

Adivasi People's Right to Adequate Housing

Submission to the UN Special Rapporteur on the Right to Adequate Housing

About IDEAL-Centre for Social Justice

Established in 1993, IDEAL-Centre for Social Justice (“CSJ”) is a human rights organisation fighting for the rights of the marginalised and the vulnerable, principally in the sphere of access to justice. Central to CSJ’s efforts are its institutional interventions in legal reform and research which bridge and symbiotically combine grassroots activism, law and policy-making on a wide gamut of issues concerning the rights of women, Dalits, Adivasis (Indigenous people), minorities and other socially vulnerable groups. This has only been possible because of the Centre’s tireless efforts – through its wide network of law centres – in training and strengthening community lawyers and paralegals; thus, building capacities for paradigm-altering leadership within their communities. The law centres – consisting of a team of lawyers, paralegals and researchers – not only provide litigative support and outreach to communities but become nodes for the propagation of a more holistic conception of Human Rights that incorporates a vision for peace and justice beyond the confines of the rights-framework. One such law centre is the Dang unit in Gujarat, the experience of which informs this submission.

Introduction

For Adivasi (Indigenous) people, who have for long struggled against both state and corporate actors for rights to their land, the conversation around housing rights cannot be divorced from broader questions of forest and governance rights. The issue of housing for Adivasi people is hence not simply about the physical structure but is inextricably intertwined with Adivasi people’s right to self-determination. Centre for Social Justice, a socio-legal organisation with a presence multiple states around India, has engaged extensively with Adivasi people, particularly in the area of Dang in South Gujarat. Through this, CSJ has gained an intimate understanding of the barriers that are depriving Adivasi people of their right to housing. CSJ’s extensive experience on the field in Adivasi areas in various states suggests that the issues discussed below can be extrapolated to the rest of the country.

Barriers to Adivasi People’s Right to Adequate Housing

Access to Housing Material from Forests

Adivasi people have always had a symbiotic relationship with forests. In light of this, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [FRA] was passed in 2006 to recognise Adivasi people’s inherent rights to use and govern

their forests and its produce. The act sets up a three-tier system to transfer forest rights back to Adivasi people, making the Gram Sabha (body consisting of all eligible voters in the concerned village) the central body through which forest rights are governed. While in theory FRA represents a radical challenge to the historical and ongoing usurpation of Adivasi land, on ground functioning reveals significant implementation failures. As a result of arbitrary bureaucratic practices, baseless rejection of legally valid evidence and circumvention of the critical role of the Gram Sabha, claims are being routinely rejected, depriving Adivasi people of their resources.

The implications of this for availability of adequate housing are significant. Adivasi people have always relied on forests to procure material for housing. Traditional Dangi housing, and housing in many other Adivasi communities around the country, is constructed using four primary materials – timber, bamboo, sand and water, all of which exist in the forest. Alienation of Adivasi people from their forest land as a result of the ad hoc implementation of FRA has cut off their access to forest material needed for construction of housing. The process to procure these forest materials now involves going through a contractor for materials like sand or placing a bid for timber wood in an auction. Adivasi people are therefore forced to spend exorbitant amounts of money to purchase resources that they are the rightful owners of under the Indian legal framework but are denied access to. Of note here is the role of the State Forest Department, which has through encroachment of FRA land and interference in the claims approval process monopolised the practice of growing timber wood. This has enabled bodies like the Joint Forest Management Committee (JFMC), which is situated within the Forest Department, to solidify its role as somewhat of a contractor of wood for private industry. While the Forest Rights Committee at the local level under FRA is meant to supersede the JFMC, vested state-corporate interests are preventing this from happening. Not only does this undermine the principle of Adivasi self-governance that FRA aims to operationalise, but is also leading to a serious degradation of the state of housing in Adivasi areas such as Dang. Adivasi people are therefore being compelled to become dependent on external means of securing housing such as Government Schemes, most notably the Pradhan Mantri Awas Yojna. However, as will be shown below, implementation of the scheme in Adivasi Areas is fraught with problems.

[Pradhan Mantri Awas Yojna and Housing for Adivasi People](#)

Pradhan Mantri Awas Yojna (PMAY) is a nation-wide “housing for all scheme” that provides financial assistance to beneficiaries (identified using a deprivation index formulated under the scheme) to build pucca (permanent and solid) housing. CSJ’s experience in Dang has revealed multiple issues with the design of the scheme when applied in Adivasi areas.

a) Construction Material

PMAY stipulates that the money received under the scheme can only be used to build pucca housing, using cement, stone and brick. Materials like wood and bamboo used for traditional Dangi and other Adivasi housing do not fall within the scope of the scheme. Consequently, Adivasi people are being forced to procure resources from the market at high prices. Most significantly, since the type of housing that attracts PMAY funding does not align with culturally relevant construction methods, the added expenditure on labour is increasing overall

costs. Geographical constraints have also led to increased material transportation costs. What this means is that the amount received through PMAY is barely sufficient. Additionally, PMAY disburses money in instalments. The first instalment is Rs 20000 and second instalment is provided only when the house is constructed up to window level. However, purchasing construction material alone costs around Rs 16000. When other costs like labour and additional incidental costs are added, it becomes extremely difficult to fulfil this requirement using the first instalment.

b) Toilet Integration

PMAY funding is linked to construction of toilets. In areas like Dang, where water shortage is a pressing concern, constructing toilets becomes increasingly difficult. Moreover, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 prevents construction of dry latrines. Inability to comply with this requirement is resulting in non-payment of PMAY instalments.

The design of PMAY is hence inappropriate for Adivasi areas. Not only are its requirements ill-suited to ground realities, but it is also excluding local communities from exercising control over the process. The result of this is an overall erosion of Adivasi people's housing rights.

Implementation of the Panchayats (Extension to Scheduled Areas) Act

Another piece of legislation that is central to understanding housing in Adivasi areas is the Panchayats (Extension to Scheduled Areas) Act (PESA). PESA is a powerful piece of legislation that devolves power and governance to the local Gram Sabha in Adivasi areas. The objective is to recognise and operationalise the vision of participatory Adivasi self-governance, together with other laws like FRA. Under PESA, the Gram Sabha is empowered to manage all natural resources. Planting timber for housing falls squarely within the powers of the Gram Sabha. However, CSJ's experience in Dang, shows that despite this, and owing to politics concerning the Forest Department and local state administration, Gram Sabhas are not allowed to effectively exercise this right. If adequately empowered in practice, Gram Sabhas can perform a transformative role in securing housing by locally producing and distributing material needed for housing. Doing so will mean that Adivasi people will no longer have to rely on external auctions and contractors to access housing material. Moreover, by vesting control of the process in the Gram Sabha, the hurdles created by poorly designed schemes like PMAY can be adequately addressed. Ultimately, strengthening housing rights through strengthening PESA will not only address housing concerns, but will ensure that the way forward on Adivasi people's housing rights is inclusive, participatory and led by Adivasi communities.