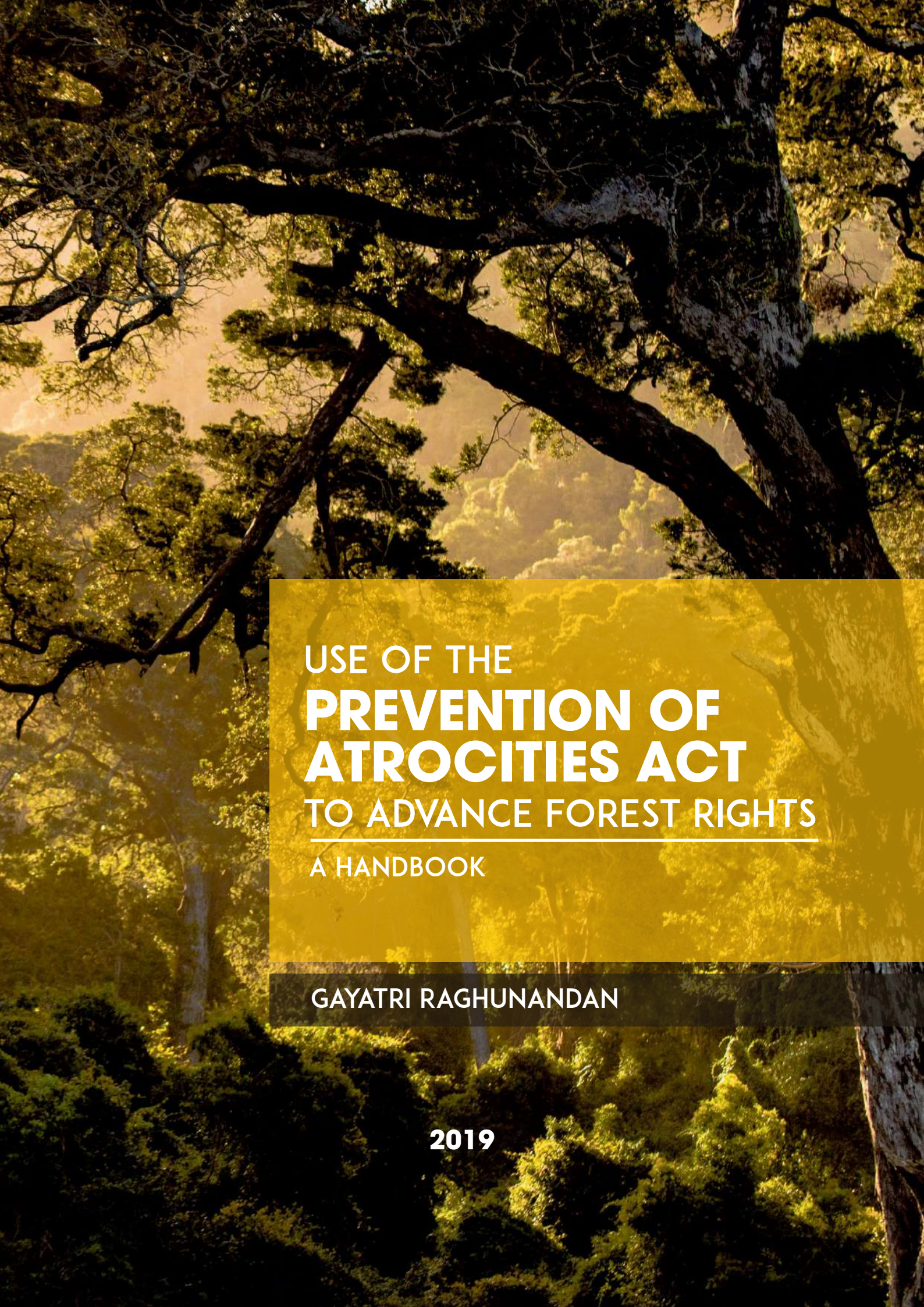
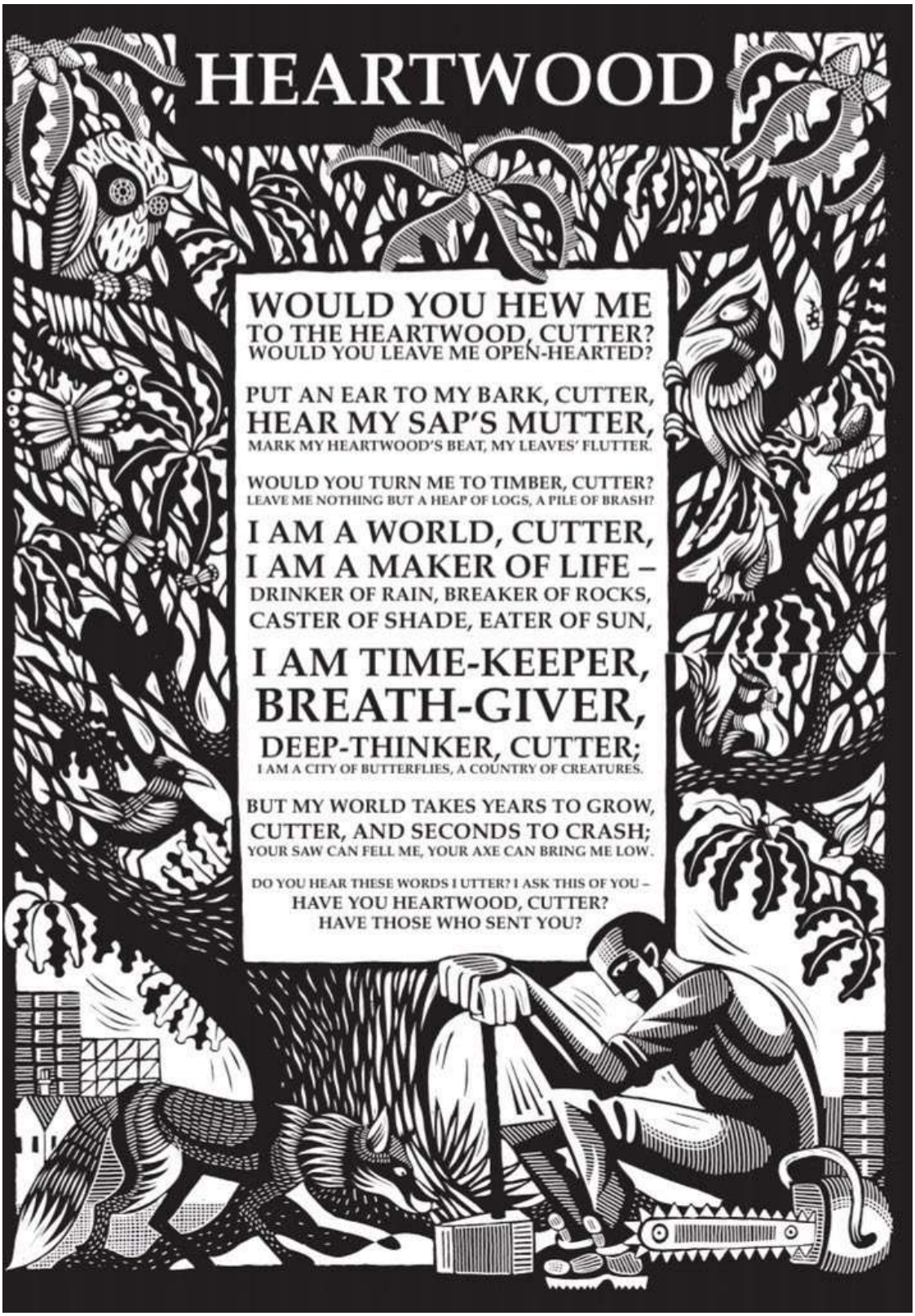


# USE OF THE PREVENTION OF ATROCITIES ACT TO ADVANCE FOREST RIGHTS

## A HANDBOOK

GAYATRI RAGHUNANDAN

2019


HEARTWOOD
WOULD YOU HEW ME
TO THE HEARTWOOD, CUTTER?
WOULD YOU LEAVE ME OPEN-HEARTED?
PUT AN EAR TO MY BARK, CUTTER,
HEAR MY SAP'S MUTTER,
MARK MY HEARTWOOD'S BEAT, MY LEAVES' FLUTTER.
WOULD YOU TURN ME TO TIMBER, CUTTER?
LEAVE ME NOTHING BUT A HEAP OF LOGS, A PILE OF BRASH?
I AM A WORLD, CUTTER,
I AM A MAKER OF LIFE –
DRINKER OF RAIN, BREAKER OF ROCKS,
CASTER OF SHADE, EATER OF SUN,
I AM TIME-KEEPER,
BREATH-GIVER,
DEEP-THINKER, CUTTER;
I AM A CITY OF BUTTERFLIES, A COUNTRY OF CREATURES.
BUT MY WORLD TAKES YEARS TO GROW,
CUTTER, AND SECONDS TO CRASH;
YOUR SAW CAN FELL ME, YOUR AXE CAN BRING ME LOW.
DO YOU HEAR THESE WORDS I UTTER? I ASK THIS OF YOU –
HAVE YOU HEARTWOOD, CUTTER?
HAVE THOSE WHO SENT YOU?

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"Heartwood" by Robert Macfarlene (2018)
Illustration by Nick Hayes

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# *Acknowledgement*

I would like to express my sincere gratitude to the Legal Resource Centre (LRC) and to Vasundhara for facilitating this publication by acknowledging its importance to the community. Most importantly, I am profusely thankful for the kind guidance offered by Ms. Shomona Khanna, who has patiently answered all of my questions and has guided me through numerous obstacles I faced through my research. This Handbook would have been impossible without her.

I am also amply thankful to Mr. Tushar Dash and Ms. Sanghamitra Dubey, who have been a driving force behind the conception of this Handbook during its early stages, and throughout.

**Gayatri Raghunandan**
Berkeley, California
September, 2019

# *Acronyms*

| | |
|---|---|
| **Atrocities Act** | Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 |
| **Cr.P.C** | Code of Criminal Procedure, 1973 |
| **CPC** | Code of Civil Procedure, 1903 |
| **CR** | Community Rights |
| **CFR** | Community Forest Resource |
| **DySP/DSP** | Deputy Superintendent of Police |
| **IFR** | Individual Forest Rights |
| **IPC** | Indian Penal Code, 1860 |
| **JFMC** | Joint Forest Management Committee |
| **LARR** | The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 |
| **FRA** | Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 |
| **FR Rules** | Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2008 |
| **FIR** | First Information Report |
| **FD** | Forest Department |
| **MFP** | Minor Forest Produce |
| **OSATIP** | Orissa Scheduled Areas Transfer of Immovable Property Regulation, 1956 |
| **POA Rules** | The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 |
| **PP** | Public Prosecutor |
| **RFO** | Range Forest Officer |
| **SC/ST** | Scheduled Caste/Scheduled Tribe |
| **SLMC** | State Level Monitoring Committee |
| **SP** | Superintendent of Police |
| **SSP** | Senior Superintendent of Police |
| **SPP** | Special Public Prosecutor |

# *Why this Handbook*

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1986 (Atrocities Act) was enacted to supplement and buttress the Protection of Civil Rights Act, 1955 (previously known as the Untouchability Act, 1955). Since then, the law has been used extensively across the country to prosecute a variety of different kinds of offences- defined as 'atrocities' in this Act.

It is also well known that this law has been primarily used by the Dalit movement, and while atrocities against tribals are equally included in the law, these have not been brought to court as much.

In 2016 important amendments were made to this law, bringing significant changes both in the definition clauses as well as in the procedures. One such change relates to the inclusion of an offence, or atrocity, relating to dispossession from or interference in enjoyment of forest rights, with 'forest right' being defined as under the Scheduled Tribes and OtherTraditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). These changes have galvanized many in the forest rights movement to start looking at the Atrocities Act more closely, a legislation which we have largely ignored till now as being of little relevance to us.

> *The purpose of this Handbook is to work towards a larger role for human rights activists and advocates in upholding the rights of members of the SC/ST communities. It is a simplified ready reckoner which provides a roadmap through the criminal justice system and attempts to ensure that we are well-equipped to prevent the roll-back of rights which have been recognised.*

In the present socio-political climate, we need to be well equipped to prevent forest rights from being taken away through various bureaucratic mechanisms of different varieties. Reading the Atrocities Act and the FRA in consonance will enable interventionists to work towards the proper implementation of the FRA in areas where it is not being implemented, or where the implementation processes have become derailed or stalled. In other words, delineating the nexus between both these enabling legislations will provide a framework for the use the Atrocities Act in such a way that enables the rights under the FRA and additionally, helps the reader understand the natural consequences of criminal prosecution. We hope that this effort assists members of the community with accessing justice and those who are part of the struggle to assimilate the scope of legal interventions in such cases.

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# I. What is the Atrocities Act?

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 **(Atrocities Act)** was originally enacted to supplement and buttress the Protection of Civil Rights Act, 1955 (previously known as the Untouchability Act, 1955). Since then, the law has been used extensively across the country to prosecute a variety of different kinds of offences-defined as 'atrocities' in this Act.

> *It is well known that this law has been primarily used by the Dalit movement. What is less known is that atrocities against tribals are equally included in the law. Therefore, these have not been brought to court as much. For instance, Section 3(1)(f) speaks of wrongful occupation or transfer of tribal land.*

In 2016, important amendments were made to this law, both in the definition clauses as well as in the procedures. One such change relates to the inclusion of an offence, or an atrocity, relating **to dispossession from or interference in enjoyment of forest rights,** with the definition of 'forest right' specifically incorporated from the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 **(FRA).**

### Atrocities specific to forest dwellers and tribals

- Wrongful occupation or cultivation or transferring to himself, of any land owned, allotted, notified to any Scheduled Caste (SC) or Scheduled Tribe (ST) (Section 3(1)(f);
- Compelling or enticing to do 'begar' or other form of forced labour or bonded labour (Section 3(1)(h);
- Denial or obstruction of customary right of passage to a public place, or community property resources (Section 3(1) (za));
- Forcing or causing to leave his house, village or other place of residence (Section 3(1)(z)).
- Wrongfully dispossessing a member of an SC or ST from his land or premises or interference with the enjoyment of his rights, **including forest rights**, over any land or premises or water or irrigation facilities or destruction of crops or taking away the produce from it. (Section 3(1)(g)).

# II. What are Section 3(1)(f)and(g)?

An understanding of the meaning and content of the 'atrocity' defined under Sections 3(1)(f) and (g) is crucial to the use of this law to advance forest rights. These provisions are extracted below:

*"3. Punishments for offences atrocities.—3 [(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—*

*xxx*

*(f) wrongfully occupies or cultivates any land, owned by, or in the possession of or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe, or gets such land transferred;*

*(g) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights, including forest rights, over any land or premises or water or irrigation facilities or destroys the crops or takes away the produce therefrom.*

*Explanation.––For the purposes of clause (f) and this clause, the expression — wrongfully includes— (A) against the person's will; (B) without the person's consent; (C) with the person's consent, where such consent has been obtained by putting the person, or any other person in whom the person is interested in fear of death or of hurt; or (D) fabricating records of such land;*

*xxx"*

*shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."*

## *Key Ingredients of Section 3(1)(f) are:*

- *A non SC/ST perpetrator*
- *Occupies or cultivates land*
- *Such occupation or cultivation is wrongful*
- *The land is owned, in possession of, or allotted to an SC/ST*

  *OR*
- *Gets such land transferred*

*This provision, while important, is clearly restricted in its operation to certain types of actions and certain types of land only. Hence, the need for a further provision in Section 3(1)(g), which was incorporated in 2016.*

## *Key Ingredients of Section 3(1)(g) are:*

- *A non SC/ST perpetrator*
- *Dispossesses or interferes with enjoyment of forest right or other right of SC/ST person,*
- *Such right of SC/ST person could be over land or premises or water or irrigation facilities*
- *Destroys the crop or takes away agricultural produce from the land/ premises*
- *Such dispossession or interference is wrongful (as defined in the section)*

### What is the meaning of "wrongfully" under section 3(1)(f) & (g)?

Although 'wrongfully' is a commonly used word, its meaning here is specifically stated in the provision itself :

- Against the person's will - this would mean any situation where the person is unwilling or disinclined for such possession to be taken from him.
- Without the person's consent - where the person concerned has not given his express approval, and would include situations where he has no knowledge of the fact of dispossession.
- With the person's consent, obtained by putting such person (or person in whom they are interested) in fear of death or hurt - where a person has given 'consent' because he or someone he is close to, such as a family member or friend, is put in fear of death or hurt, such consent has no value in the eyes of law.
- Fabricating records of such land - If the records have been fabricated for the purpose of such dispossession, then that is sufficient in itself for the act to be wrongful, and it is not necessary to show lack of consent or unwillingness.
- Any other similar wrongful act - by using the word "includes" at the beginning of the Explanation, the legislature has left it open to the Judge to include other similar wrongful acts within the purview of this provision.

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VII. Alternate strategies- What more can you do for your rights?
VI. What can the Gram Sabha do?
V. Gaps in process - What should you do?
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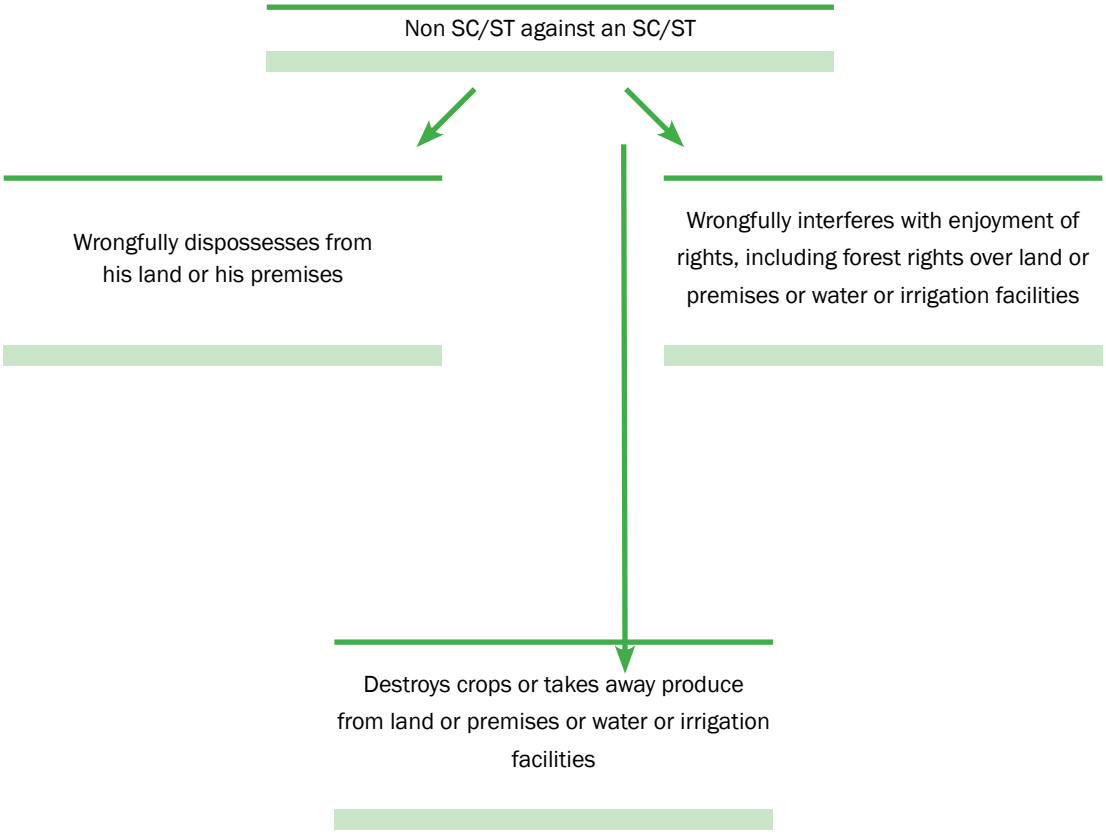
I. What is the Atrocities Act?

- Punishment under Section 3(1)(f) and (g) are of conviction for a minimum of 6 months imprisonment, and may extend to 5 years, including fine. The provision for a mandatory minimum sentence is unusual, and demonstrates that Parliament considers this to be a serious offence.

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# III. Aggravated offences

Section 3(2) of the Atrocities Act defines certain aggravated or more serious offences, which have more stringent punishments:

- Providing false evidence in a capital crime is punishable with death;
- providing false evidence in a crime punishable with 7 years imprisonment and upwards is punishable with 6 months to 7 years imprisonment;
- mischief by fire/ explosive substance can amount to punishment of 6 months to 7 years imprisonment; and
- mischief by fire destroying a place of worship or dwelling is punishable with life imprisonment.

### Offences by Public Servants

In addition to the provisions as described earlier, the Atrocities Act also makes specific provision for punishment for offences committed by public servants. This is important to keep in mind in the context of forest rights where often the violation of such rights is by government functionaries. These provisions state:

- According to Section 3(2)(vii), a public servant committing any offence under Section 3 is punishable with a minimum sentence of 1 year imprisonment (as against a minimum of 6 months for non-government servants) upto the maximum sentence of that offence.
- Section 4 of the Act lays down the activities which can be considered to be a wilful neglect of duties of a public servant (who does not belong to the SC/ ST community). Such wilful neglect of duty is punishable with the minimum sentence of 6 months and can extend to 1 year.

# *Sanction for Prosecution*

*As stated before, in 2016 there were sweeping amendments to the Atrocities Act, 1989, including the incorporation of dispossession from forest rights as an 'atrocity' under Section 3(1)(g), with offences by public servants attracting even more stringent punishments.*

*However, it is a well established law that before cognizance of an offence against a government servant can be taken by a court of law, sanction for prosecution must be obtained from the appointing authority under Section 197 Cr.P.C.*

*Given that a considerable proportion of violations of the FRA taking place across the country are by government officials, if a prosecution under the Atrocities Act is to be an effective remedy for tribals and forest dwellers, clarity on this issue is very important.*

*Section 197(1) CrPC states that when a public servant is accused of an offence "alleged to have been committed by him while acting or purporting to act in the* ***discharge of his official duty****", before a court takes cognizance of the same, sanction of the relevant appointing authority (of the central or state government, as the case may be) is required.*

*An additional proviso to Section 4 of the Atrocities Act states that if a public servant is being prosecuted under this section, then sanction for prosecution through an administrative enquiry would be necessary. This however, applies only to offences under Section 4(1) of the Atrocities Act relating to 'neglect of duties', and is not applicable to the main offences under the Act described under Section 3.*

## WHAT CAN YOU DO?

*It is a truism that obtaining sanction for prosecution of public servants can be difficult and time consuming, and sometimes impossible.*

*It is important to recognise, first of all, that no sanction is required for the purpose of registration of FIR, for arrest, or for investigation into an offence committed by a public servant.*

*It is only at the time of filing of chargesheet, when the Court is required to decide on what charges to frame, that sanction for prosecution is required. At this point, you can ask your lawyer to address oral as well as written arguments that violation of forest rights is not "discharge of official duty" by the accused public servant, and therefore sanction for prosecution is not required. This argument has been successfully adopted by many social justice lawyers in India in cases of human rights violations. And several criminal courts have proceeded with prosecutions on the basis that committing such abuses is not* ***"in the discharge of his official duty"****. For this reason, there is no need for sanction for prosecution.*

| ACT OF THE PUBLIC SERVANT | IS THE ACTION TAKEN IN DISCHARGE OF OFFICIAL DUTY? |
|---|---|
| Sexual assault and violence against members of community | No, such an act can in no manner be directly or reasonably connected with carrying out official duties |
| Confiscation of food and personal belongings of villagers entering forests with restricted access | No, such acts of violence cannot be seen as to be committed while discharging an official duty. |
| Forgery of documents or electronic records for the purpose of cheating (Section 468, 471 of the IPC, 1860) for e.g. forgery of signatures for the passage of a Gram Sabha resolution etc. | No, such acts cannot be said to have been committed during the course of discharge of official duty. |
| Burning down of villages and settlements in an attempt to move villagers out of reserved areas | No, such acts will constitute offences under Section 3(2)(iii) and (iv) POA 1989 and do not fall within the ambit of official duties. |
| Plantation of trees on fallow lands | Arguable.<br>In a case where there is use of force/ coercion/forgery or violence to do so, sanction will not be required. |

However, please note that this legal argument is hotly contested in every case. Hence it is advisable that, in addition to a criminal prosecution, alternate strategies also be adopted (see below **Alternate strategies- what more can you do for your rights?)**

**Some examples of "atrocities" (Please note that this is meant to be only illustrative, rather than a complete list)**

| | OFFENCE | AGGRAVATED OFFENCE | OTHER STATUTES |
|---|---|---|---|
| **FORCIBLE COMMERCIAL PLANTATION ON TRIBAL LANDS** | Forcible plantations without specific permission, on lands where IFR/CR/CFR titles have been made or titles have been granted, or are under process.<br>Section 3(1)(f)&(g) of the Atrocities Act | Where the plantations are done by the FD either directly or through its agent.<br>Sections 3(1)(f)&(g), and 3(2)(vii) of the Atrocities Act | Section 7 FRA<br>Sections 441, 447 IPC |
| **SEIZURE OF MFP** | Seizure from forest dwellers and/or obstruction in its transportation when forest dwellers are engaged in collection, use and disposal of MFPs in accordance with section 3 (1)(c) of FRA.<br>Section 3(1)(g) Atrocities Act | Seizure of MFP by government officials followed by burning of produce collected by forest dwellers or setting fire/bombing mode of transportation.<br>Sections 3(1)(g), 3(2)(iii), (vii) of the Atrocities Act | Section 7 FRA,<br>Sections 435, 436 IPC |
| **PHYSICAL OR VERBAL ABUSE** | Threats of violence such as physical assault, verbal abuse (name-calling) if the forest dweller exercises rights under the FRA.<br>Sections 3(1)(r),(s)&(g) of the Atrocities Act | Threats of violence and/or causes the evidence regarding such a commission to disappear and/or gives any information regarding the offence he knows to be false.<br>Sections 3(1)(r),(s)&(g), and 3(2)(v), (vi), (vii) of the Atrocities Act | Section 503-506 IPC |
| **FABRICATION OF GRAM SABHA PROCEEDINGS** | Fabrication/forgery of Gram Sabha proceedings granting 'consent' for forest diversion, forged signatures of villagers.<br>Section 3(1)(g) of the Atrocities Act | Fabrication/forgery by a government functionary of Gram Sabha proceedings granting 'consent' for forest diversion, forged signatures of villagers<br>Section 3(1)(g) with Section 3(2)(vii) of the Atrocities Act. | Section 7 FRA<br>Sections 463 to 474 IPC |

| | OFFENCE | AGGRAVATED OFFENCE | OTHER STATUTES |
|---|---|---|---|
| **TRANSFER OF TRIBAL LANDS** | Transfer of tribal land to non-tribals through benami transactions.<br><br>Section 3(1)(f) and (g) of the Atrocities Act | When the said public servant dishonestly misappropriates or converts to his own use that property and commits criminal breach of trust.<br><br>Sections 3(1)(f) and (g) r/w 3(2)(vii) of the Atrocities Act | Section 7, FRA<br><br>Section 441 IPC |
| **EVICTION** | Eviction of tribals/forest dwellers without recognition of rights and without due process.<br><br>Section 3(1)(f)&(g) of the Atrocities Act | Eviction of tribals/forest dwellers without recognition of rights by a government official.<br><br>Sections 3(1)(f) and (g) r/w 3(2)(vii) of the Atrocities Act | Section 4(5) read with Section 7 of FRA<br><br>Multiple IPC provisions |
| **SEXUAL HARASSMENT** | Sexual harassment of women forest dwellers who are exercising their forest rights, such as collecting MFP or managing their CFRs.<br><br>Section 3(1)(w)&(g) of the Atrocities Act | Sexual harassment of women forest dwellers who are exercising their forest rights, by a government official.<br><br>Sections 3(1)(w) & (g), and 3(2)(v)&(vii) of the Atrocities Act | Section 7 FRA<br>Section 354, 354A, 354B, and other provisions of IPC |
| **CAUSING DEATH** | Causing death of an SC/ ST person, whether murder or culpable homicide not amounting to murder.<br><br>Section 3(2)(v) of the Atrocities Act. | Murder or culpable homicide not amounting to murder of an SC/ST person by a government official<br><br>Section 3(2)(v) and (vii)of the Atrocities Act | Sections 299 to 306 IPC |

# IV. Process maps and procedure

In this part, we have explained the procedure to be followed during a criminal proceeding under the Atrocities Act.

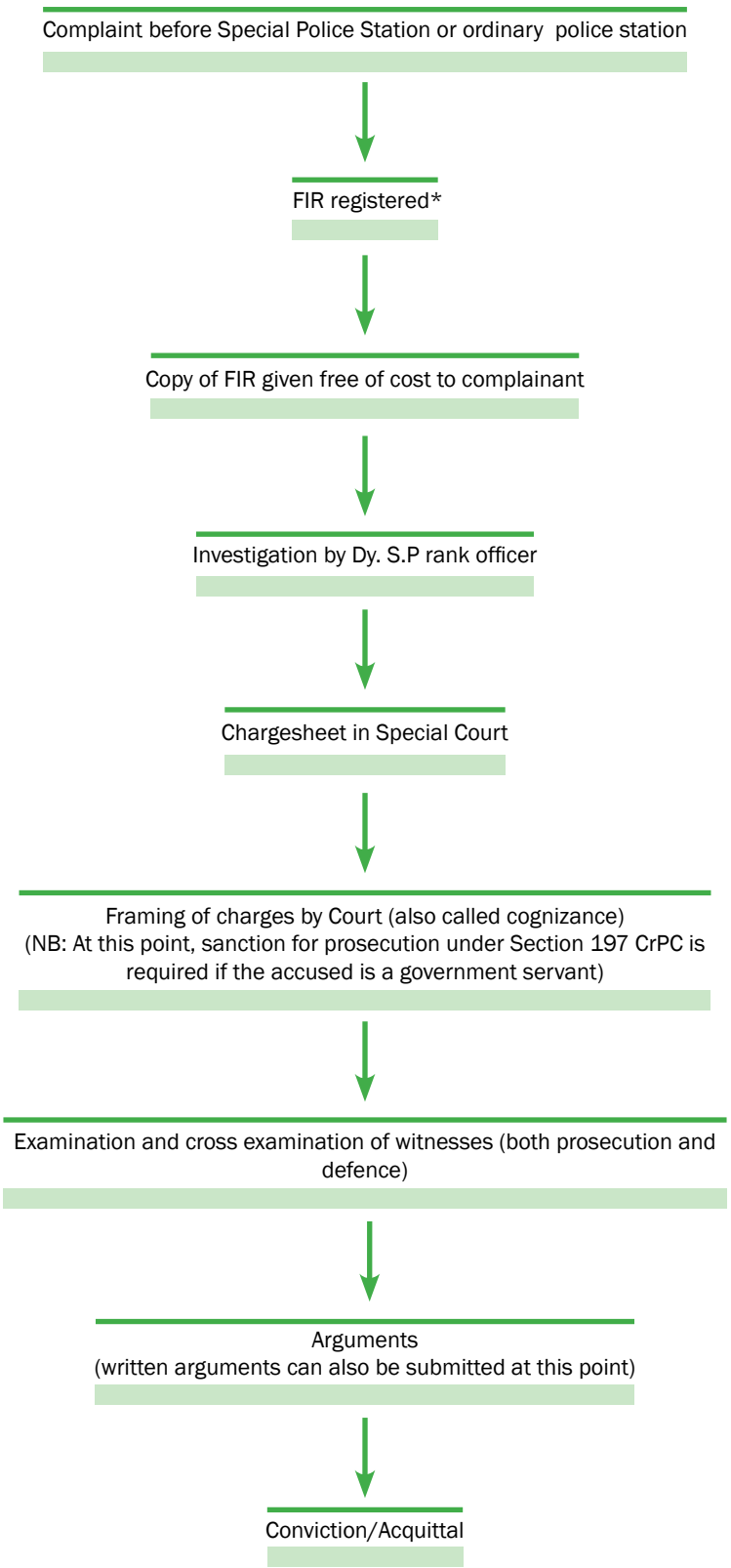
**Chart I** is a process map from the time of registration of FIR up to conviction/ acquittal.

**Chart II** provides for the procedure when the FIR is not registered.

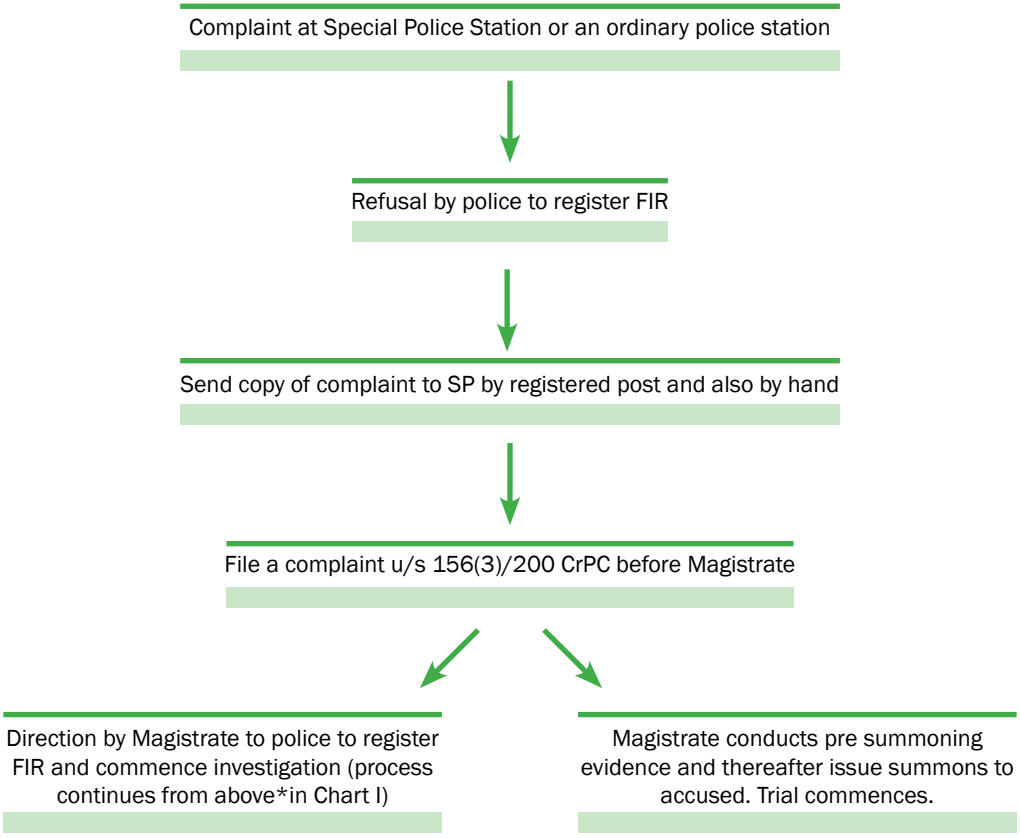
**Chart III** explains the criminal process for bail, which gains significance in light of the fact that anticipatory bail is not allowed under the Atrocities Act (Section 18A).

Under **Section 7** of the FRA, any authority or Committee or officers or member of such authority or committee who contravenes any provision of the FRA or any Rule made thereunder concerning recognition of forest rights shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees. **Section 8** provides for the procedure to be followed in taking cognizance of such offences. **Chart IV** shows the procedure for parallel criminal proceedings with proceedings under Section 7 and 8 of the FRA.

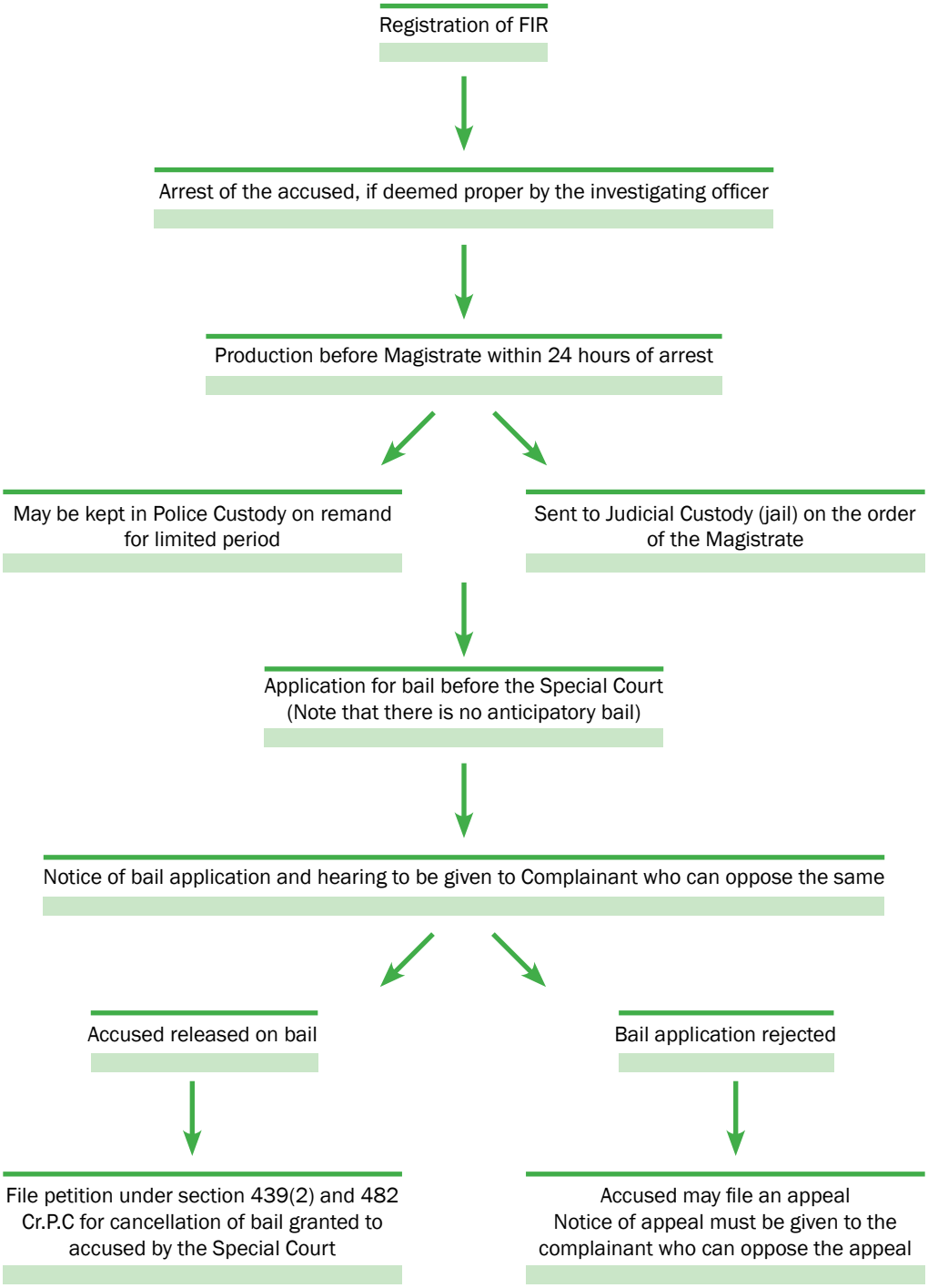
## CHART - I | WHEN FIR IS REGISTERED



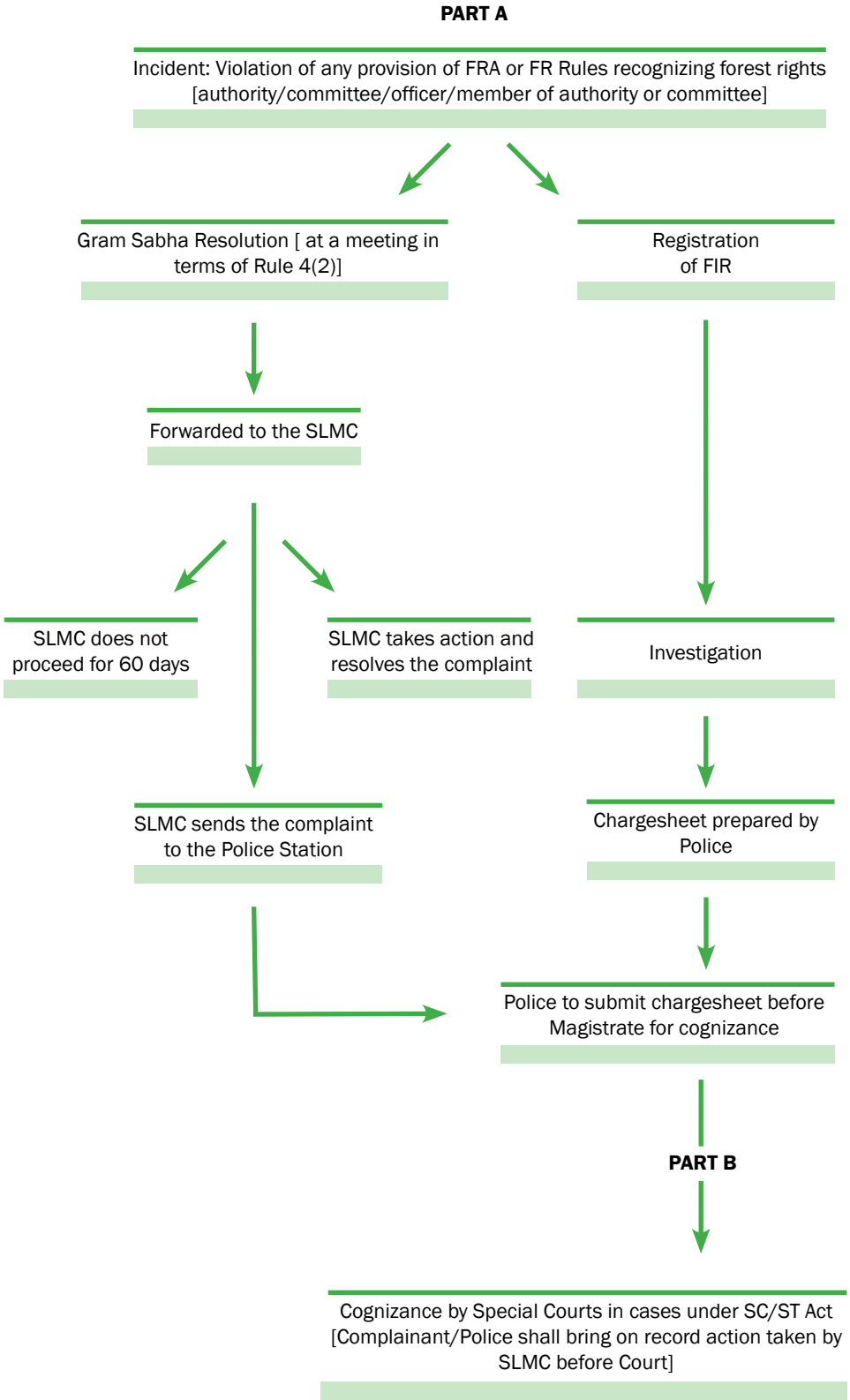
## CHART - II | WHEN FIR IS NOT REGISTERED



## CHART - III | BAIL



## CHART - IV | SECTION 7 & 8 FRA, WITH PARALLEL CRIMINAL PROCEEDINGS




**NB:** (1) When FIR is not registered, follow process in CHART II
(2) This process map is based on a technical analysis of the statute and the procedure described has not been tested in a court of law.

# V. Gaps in process - What should you do?

### Non-registration of complaint

- File a private complaint in the court of jurisdiction under Section 156(3) CrPC or 200 CrPC

### Delay in filing charge sheet

- File a complaint before concerned Magistrate's court under Rule 7 (2) POA Rules and Section 173 (1) CrPC.

### Negligence of Public Prosecutor

- File a petition filed under Section 301(2) Cr.PC for permission to assist PP.

### Registration of false/counter cases against complainant

- File a petition under Section 177 IPC and Section 3(1) (p) of the Atrocities Act.

### Police are not arresting accused

- File a petition before the Court to issue warrant to arrest accused directly under Section 44 CrPC.

### Officials are failing to visit the incident place on time

- File application under Rule 6 & 12 POA Rules

### Wilful negligence of officials

- File petition under Section 166 of IPC and Section 4 of the Atrocities Act.

### Prosecution not examining all the witnesses during trial

- File petition filed under Section 202(2) CrPC, or a protest petition for the re-opening of the case in case the concerned judge is not examining the witnesses.

# VI. What can the Gram Sabha do?

1. Use a specific format for Gram Sabha Resolutions and ensure that they conform to Rule 4(5) of FR Rules. For e.g. incorporation of relevant provisions of the Atrocities Act in Gram Sabha resolutions would give them greater legitimacy in the minds of government officials.

> *NOTE: Despite the existence of Section 4(5) of the FRA, in many cases, the FD has been displacing people while the recognition process is underway. It would be important to create awareness regarding this provision and ensure that a letter is written to the authorities, even if such violation is only apprehended.*

2. Gram Sabha should exercise their rights as mentioned in Section 5 FRA and follow the dictum of the Supreme Court in **Orissa Mining Corporation v. Union of India and Ors. (2013) 6 SCC 476**

> *The Gram Sabha has both a duty and a power over forest management, that is, it has a duty to protect and preserve the community forest resource, which it is empowered to carry out under section 5 of the FRA. The Supreme Court held that "(t)hose duties include preservation of habitat from any form of destructive practices affecting their cultural and natural heritage". (para 54)*

3. The Gram Sabha should build evidence relating to violations, such as forged proceedings, threats of violence, mischief with fire, and so on. For e.g. in the case of forged Gram Sabha proceedings/resolutions, it would be helpful to note the procedure and other details such as quorum, notice, attendance rolls, etc., and address complaints under the relevant state panchayati raj legislation, including the provisions of the Atrocities Act which apply.

4. In cases of defaulting public servants, the Gram Sabha should address a representation/letter containing relevant provisions of the Atrocities Act to the Secretary of the department to which the official belongs, seeking disciplinary action for "misconduct" under the relevant service rules.

# VII. Alternate strategies - what more can you do for your rights?

Sometimes it is just not possible, despite all efforts, to initiate criminal proceedings and follow through upon them. This does not mean that the important rights under the Atrocities Act are not enforceable. It's important to recognise the fact that the Atrocities Act makes a substantive statement regarding forest rights, and there are many other ways in which you can ensure these rights are protected. In this part some of these alternative strategies are listed, although this list is by no means exhaustive.

- Incorporation of the provisions of the Atrocities Act in Gram Sabha resolutions would lend a greater authority to such resolutions in the minds of government officials. It would be helpful to create formats for these resolutions and distribute them through the sangathans.
- Identify atrocity-prone areas under Section 17 of the Atrocities Act and prepare common intervention mechanisms for these areas through a common network of lawyers and activists.
- Create awareness regarding FRA and Atrocities Act through proliferation of pamphlets/primers at the ground level; these documents must contain a list of common atrocities and the grievance redressal mechanisms.
- Establish and maintain contact with State and Central legal services authorities for enhanced flow of information, especially with legal aid lawyers.
- Organise national and local level meetings with activists and lawyers to improve information sharing and create a common shared database of information and knowledge. Also, create and maintain a functional relationship with alternative media and press.
- Most importantly, be ready for a backlash following the filing of cases and other lines of action; it is advisable to identify and engage lawyers in the District and High Court who are agreeable to be available as and when required.
- Prepare victims/witnesses for court proceedings by providing them with model questions of examination and other related information.

# VIII. Important Developments in 2018

*On 20 March 2018, the Supreme Court passed a judgment (Subhash Kashinath Mahajan vs. State of Maharashtra & Anr. (2018) 6 SCC454, AIR 2018 SC 1498), issuing directions supposedly to prevent the misuse of the Atrocities Act. A two –judge Bench was examining whether there could be procedural safeguards to prevent the provisions of the Atrocities Act from being 'abused' for extraneous considerations. The Bench issued the following directions:*

1. *There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.*
2. *In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.*
3. *To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.*
4. *Any violation of direction (2) and (3) will be actionable by way of disciplinary action as well as contempt.*

## WHAT HAPPENED NEXT?

*This judgment resulted in mass protests against the dilution of the enabling provisions of the Atrocities Act. A nationwide call for a Bharat Bandh by community-based organisations sparked violent clashes between police and protesters leading to the death of at least six people and injuries to several.*

*The upsurge was followed by the Union of India filing a petition[1] on 02.04.2018 before the Supreme Court, seeking a review of the judgment and a recall of the directions. These proceedings also included upwards of 13 intervention applications and 10 writ petitions filed by various civil society organisations and parties. Arguments were heard at length by the Supreme Court during 2018-19. By a detailed judgment on 1st October 2019, a three judges bench of the Supreme Court has set aside the directions of the March 2018 judgment, bringing the matter to a rest.*

[1] R.P.(Crl.) No. 228/2018 in Crl.A. No. 416/2018, Union of India vs. State of Maharashtra & Ors. Supreme Court of India.

*Parliament has also acknowledged that the March 2018 decision of the Supreme Court subverted the very objective of the Atrocities Act, which was to prevent commission of atrocities against members of SC/ST communities. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 (see Annexure 1) was passed by Parliament on 9th August 2018 to amend the provisions of the Act in order to restore its effectiveness.*

**With the Supreme Court having pronounced its view as the law stands today, the procedures under the Atrocities Act 1989, as amended in 2018, is the applicable law of the land, and the directions of the Supreme Court judgment dt. 20.3.2018 are not operational.**

### Key provisions of the 2018 amendment

- No preliminary enquiry required for registration of a First Information Report against any person under the Atrocities Act;
- the Investigating Officer shall not require approval for the arrest, if necessary, of any person; and
- Anticipatory bail shall not be provided to any person charged under the Act in terms of Section 18A of the Atrocities Act.

# IX. Frequently Asked Questions

**Q.** Is it an offence under the Atrocities Act when the DLC refuses/rejects a claim? In such a case, is it the individual person or the DLC that will be held responsible?

**A.** Mere rejection of a claim by the DLC may not constitute an offence. However, this rejection/refusal coupled with threat/assault/violence would constitute an offence under the provision. In such a case, it is only possible to book an individual under the Atrocities Act, not the committee as a whole. It is important to note that only when the dispossession is "wrongful" is an offence made out.

**Q.** Is the meaning of "wrongfully" limited to what is specified in the provision?

**A.** The word "includes" within the provision indicates that the provision is not limited only to that which is specified in the explanation of "wrongfully" but also includes other such similar acts.

**Q.** Can the misinterpretation of records fall under the definition of "wrongfully"?

**A.** No, mere misinterpretation of records cannot be said to be wrongful. In such a case, an appeal may be preferred against the decision of the concerned officer or committee.

**Q.** Under Section 7 read with Section 8 of the FRA, can an FIR be registered directly with the police without a resolution of the Gram Sabha?

**A.** Section 7 has a wide ambit, and therefore a violation of the FR Rules will also fall under Section 7. This section does not require a resolution to be passed by the Gram Sabha for the registration of an FIR. However, for the chargesheet to be taken cognizance of, it is necessary that a Gram Sabha resolution has been passed, has been forwarded to the SLMC, and no action has been taken by the SLMC for sixty days. Therefore, it is advisable that a Gram Sabha resolution be passed prior to, or at the same time as the registration of an FIR. (see Chart IV in Process Maps & Procedure above).

In this regard it would be pertinent to refer to the Guidelines on the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act,2006:-

"VI. Awareness-Raising, Monitoring and Grievance Redressal:

xxx

*d. If any forest dwelling Scheduled Tribe in case of a dispute relating to a resolution of a Gram Sabha or Gram Sabha through a resolution against any higher authority or Committee or officer or member of such authority or Committee gives a notice as per Section 8 of the Act regarding contravention of any provision of the Act or any rule made thereunder concerning recognition of forest rights to the State Level Monitoring Committees, the State Level Monitoring Committee should hold an inquiry on the basis of the said notice within sixty days from the receipt of the notice and take action, if any, that is required. The complainant and the Gram Sabha should be informed about the outcome of the inquiry."*

**Q.** Can criminal proceedings be initiated against an official without sanction for prosecution? When is an administrative enquiry necessary?

**A.** Sanction for prosecution is not required for the registration of FIR, investigation, or arrest of a government servant. It is only at the time of cognizance – when the Magistrate frames charges -- that a sanction (from the appointing authority) is required under Section 197 CrPC, and then too, only for actions taken "in the discharge of his official duty".

Additionally, an administrative enquiry is required when any public servant is charged with an offence of 'neglect of duties' under Section 4 of the Atrocities Act. This is not required for an 'atrocity' under Section 3(1) and/or Section 3(2) of the Act.

**Q.** Would dispossession of forest rights qualify as an "atrocity" even while the rights are in the process of being recognized?

**A.** Under Section 4(5) of the FRA, dispossession from forest rights while the recognition process is underway is, in any case, prohibited. Furthermore, the definition of forest rights under the Atrocities Act is relatable to Section 3(1) of the FRA, which is the list of forest rights. This is noteworthy as the Legislature could have referred to Section 4(1) or even Section 6 of the FRA, which may have indicated that only recognised forest rights are protected. The Legislature did not take that route.

Hence, it is safe to say that dispossession from forest rights even while the rights recognition process is underway is an "atrocity" within the meaning of Section 3(1)(g) of the Atrocities Act.

**Q.** Is it mandatory to include all possible facts within the FIR?

**A.** That is not required. It has been held in the case of **Ashabai Machindra Adagale vs. State of Maharashtra** AIR 2009 SC 1973, (2009) 3 SCC 789 that an FIR is not expected to be an encyclopedia. However, the key ingredients of the offence should be mentioned in the FIR.

**Q.** Is arrest compulsory?

**A.** Arrest of the accused is not compulsory. In **Arnesh Kumar vs. State of Bihar** (2014) 8 SCC 273, AIR 2014 SC 2756, it was held that in cases where the offences invite punishment less than 7 years imprisonment, arrest is not mandatory. Section 41 CrPC also uses the word "may", and not "shall", when referring to the power of the police to arrest the accused.

**Q.** Can there be an arrest without giving a reason?

**A.** Under Section 50 CrPC and Article 22 of the Constitution of India, you must be informed of the reasons for your arrest.

**Q.** What factors must one keep in mind when provided with the copy of the chargesheet?

**A.** Examine the chargesheet to see which of the accused have not been included and ask for all the information to be produced under Section 91 CrPC.

**Q.** What can one do if the SPP is not helpful?

**A.** Under Section 24 CrPC any victim can assist the Public Prosecutor during the trial. However, it may happen that the Public Prosecutor is not open to such assistance for a variety of reasons. In such a situation, the Atrocities Act provides that the victim/complainant can file an application before the District Magistrate/ Collector for the appointment of an advocate of the victim's choice as per Rule 4(5) POA Rules (i.e. an advocate with at least seven years experience) by duly informing the Trial Court, as a Special Public Prosecutor or SPP.

# X. Annexures

## ANNEXURE 1

रजिस्ट्री सं॰ डी॰ एल॰—(एन)04/0007/2003—18 REGISTERED NO. DL—(N)04/0007/2003—18

भारत का राजपत्र
The Gazette of India

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सं॰ 39] नई दिल्ली, शुक्रवार, अगस्त 17, 2018/ श्रावण 26, 1940 (शक)
No. 39] NEW DELHI, FRIDAY, AUGUST 17, 2018/SHRAVANA 26, 1940 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

**MINISTRY OF LAW AND JUSTICE**
**(Legislative Department)**

*New Delhi, the* 17*th August,* 2018/*Shravana* 26, 1940 (*Saka*)

The following Act of Parliament received the assent of the President on the 17th August, 2018, and is hereby published for general information:—

# THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (PREVENTION OF ATROCITIES) AMENDMENT ACT, 2018

No. 27 OF 2018

[17*th August*, 2018.]

An Act further to amend the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

**1.** (*1*) This Act may be called the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Insertion of new section 18A.

**2.** After section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the following section shall be inserted, namely:—

No enquiry or approval required.

"18A. (*1*) For the purposes of this Act,—

(*a*) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(*b*) the investigating officer shall not require approval for the arrest, if necessary, of any person,

against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

(*2*) The provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court.".

---

DR. G. NARAYANA RAJU,
*Secretary to the Govt. of India.*

## ANNEXURE 2: SAMPLE COMPLAINT TO POLICE

**[FOR REGISTRATION OF FIR]**

NB: Please note that this is a format generated based on experience, and is not a statutory format. You may revise and modify it based upon the circumstances and requirements of the case.

**FROM**
Complainant/s name:
Scheduled Tribe
Address:
Contact Details:
Date:

**TO**
The Police Officer-in-Charge
(Complete Address)

**Subject:**

Dear Sir/Madam,

We would like to bring the following facts to your notice:
1. **Facts** of the case [bringing out the forest rights/ any other violation in narrative form].
2. **Additional facts such as:-**
[(a) In the case of forged gram sabha proceedings, list out the individuals whose signatures have been forged.
(b)Trace the path of the letter/Gram Sabha Resolution/petition through authorities who have been sent a copy. Here, the name and designation of the person who forwarded the resolution to the concerned authority will have to be given, along with a statement that she/ he is not a tribal].

We would like to report that this is a serious case of **(nature of the violation)** under various provisions of the **(Relevant Acts)**, including but not limited to **(relevant sections).** These acts are also a criminal 'atrocity' committed by public servants within the meaning and intent of Section 3(1)(g) read with Section 3(2)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
We therefore want to register this as a First Information Report against the ..... for the above criminal acts.
We are seeking your help and request you to kindly register our First Information Report in this case and conduct a thorough investigation and take necessary steps as required under the Criminal Procedure Code.

For your ready reference we are enclosing herewith
(a) Copy of [Complainant/Informant] I.D. proof.
Hope you will do the needful favourably at the earliest.

Yours Sincerely (Complainant/Informant Signature)

## ANNEXURE 3 : NOTICE UNDER SECTION 8 FRA

NB: Please note that this is a format generated based on experience, and is not a statutory format. You may revise and modify it based upon the circumstances and requirements of the case.

Notice issued under Sec. 8 for violations under Sec. 7 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, and under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007.

DATE:

To,
The Chief Secretary-cum-Chairman
State Level Monitoring Committee,
**[City, State]**

**Subject:** Notice under Section 8 of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Amended Rules, 2012, to the State Level Monitoring Committee challenging **[details of the decision of the DLC],** which is in contravention of the provisions of FRA 2006 and rules

Dear Sir/Ma'am,
We the undersigned write to you on behalf of [.....] gramsabha as mandated by its resolution dated [.....] (Provide as an Annexure to the notice) with great concern and grievances to draw your sincere attention to a matter that that requires your urgent perusal and action. This impugned decision has been provided at **Annexure [.....].**
**[annex the impugned decision]**

[Provide a comprehensive outline of the matter, with special emphasis on the points below]

1. Name of the authority/Committee/officer/ member of such authority or Committee :

2. Description of offence under Sec.7 of FRA :

3. Nature of violations with the specific Sections of FRA and its Rules :

4. Names of the victims :

5. Names of witnesses, if any :

6. List of evidences attached :
   (Complaint, Fine receipt, any other)

The Gram Sabha of [**name of Gram Sabha]** would like to submit the following objections on the decision [**date of impugned decision**].

**[List all the objections raised in a comprehensive form such as**

1. With regard to the process of decision making;
2. With regard to the eligibility and definition of forest dwellers;
3. With regard to the adequacy of the evidences;
4. With respect to the Settlement process, if any; and/or
5. With regard to individual rights resulting in the infraction of Community rights;
6. Any other matter]

On the above grounds we are placing before you this notice under Rule 8 of FRA 2006 and Amended Rules, 2012, which has authorized the SLMC to conduct an inquiry into and question the reasons and proceedings/decisions of district level committees.
We re-iterate that the decision taken in the case [**date and reference of impugned decision**] must be considered as null and void due to it being in complete violation of the above mentioned provisions and rules of FRA, 2006.

**Therefore, 60 (sixty) days notice is hereby issued to the State Level Monitoring Committee under Sec. 8 of the Forest Rights Act to take cognizance of the above acts of the above stated officials which constitute an offense under Sec.7 of the Forest Rights Act for violations of the above stated section/s of the Forest Rights Act and Rules.**

The Forest Rights Act, 2006 and Rules 2008, (Amended 2012) came to recognize the historical injustice done with communities dependent on forests and to give legal recognition to their rights. However, the decision of official members of the DLC in this case has brought us back to the crossroads of the same injustice. We have our hope in your office that you will intervene in the process and ensure that both the spirit of the law and the rights of the people are not violated.

We therefore pray that:

1. The decision of [give **date and reference of impugned decision**] be considered as void ab initio, and set aside;
2. An order to reconvene the SDLC/DLC in accordance with the tenets of the FRA, 2006 be passed; and
3. Any other order that may be deemed to be fit.

# *About*

## LEGAL RESOURCE CENTRE (LRC)

LRC is a resource centre for strengthening legal knowledge, capacities and strategies relating to rights of adivasis in India, through multi-pronged and inter-disciplinary approaches to law. This includes academic and action-oriented legal research, case support, capacity development, knowledge production and development of curricula for law universities. LRC locates itself firmly at the intersection of professional legal practice and social movements. The areas of practice and intervention of LRC cover constitutional law, laws relating to land and forests, environmental law, criminal law, administrative law, human rights, among others.

While academics can provide theoretical imagination to lawyers and activists, they are also forced to politicize and pragmatize their theories. Alongside, activism thoroughly benefits from critical lawyering, and lawyering (especially one that is bound in traditional notions) benefits from activism in social movements in order to make the legal system a safer space for marginalized communities. At LRC, a fusion of these three pockets of socio–legal communities is considered necessary for any comprehensive reform of the political and has been implemented in any project that we have undertaken to do. Since it formally commenced activities in July 2017, the LRC has attempted to be just such a space, bringing together lawyers, academics and activists who are committed to ensuring social justice for the marginalised in general, and for adivasi and forest dwelling communities in particular.

For practical purposes, we are located in the law office of a practicing lawyer in the Supreme Court at New Delhi. However, LRC is also located in the people who constitute it, thereby having a peripatetic outreach in various states such as, Bhubaneshwar in Odisha, Jabalpur in Madhya Pradesh, with outposts in Bangalore and Patna. In coming months, it is expected that these extensions and outposts will be further strengthened, and new areas will be reached.

### What does LRC do?

**(a) Monitoring of evolving laws and precedent**

LRC monitors various constitutional courts and tribunals where litigations around adivasi and forest rights are ongoing, collating this information for further use as and when required. A nascent jurisprudence evolving around the FRA in particular is being closely observed. Where important developments are taking place/ anticipated, care is taken to alert social movements working on these issues in a timely manner.

Parallel to the monitoring of developments inside the justice system, as a natural corollary, LRC is also monitoring developments in the law in the form of legislative changes, through guidelines and executive instructions, as well as in the form of procedural changes.

**(b) Capacity building of lawyers at the District and High Courts**

LRC's endeavour is to promote access to justice under the FRA by building capacities and networks of lawyers and legally trained activists capable and willing to provide support in cases of rights violations under the law. The emergence of a rich body of case law under the FRA between 2006 and today demonstrates that the rights under this legislation are being regularly asserted and creatively interpreted. New spaces for strategic intervention within the administration as well as in semi-autonomous bodies has also meant there is an increased role to be played by lawyers who are located at the District centres, where many of these official bodies are to be found. At the same time, given that there are enormous structural obstructions to the advancement of rights of marginalised communities, it is important to be prepared in advance for future challenges before appellate courts/ authorities. Providing training and training resources to lawyers and legally trained activists at the district level is, therefore, a pivotal activity of LRC.

- Training resources: The lawyers and researchers at LRC are also available as resource persons/ trainers for other institutions and organisations (grassroots organisations, law universities, tribal research institutions, state line departments, and other institutions) who may require such support from time to time on specific issues.
- Curricula development: An important long term goal of LRC is to provide technical support to universities, law colleges, and judicial training institutions to develop curricula in law and praxis around adivasi and forest dwellers rights. Towards this end, LRC has collaborated with leading law universities to prepare teaching modules for undergraduate law courses on a variety of subjects, including constitutional law, property law, civil law, criminal law, international law, and the law of torts. These teaching modules have generated considerable enthusiasm and interest.

**(c) Research, documentation and development of analysis**

LRC is engaged in legal research, analysis and support in the nature of academic and doctrinal endeavours. This is done through the medium of articles, books, chapters, legal briefs and IEC publications. This literature is on a variety of subject matters pertaining to the areas of LRC's work and is targeted at different audiences.

**(d) Advocacy, legal reform, litigation and legal intervention**

LRC provides legal advice, strategy inputs, and research support for a variety of grassroots organisations, district level lawyers, activists and other concerned individuals. LRC also provides assistance with drafting of pleadings, in order to ensure creation of court records which will be valuable in the short term as well as in the longer term.

Since LRC comprises of both lawyers and non-lawyers, the advice provided, while being grounded on sound legal principles, is also practical and attentive to detail. Whether it was the sustained advocacy regarding the Compensatory Afforestation Act and its proposed Rules, the Draft Forest Policy 2018, creation of land banks, or amendments to the 2013 LARR, LRC has remained fully engaged and provided comprehensive inputs to activists engaged in advocacy around these issues.

## Where is LRC going?

In the coming months, LRC will take the first step towards establishing an advisory body which can guide and course correct, and most importantly, enable rapid responses to evolving trends in law and process. Such consolidation will be crucial to prevent LRC from wavering in the ebb and flow that is the natural concomitant of legal interventions, from frittering away its accomplishments on the one hand, and despairing its inevitable failures on the other.

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# *About*
# VASUNDHARA

Vasundhara, Odisha is an action research & policy advocacy organisation working on natural resources governance, conservation and sustainable livelihoods. Founded in 1991, Vasundhara was registered in 1992 as a society under the Societies Registration Act, 1860. We began with a focus to support and strengthen self-initiated community forestry groups, conserving and managing community forests in the state of Odisha. Our constant efforts have been towards highlighting the critical role that forests play in sustaining rural livelihoods. Our focus has been to facilitate the reflection of livelihood interests of forest dependent communities, especially women, in government policies and also to create an environment in which the primary owners and users of forests are economically and politically empowered to have exclusive control over their lives and livelihoods.

Over the years, our work with communities has expanded to have greater focus on rights of tribal and other forest dependent communities on community forest rights as envisaged under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 or FRA. We have also focused on assessing the impact of community conservation initiatives on mitigating and adapting to climate change.

## What does Vasundhara do?

### Mission

Sustainable development with an emphasis on empowerment of the rural poor, to further social justice and equity.

### Core Values

- Conservation
- Sustainable
- Democratisation of natural resources governance
- Social justice & equity
- Inclusion of voices of the poor
- Political involvement of the marginalised section
- Women's rights at the centre of all our work

**Role**

We see our role as a process facilitator and catalyst in developing a supportive and enabling environment for community based natural resources governance. Equally important is our role in building local capacities to strive for changes in the direction of sustainability and democratisation of natural resources governance and socially just and ecologically sustainable development.

## Where is Vasundhara going?

Networking, learning from each other, and strong feedback loops are critical in improving the efficacy of those who would like to see a more just and democratic society. With this in mind, Vasundhara continues to consolidate the work and interventions in different areas, with a focus on collaborative learning processes at different scales with different actors. As reflective practitioners, we would like our learning to feed into other social processes more directly. We also strive to play a greater role in fostering learning, reflection, and critique amongst civil society actors.

## Contact us

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## About this Handbook

The purpose of this Handbook is to work towards a larger role for human rights activists and advocates in upholding the rights of members of the SC/ST communities. It is a simplified ready reckoner which provides a roadmap through the criminal justice system and attempts to ensure that we are well-equipped to prevent the roll-back of rights which have been recognised.

**Legal Resource Centre**
Delhi

**Vasundhara**
Odisha