



**The Scheduled  
Tribes and  
Other Traditional  
Forest Dwellers  
(Recognition of  
Forest Rights)  
Act, 2006**



## Legislation Briefing Note

# The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006<sup>1</sup>

This Act recognizes and gives forest related rights to Scheduled Tribes who live in forests, as well as to other communities who have traditionally been living in forests for generations. The Act aims to address the historical injustice done to those communities whose forest rights have so far not been legally recorded.

The Act extends to the whole of India except the State of Jammu and Kashmir.

## 1. Who can claim rights under this Act?

Two categories of people can claim rights under this Act:

- "Forest dwelling Scheduled Tribes": members of Scheduled Tribes who primarily reside in, and depend upon, forest or forest lands<sup>2</sup> for bona-fide livelihood needs. This includes Scheduled Tribe pastoralist communities.
- "Other traditional forest dwellers": anyone who has, for at least 3 generations prior to the 13<sup>th</sup> of December 2005, primarily resided in and depended upon forest or forest land for bona-fide livelihood needs.

## 2. What kinds of rights are to be given?

The following rights can be claimed by individuals or communities (or both) (Section 3):

1. Right to hold<sup>3</sup> and live in forest land under individual or common occupation. There are 4 conditions to this right:
  - (a) The land must be for the purpose of habitation or cultivation to provide for livelihood needs.
  - (b) The land should have been under occupation prior to 13<sup>th</sup> December 2005.
  - (c) The land claimed is restricted to the area under actual occupation.
  - (d) The land cannot be more than 4 hectares.
2. Community rights such as Nistar (use rights) or those used in erstwhile Princely States, Zamindari or such intermediary regimes.
3. Right to collect, use, and dispose of Minor Forest Produce which has been traditionally collected within or outside the village. 'Minor Forest Produce' includes all non-timber forest produce of plant origin (including bamboo, brushwood stumps cane, honey, wax, tussar, cocoon, lac, tendu or kendu leaves, medicinal plants, herbs, roots, tubers and the like).
4. Other community rights of use or entitlement, such as rights to fish and other products of water bodies, grazing or traditional seasonal access to natural resources by nomadic or pastoralist communities.

<sup>1</sup> Prepared by Divya Radhakrishnan and Dhruv Singh, Symbiosis Society's Law College (Pune), for Kalpavriksh, under the guidance of Ashish Kothari and Neema Pathak. Editorial inputs by Tejaswini Apte and Erica Taraporevala. This is a legislation briefing note meant to provide the key provisions of the Act in simple terms, and does not include a critical analysis of the law.

<sup>2</sup> The term "forest lands" refers to lands legally classified as forests (regardless of their actual ecological status).

<sup>3</sup> It is not clear if the term "hold" means outright ownership.

4. Community tenure<sup>4</sup> of habitat and habitation for primitive tribal groups and pre-agricultural communities.
6. Rights in or over lands under any categorization in any State where there are disputes regarding claims to such lands.
7. Right to convert leases, grants or pattas issued by any local authority or any State Government on forest lands, to titles (ownership deeds).
8. Rights to convert the following types of habitation into revenue villages: forest villages, old habitations<sup>5</sup>, un-surveyed villages and other villages in forests. This includes villages/habitations which have been recorded and notified, as well as villages/habitations which have not been recorded and notified.
9. Rights to protect, regenerate, conserve or manage any community forest reserves which the individual or community has been traditionally protecting and conserving for sustainable use.
10. Rights which are recognized under any of the following kinds of law: (a) State law (b) laws of any Autonomous District Council, (c) laws of any Autonomous Regional Council (d) rights of tribals as accepted under any traditional or customary law of the concerned tribes of any State.
11. Right of access to biodiversity, and community rights to intellectual property in traditional knowledge related to biodiversity and cultural diversity.
12. Any other traditional rights enjoyed which are not mentioned above. However, this excludes the traditional right of hunting or trapping or extracting a part of the body from any species of wild animal. (Here, 'wild animal' means any species of animal specified in schedule I to IV of the Wild Life (Protection) Act, 1972 and found wild in nature).
13. Rights to rehabilitation on the individual's or community's currently occupied land or alternative land, in cases where they have been illegally evicted or displaced from forest land without receiving their legal entitlement to rehabilitation. The eviction or displacement must have been prior to 13<sup>th</sup> December 2005.
14. Rights to development facilities. The Central Government can use forest land to provide for the following facilities to be managed by the Government, and these will be exempted from the operation of the Forest Conservation Act:
  - (1) schools (2) dispensary or hospital (3) fair price shops (4) electric and telecommunication lines (5) tanks and other minor water bodies (6) drinking water supply and water pipelines (7) minor irrigation canals (8) water or rainwater harvesting structures (8) non-conventional sources of energy (9) skill up-gradation and vocational training courses (10) anganwadis (11) roads (12) community centres.

But such use of forest land can be allowed only if:

- The forest land to be used is less than 1 hectare in each case
- Only 75 trees (or less) per hectare are to be felled
- The clearance of such developmental projects is recommended by the Gram Sabha.

The forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers include the right to return to land they have been displaced from, for those who can establish that they have been displaced from their dwellings and cultivation without land compensation because of State development activities, and where the land they had been displaced from has not been used for the purpose it was acquired by the State within 5 years of the acquisition {Section 4(8)}.

<sup>4</sup> It is not clear if "tenure" here means ownership.

<sup>5</sup> Undefined; presumably these are villages that do not appear in records as either forest or revenue villages.

The rights granted by this Act {Section 4(7)} do not require project proponents<sup>6</sup> or beneficiaries to :

- pay 'net present value' (i.e. payment of a fixed amount per hectare of forest land that is diverted for non-forest use, as ecological compensation).
- carry out 'compensatory afforestation' for diversion of forest land, except those specified in this Act.

### 3. Can the rights be inherited or transferred?

The rights can be inherited, but not transferred to another person. These rights are also not alienable, i.e. cannot be bought or sold or otherwise transferred to another owner. The right must be registered jointly in the name of both husband and wife, or in the name of the single head where the household is headed by one person. In the absence of a direct heir, the right will be inherited by the next of kin {Section 4 (4)}.

### 4. Can forest dwellers be evicted before they claim the above rights?

No member of a forest dwelling Scheduled Tribe or any other traditional forest dweller can be evicted from forest land under his/her occupation till the procedure to verify and recognize his/her rights is complete {Section 4(5)}.

### 5. In what kind of lands are such rights to be given?

Rights can be conferred on all kinds of "forest land", defined as "land of any description falling within any forest area and includes unclassified forest, undemarcated forests, existing or deemed forest, protected forest, reserved forest, sanctuaries and national parks."

### 6. What about rights in protected areas?

The Act has special provisions for sanctuaries and national parks declared under the Wild Life (Protection) Act. Areas inside (but not outside) national parks and sanctuaries can be declared "critical wildlife habitats". Such areas will be determined by "scientific and objective criteria" as needing to be "kept inviolate for the purposes of wildlife conservation". The identification and declaration of such areas will be done through a consultative process involving an Expert Committee that includes "experts from the locality".

Rights recognized under this Act in "critical wildlife habitats" of national parks and sanctuaries may subsequently be modified, as long as the rights of forest rights holders are not affected for the purpose of creating inviolate areas for wildlife conservation.

However, under the circumstances that all the conditions listed below are satisfied, the rights can be affected, and relocation can take place. {Section 4(2)}

<sup>6</sup> Presumably this means village bodies or government agencies making the claims on behalf of beneficiaries.

1. When the process of recognition and giving of rights is complete.
  2. When it has been established by the concerned agencies of the State Government under the Wild Life (Protection) Act, 1972 that the impact of the presence or activities of rights holders may cause irreversible damage and threaten the existence of a species and its habitat.
  3. When the State Government has concluded there are no other reasonable options available (e.g. co-existence of wildlife and rights holders).
  4. When a resettlement or alternative package is prepared and communicated to the rights holders, which provides for a secure livelihood for the affected people and fulfills their requirements as per relevant laws and policies of the Central Government.
  5. When the concerned Gram Sabha has given its free and informed consent (in writing) to the proposed resettlements.
  6. When the facilities and land allocation at the resettlement location are complete. No resettlement will take place until this happens.
- The "critical wildlife habitats" from which the right-holders are relocated for the purpose of wildlife conservation, cannot subsequently be used for other purposes by the State or Central Government.

## 7. Do the rights holders have any conservation duties?

The holders of any forest rights, including the gram sabha and village level institutions (in areas where there are forest right holders) are "empowered"<sup>7</sup> to {Section 5}:

1. Protect wildlife, forest and biodiversity.
2. Ensure that adjoining catchment areas, water sources and other ecologically sensitive areas are adequately protected.
3. Ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is protected from any form of destructive practices affecting the cultural and forest heritage of the concerned community.
4. Ensure implementation of decisions taken in the gram sabha to regulate access to community forest resources, and to stop activities which adversely affect wild animals, forests and biodiversity.

## 8. What are the authorities under this Act? (Section 6)

1. Gram Sabha: The gram sabha is the authority for starting the process to determine the nature and extent of individual or community forest rights within the local limits of their jurisdiction. The gram sabha will receive claims, consolidate and verify them, prepare a map outlining the area of each claim, pass a resolution stating the claim, and forward a copy of the claim and resolution to the Sub-Divisional Level Committee.
2. Sub-Divisional Level Committee: The State Government will constitute a Sub-Divisional Level Committee, which will examine the concerned resolutions passed by the gram sabha, prepare a record of forest rights, and forward the same through the Sub-Divisional Officer to the District Level Committee for a final decision.

<sup>7</sup> The term 'empowered' is not defined. It is important to note that the header column alongside this section is titled "Duties of holders of forest rights", which would imply that "empowered to" includes duties.

3. District Level Committee: The State Government will constitute a District Level Committee to finally approve the record of forest rights.
4. State Level Monitoring Committee: The State Government will also constitute a State Level Monitoring Committee to monitor the process of recognition and giving of forest rights. If required, the State Level Monitoring Committee will submit reports to the Central Government Nodal Agency.
5. Central Government Nodal Agency: The Ministry of the Central Government dealing with Tribal Affairs or any officer or authority authorized by the Central Government shall be the Nodal Agency for this Act.

## 9. Which people will be on the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee?

The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee will consist of officers from the departments of Revenue, Forest and Tribal affairs of the State Government, and three members from relevant Panchayati Raj Institutions. The three members of the Panchayati Raj Institutions must include at least 2 Scheduled Tribe members, and at least 1 woman.

## 10. Can a person dispute a resolution or decision by any of these authorities? (Section 6)

A person aggrieved by a gram sabha resolution should file a petition to the Sub-Divisional Level Committee within 60 days from the date of the resolution.

The Committee cannot rule against the aggrieved person, till the aggrieved person has been given a reasonable opportunity to present his/her case.

A person aggrieved by the decision of the Sub-Divisional Level Committee can file a petition to the District Level Committee within 60 days from the date of the decision. The decision of the District Level Committee is final and binding.

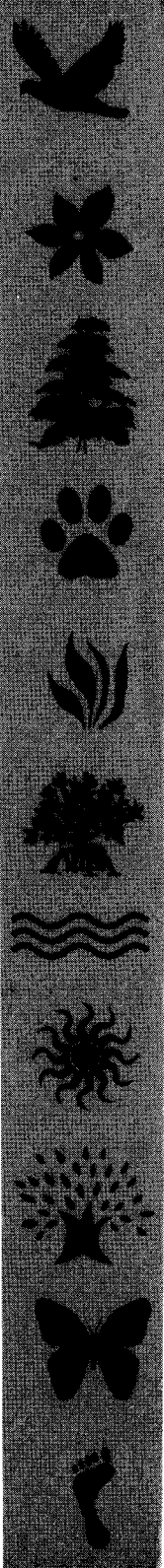
## 11. What are the penalties for violating the Act? (Section 7)

Any authority, committee or member of an authority/committee, who violates any provision of this Act or Rules made under this Act, will be liable to be proceeded against and punished with a fine, which may extend to 1000 rupees.

However, if they can prove that the offence was committed without their knowledge or that they had acted in good faith (i.e. without any intention or prediction of violation), then they will not be held guilty.

## 12. When will this Act come into operation?

The Act was passed in December 2006 and has come into force on 1st January 2008 with the notification of the Rules made under this Act.



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