

THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005

A

BILL

to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

WHEREAS the recognised rights of the forest dwelling Scheduled Tribes include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes;

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes who are integral to the very survival and sustainability of the forest ecosystems;

AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes.

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

1. Short title, extent and commencement

(1) *This Act may be called the Scheduled Tribes (Recognition of Forest Rights) Act, 2005.*

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

2. Definitions

In this Act, unless the context otherwise requires,—

(a) “bonafide livelihood needs”, in relation to forest dwelling Scheduled Tribes, means the use of forests and forest based products for subsistence of such Tribes or for their own consumption and includes barter and sale of such forest based products for their household needs;

(b) “commercial purpose” includes a forest based activity where such activity is used for profit or for large scale trade or mercantile purposes;

(c) “forest dwelling Scheduled Tribes” means the members or community of Scheduled Tribes who primarily reside in and around forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest lands for bonafide livelihood needs;

(d) “forest land” means land of any description falling within any forest area and includes unclassified forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks;

(e) “forest rights” means the forest rights referred to in section 3;

(f) “forest villages” means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements by whatever name called for such villages and includes lands for cultivation and other uses, permitted the Government;

(g) “Gram Sabha” means a village assembly, which shall consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level and in case of State having no Panchayats, the traditional village institutions;

(h) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "Scheduled Area" means any Schedule Area as referred to in clause (1) of article 244 of the Constitution;

(k) "village" means—

- (i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats Extension to the Scheduled Areas Act, 1996 (40 of 1996);
- (ii) any area referred to as a village in any State law relating to Panchayats, other than a Schedule Area;
- (iii) forest villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or
- (iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;

CHAPTER II

FOREST RIGHTS

3. Forest rights of forest dwelling Scheduled Tribes defined

For the purposes of this Act, the following rights shall be the forest rights of forest dwelling Scheduled Tribes, namely:-

- (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe;
- (b) rights such as nistar, by whatever name called, and uses in erstwhile princely States, Zamindari or such intermediary regimes;
- (c) right of access to, use or dispose of minor forest produce;
- (d) other rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- (e) right of habitat and habitation for primitive tribal groups and pre- agricultural communities;
- (f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;
- (g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
- (h) rights of conversion of forest villages into revenue villages;
- (i) rights of settlement of old habitations and unsurveyed villages, whether notified or not;
- (j) right to access to bio-diversity and community right to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity;
- (k) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving;
- (l) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of any State;
- (m) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are not mentioned in clauses (a) to (l) but excluding the right of hunting.

CHAPTER III

RIGHTS OF FOREST DWELLING SCHEDULED TRIBES

4. Recognition of and vesting of forest rights in forest dwelling Scheduled Tribes

(1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in the forest dwelling Scheduled Tribes, where they are scheduled, in respect of forest land and their habitat including right to collect, utilize or transfer minor forest produce in such manner as may be prescribed.

(2) The recognition and vesting of forest rights under this Act to forest dwelling Scheduled Tribes in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Tribes or tribal communities had occupied forest land before the 25th day of October, 1980 or such other date as the Central Government may, by notification in the Official Gazette, specify.

(3) A right conferred by sub-section (1) shall be heritable but not alienable or transferable.

(4) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed in such manner as may be prescribed.

(5) Where the forest rights recognized and vested under sub-section (1) are in respect of land, -

- (i) such land in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe;
- (ii) the title to the extent given shall be registered jointly in the name of the male member and his spouse;

(6) The forest rights recognized and vested under sub-section (1) in the forest dwelling Scheduled Tribe shall –

- (i) be exercised only for bonafide livelihood purposes and not for exclusive commercial purposes;
- (ii) include the responsibility of protection, conservation and regeneration of forests.

(7) In case any forest right recognized and vested under sub-section (1) is disputed by any State Government or local authority, the Competent Authority appointed by the Central Government shall consider the records prepared at the time of declaring the area as a Scheduled Area, and while notifying any tribe to be or deemed to be a Scheduled Tribe under article 342 of the Constitution, along with evidence and then pass an appropriate order in the matter:

Provided that no order denying or refusing to grant any forest right shall be passed unless the aggrieved member or members of the community are given an opportunity of being heard.

5. Duties of holders of forest rights

The holder of any forest right under this Act shall ensure that, –

(a) save as those activities that are permitted under such rights, no activity shall be carried out that adversely affects the wild life, forest and the biodiversity in the area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including reforestation;

(b) catchment areas, water sources and other ecologically sensitive areas are adequately protected;

(c) the habitat of forest dwelling Scheduled Tribes is preserved from any form of destructive practices affecting their cultural and natural heritage;

(d) any activity that adversely affects the wild life, forest and the biodiversity is intimated to the Gram Sabha and to the forest authorities;

(e) appropriate measures taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the wild life, forest and the biodiversity are complied with.

CHAPTER IV

AUTHORITIES AND PROCEDURE FOR VESTING OF FOREST RIGHTS

6. Authorities to vest forest rights in forest dwelling Scheduled Tribes and the procedure thereof

(1) The Gram Sabha shall be the authority to initiate any action for determining the extent of forest rights that may be given to the forest dwelling Scheduled Tribes within the local limits of its jurisdiction under this Act.

(2) Every action under sub-section (1) shall be initiated in such manner and subject to such procedure as may be prescribed.

(3) A Sub-Divisional Level Committee shall examine the decision taken by the Gram Sabha.

(4) The composition and functions of the Sub-Divisional Level Committee and the procedure to be followed by it in the discharge of its functions shall be such as may be prescribed.

(5) Any person aggrieved by the decision of the Gram Sabha may prefer an appeal to the Sub-Divisional Level Committee in such manner as may be prescribed and the Sub-Divisional Committee shall consider and dispose of such appeal:

Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

(6) Every appeal under sub-section (5) shall be preferred within sixty days from the date of decision of the Gram Sabha.

(7) There shall be constituted a District Level Committee with such composition and functions as may be prescribed to consider the record of forest rights prepared by the Sub-Divisional Level Committee for its final approval.

(8) Any person aggrieved by the decision of the Sub-Divisional Committee may prefer an appeal to the District Level Committee in such manner as may be prescribed and the District Level Committee shall consider and dispose of such appeal:

Provided that no such appeal shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to represent his case.

(9) In discharging the functions under this Act, the District Level Committee shall follow such procedure as may be prescribed.

(10) Every appeal under sub-section (8) shall be preferred within sixty days from the date of decision of the Sub-Divisional Level Committee.

(11) The decision of the District Level Committee shall be final and binding and the Gram Sabha shall maintain the records accordingly.

7. State Level Monitoring Committee

(1) The State Government shall constitute a State Level Monitoring Committee with such composition and functions as may be prescribed.

(2) The State Level Monitoring Committee shall examine the record of recognised and vested rights of forest dwelling Scheduled Tribes submitted by the District Level Committee and conduct periodic inquiry into the process of recognition and vesting through random selection of sites.

(3) The State Level Monitoring Committee shall submit to the nodal agency such periodic returns and reports as may be called for by that agency along with the recommendations of the Committee for appropriate action.

CHAPTER V

OFFENCE AND PENALTIES

8. Penalties

If any holder of any forest right conferred by or under this Act or any other person –

- (i) contravenes or abets the contravention any of the provisions of this Act, or
- (ii) commits a breach of any of the conditions of the forest right vested or recognised under this Act; or
- (iii) engages in unsustainable use of forest or forest produce; or
- (iv) destroys wildlife, forests or any other aspect of biodiversity; or
- (v) fells trees for any commercial purpose, he shall be guilty of an offence against this Act and be punished with a fine which may extend to one thousand rupees and in case of the offence is committed more than once, the forest right of the person who has committed the offence shall be derecognised for such period as the District Level Committee, on the recommendation of the Gram Sabha may decide.

9. Offences by members or officers of authorities under this Act

Where any authority or officers or member of such authority contravenes any provisions of this Act or any rule made thereunder shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with imprisonment which may extend to thirty days or with fine which may extend to five thousand rupees, or with both:

Provided that nothing contained in this sub-section shall render any member of the authority or head of the department or any person referred to in this section liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

10. Cognizance of offences

No court shall take cognizance of any offence under section 9 of this Act unless any forest dwelling Scheduled Tribe in case of dispute relating to a resolution of a Gram Sabha or the Gram Sabha through a resolution against any higher authority gives a notice of not less than sixty days to the State Monitoring Committee and the State Monitoring Committee has not proceeded against such authority.

CHAPTER VI

MISCELLANEOUS

11. Members to be public servants

Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

12. Protection of action taken in good faith

(1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employees for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against the Authority as referred to in Chapter IV including its Chairperson, members, member secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

13. Nodal agency

The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

14. Power of Central Government to issue directions

In the performance of duties and exercise of powers by or under this Act, every authority referred to in Chapter IV shall be subject to such general or special directions, as the Central Government may, from time to time, give in writing.

15. Act not in derogation of any other law

Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

16. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the powers, such rules may provide for all or any of the following matters, namely:-

(a) the procedure and for manner of recognition and verification of forest rights under sub-section (4) of section 4;

(b) the manner in which action may be initiated to determine the extent of forest rights to be recognised and vested in a nuclear family of a forest dwelling Scheduled Tribe and the procedure to be followed in such proceedings under sub-section (2) of section 6;

(c) the composition and functions of the Sub-Divisional Committee and the procedure to be followed by it in the discharge of its functions under sub-section (4) of section 6;

(d) the manner of preferring an appeal to the Sub-Divisional Committee under sub-section (5) of section 6;

(e) the composition and functions of the District Level Committee under sub-section (7) of section 6;

(f) the manner in which an appeal may be preferred to the District Level Committee under sub-section (8) of section 6;

(g) the procedure to be followed by the District Level Committee under sub-section (9) of section 6;

(h) the composition and functions of the State Level Committee under sub-section (1) of section 7;

(i) the periodic reports and returns to be submitted to the nodal agency by the State Level Committee under sub-section (3) of section 7;

(j) any other matter is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Forest dwelling tribal people and forests are inseparable. One cannot survive without the other. The conservation of ecological resources by forest dwelling tribal communities have been referred to in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains and probably for good reasons prevalent at that time. After independence, in our enthusiasm to protect natural resources, we continued with colonial legislation and adopted more internationally accepted notions of conservation rather than learning from the country's rich traditions where conservation is embedded in the ethos of tribal life. The reservation processes for creating wilderness and forest areas for production forestry somehow ignored the bona fide interests of the tribal community from legislative frame work in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they belong and

depended upon. The modern conservation approaches also advocate exclusion rather than integration. It is only recently that forest management regimes have in their policy processes realised that integration of tribal communities who depend primarily on the forest resource cannot but be integrated in their designed management processes. It underlines that forests have the best chance to survive if communities participate in its conservation and regeneration measures. Insecurity of tenure and fear of eviction from these lands where they have lived and thrived for generations are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This historical injustice now needs correction before it is too late to save our forests from becoming abode of undesirable elements.

2. It is, therefore, proposal to enact a law laying down a procedure for recognition and vesting of forest rights in forest dwelling Tribes. The recognition of forest rights enjoyed by the forest dwelling Scheduled Tribes on all kinds of forest lands for generations and which includes both bona fide needs of forest land for sustenance and usufructs from forest based resources are the fundamental basis on which the proposed legislation stands.

3. The Bill, *inter alia*, provides for the following matters, namely:—

- (i) it reinforces and utilises the rich conservation ethos that tribal communities have traditionally shown and cautions against any form of unsustainable or destructive practices;
- (ii) it lays down a simple procedure for recognition and vesting of forest rights in the forest dwelling Scheduled Tribes so that rights, which stand vested in forest dwelling tribal communities, become legally enforceable through corrective measures in the formal recording system of the executive machinery;
- (iii) it provides for adequate safeguards to avoid any further encroachment of forests and seeks to involve the democratic institutions at the grassroots level in the process of recognition and vesting of forest rights;
- (iv) it addresses the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to Scheduled Tribes dwelling in the forests for generations in symbiotic relationship with the entire ecosystem.

4. The Bill seeks to achieve the above objects.

NEW DELHI;

P.R.KYNDIAH.

The April, 2005.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Subclause (2) of that clause enumerates the matters in respect of which rules may be made under the said clause. These matters, *inter alia*, relate to the procedure and for manner of recognition and verification of forest rights, the manner in which action may be initiated to determine the extent of forest rights to be recognised and vested in a nuclear family of a forest dwelling Scheduled Tribe and the procedure to be followed in such proceedings, the composition and functions of the Sub-Divisional Committee and the procedure to be followed by it in the discharge of its functions, the manner of preferring an appeal to the Sub-Divisional Committee, the composition and functions of the District Level Committee, the manner in which an appeal may be preferred to the District Level Committee, the procedure to be followed by the District Level Committee, the composition and functions of the State Level Committee and the periodic reports and returns to be submitted to the nodal agency by the State Level Committee. Sub-clause (3) of the said clause provides that the rules are required to be laid before Parliament.

2. The aforesaid matters relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.