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**THE SCHEDULED TRIBES AND FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS)
BILL 2005**

Preamble

An Act to recognize the forest rights and occupation of Scheduled Tribes in forest land who have been residing for generations but whose rights could not be recorded and provide for a framework for recording, recognizing and the nature of evidence that may be adduced for rights of other forest dwellers, in respect of forestland and forest based resources.

The rights so recognized shall include responsibility of sustainable use, , biodiversity conservation and maintaining the ecological balance and thereby the Act seeks to strengthen the conservation regime while ensuring livelihood and food security of the Scheduled Tribes and Forest Dwellers.

This Act has become necessary because many of these rights on their ancestral lands, 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 dwellers who are integral to the very survival and sustainability of the forest ecosystem.

The Act also seeks to address the long standing insecurity of tenurial and access rights of Scheduled Tribes and forest dwellers.

CHAPTER-I

PRELIMINARY

1 (1) This Act may be called The Scheduled Tribes And Forest Dwellers (Recognition Of Forest Rights) BILL 2005

(2) It extends to the whole of India except the State of Jammu and Kashmir and Andaman and Nicobar group of Islands

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

CHAPTER II-

DEFINITIONS

2 (1) In this Act, unless the context otherwise requires

a) "Forest Rights" mean secure tenurial and/or ownership rights of Scheduled Tribes and Forest Dwellers over forest land and forest based resources as enumerated in Section 3(3) of this Act.

(b) "Pattas ,Leases and Grants" includes temporary or permanent leases or grants by whatever name called on forest and forest land granted by any state department or local authority.

(c)"Entitlement" means access and usufruct rights to land and minor forest produce including grazing, concessions, privileges, favours and unrecorded customary practices recognized by earlier princely states/zamindari/other intermediary regimes.

(d) "Forest land" means land of any description falling within the legal definition of forest and forest land and includes existing, proposed and deemed, protected forests, reserved forests , national parks and sanatoriums.

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- (e) PESA means the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996
- (f) "Claim" is an assertion for recognition of a forest right to a Competent Authority, submitted in writing and reasons recorded thereof
- (g) "Claimant" means forest dwellers or Scheduled Tribe who have migrated to an area other than where they are scheduled who file claim (s) for rights under this Act.
- (h) "Forest dwellers" are those individuals and/or communities who primarily reside in and around forests and includes Scheduled Tribes who have migrated to an area where they are not scheduled, and would further include nomadic and pastoralist communities and depend on the forests for bonafide livelihood needs.
- (i) "Competent Authority" would include a Gram Sabha, Sub Divisional level committee, District Level Committee and all appellate authorities under this Act.
- (j) Shifting Cultivation- means
- (k) Shifting Cultivator- means those individuals or communities who practice shifting cultivation by whatever name called
- (l) "Minor Forest Produce" is all non-timber forest produce of plant origin including bamboo, brush wood, skumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and their like, which is used by the Scheduled Tribes and forest dwellers for their bonafide and livelihood needs.
- (m) Nodal agency- means the Ministry of Tribal Affairs, or any other designated agency appointed on their behalf.
- (n) Gram Sabha - Gram Sabha would consist of all adult members of a village whose names are included in the electoral rolls for the Panchayat at the village level.
- (o) Village- shall be defined as under the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996 PESA for schedule V areas and under the respective State Panchayat Acts for areas other than scheduled areas. For North Eastern States where there are no Panchayats, Gram Sabha would mean traditional village institution.
- (p) Sub Divisional Level Committee- is a Sub Divisional Level Committee as defined under Section 4(2)
- (q) District Level Committee- is a District Level Committee as defined under Section 4(3)
- (r) Monitoring Committee- is a State Level Committee as defined under Section 4(4)
- (2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER III

RIGHTS OF FOREST DWELLERS

- 3 (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government hereby vests Forest Rights to Scheduled Tribes where they are scheduled, in respect of forest land and forest based resources including minor forest produce.

Provided that in case any forest right so vested is disputed by any state department or local authority, the Competent Authority, shall mandatorily consider the records prepared at the time of scheduling an area, and while scheduling the tribe along with evidence enumerated in Section 5(1) and then reasoned order passed before denying the individual and/or community right.

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- (2) The rights of the forest dwellers other than Scheduled Tribes mentioned in Section 3(1) would be recognized after a forest dweller presents a claim to the Competent authority and the same has been recognized after a due verification procedure under Chapter IV after giving due regard to nature of admissible evidence under Chapter V of this Act.

The recognition of rights of Scheduled Tribes who have migrated would follow the same procedure as defined under Chapter IV and Chapter V in case such migrated scheduled tribes want their forest rights recognized in the area where they have migrated.

Provided that such forest dwellers or migrated Scheduled Tribes have occupied forest land before 31.12.93.

- (3) Such forest rights would include rights of Scheduled Tribes and Forest Dwellers to:

- a) forest land under their occupation for habitation or for subsistence agriculture and/or
- b) rights and /or uses, entitlements of forest dwellers in erstwhile princely states, Zamindari or such intermediary regimes, and/or
- c) access to and ownership of minor forest produce, and/or
- d) other use rights or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic /pastoralist communities and/or
- e) shifting cultivation and rotational cultivation, and/or
- f) habitation for Primitive Tribal Groups
- g) disputed lands such as orange areas in Madhya Pradesh and Chhatisgarh, Dalli lands in Maharashtra, Gair Mazaria Am Lands in Bihar and, Khuntkarti Lands in Jharkhand and such lands where claims are disputed under any other nomenclature and/or
- h) Conversion of Pattas or leases issued by any local authority or any State department on forest lands to permanent titles,
- i) Forest villages, old habitation and unsurveyed villages, whether notified or not and includes those where process of conversion into revenue village is not complete.
- j) access to bio diversity and community right to intellectual and traditional knowledge related to forest biodiversity and cultural diversity
- k) any other traditional right not listed above excluding hunting

Provided however that such forest rights under Section 3 are exercised for bonafide livelihood needs and not for exclusive commercial purposes.

Provided further that the rights to forest land in no case would exceed 2.5. ha per family of the Scheduled Tribe or a Forest Dweller

Provided further that such rights so recognized would include the responsibility of protection conservation and regeneration of forests

(3) In the context of North Eastern States such rights which are already recognized under various state or Autonomous District Council or Autonomous Regional Council laws or which are accepted under traditional and customary law would not be interfered with.

- 4) Such vested forest rights under this Act shall be inheritable but not alienable or transferable.

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CHAPTER IV

AUTHORITIES UNDER THE ACT

- 4(1) Gram Sabha- Gram Sabha would consist of all adult members of a village whose names are included in the electoral rolls at the village level;
- 4(2) Sub Divisional Level Committee - There shall be a Sub Divisional Level Committee consisting of
- Sub Divisional Magistrate who will be the Chairperson
 - Sub Divisional Level Forest Officer
 - Assistant Tribal Welfare Officer or Asst. Project Officer (ITDP) who will be the Secretary
 - Two respected civil society members from the Sub- Division/ Block/Taluka, atleast one of them being a woman, recognized for their understanding of forest rights tenurial issues in the area to be appointed by the District Collector
- 4(3) District Level Committee- There shall be a District Level Committee comprising
- Collector who shall be the Chairperson
 - Chairman of the Zilla Parishad
 - Divisional Forest Officer
 - District Level Tribal Development /Welfare Officer, who shall be the Member Secretary
 - A renowned non-government person known for her/his understanding of tribal-forest issues.
 - In the case of the North Eastern States a representative selected by the confederation of tribal councils such as autonomous regional councils.
- 4(4) State Level Monitoring Committee- There shall be a State Level Monitoring Committee comprising
- Secretary in charge of Tribal Welfare
 - Commissioner/Director Scheduled Tribe
 - Secretary Forests
 - Principal Chief Conservator of Forests
 - Two renowned non-government person known for her/his understanding of tribal-forest issues

CHAPTER V

NATURE OF EVIDENCE AND RECORDING OF FOREST RIGHTS

5. Nature of Evidence:

- 5(1) The evidence for recognition of claims under Section 3(2) are laid down hereunder.
- Government Records published or not and would also include Gazetteers, Census Settlement Records Governments Orders, Commission Reports, Circulars, Quasi Judicial and Judicial Records or
 - Documentary evidence from any prior research or documentation of a reputed institution, including survey maps or
 - Relevant circumstantial evidence including witnesses of neighbours and of senior citizens and local inquiry by a local committee or
 - An affidavit submitted by the claimant which is approved in the Gram Sabha.

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Recording of Forest Rights

- 5 (2) The District Collector shall pursuant to vesting of forest rights to Scheduled Tribes under Section 3(1) and other forest dwellers under Section 3(2) issue Orders recognizing the forest rights and effecting necessary entries in the revenue and forest records specifying the nature and extent of such forest rights in a time bound manner as prescribed under the Rules under this Act.

CHAPTER VI

Miscellaneous

- 6(1) Power to make Rules- The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

- 6 (2)-The Ministry of Tribal Affairs shall be the Nodal Agency and shall be responsible for implementation of this Act.

- 6(3) Penalty for contravention of the Provisions of the Act- Who ever contravenes or abets the contravention any of the provisions of Section 3, shall be punishable with simple imprisonment for period which may extent to thirty days.

- 6(4) Operation of other laws not barred - Save as provided under this Act the operation of other laws to the extent they do not contravenes the provisions of this Act would not be barred.

- 6(5) Savings-