

Reference notes at pp.4-6/N.

2. The Ministry of Law & Justice have prepared a revised copy of the amendments notice to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 reported by the JPC, which is to be moved by MTA. The amendment notice (in English version), duly signed by MTA, has already been sent to the Secretary General, Lok Sabha, on 13.12.2006.

V F/A

3. The Ministry of Law & Justice has also now provided the Hindi version of the amendment notice, which is to be signed by MTA and then sent to the Secretary General, Lok Sabha. The same is placed below for the signatures of MTA.

3. We are required to give notice for consideration and passing of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, with official amendments, to the Lok Sabha Secretariat. Accordingly, draft of a letter addressed to Secretary General as from Hon'ble MTA is placed below for consideration and approval (DFA-I).

4. Since the current session of the Parliament is only upto 19th December, 2006, we may also write to the Minister of Parliamentary Affairs for making necessary arrangements for listing the said Bill for consideration and passing in the current session of Parliament itself (DFA-II).

687-116/12/06

P.K. Varma
(P.K. Varma)
Consultant
14.12.2006

JS(RP)

14/12/06

Secretary (PA)

*Please may kindly
get his draft letter and his notice
put up, in Hindi and English. The
notice have been vetted by the
Ministry of Law*

14/12/06

MTA *14/12/06*

1429
Dr. No. ~~1429~~
dated ~~14/12/06~~
14/12/06
14/12/06
14/12/06


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-8-

No.17014/4/2005-S&M/PC&V(Pt.)

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by Joint Committee, with amendments, was taken up for consideration and passing by the Lok Sabha today.

2. ~~In anticipation of~~ ^{After} its passage by the Lok Sabha, we may send a notice to the Secretary General, Rajya Sabha for consideration and passing of the Bill, as passed by the Lok Sabha.


3. A letter addressed to Secretary General, Rajya Sabha, from Hon'ble MTA is placed below for approval.



(P.K. Varma)
Consultant
15.12.2006

JS(RP) 
15/12/06

Secretary (TA)

The Bill has been passed by LS Lok Sabha. We may send her notice to LS Rajya Sabha.


15/12

MTA 
15/12/06

Sl. No. 17-20 (Issue) - pp 147-150

By No. 1288/K JS(RP) 15/12/06

(c) A Committee of Ministers would approve the amendments."

5. The points mentioned in para 4 above were considered in the Legislative Department and the official amendments were modified to that extent after obtaining approval of the Hon'ble MLJ and a copy of the same was sent to the Ministry of Tribal Affairs. Thereafter, a meeting was held on 11.12.2006 in which the Ministers of Tribal Affairs, Panchayati Raj and Environment and Forests, discussed the amendments to the STs & Traditional Dwellers Bill desired by the Cabinet and a few other related issues raised by the Ministers of the Committee. In the meeting, it was decided to make certain further modifications in the Amendment Notice finalized in this Ministry on 9.12.2006.

6. As per the Minutes of the Meeting, it has been decided to amend clause 6(8), clause 15, clause 2(o) and clause 4(6) of the STs & Traditional Dwellers Bill. As regards clauses 2(o), 4(6) and 6(8), necessary amendments have been made in the Amendment Notice in light of decision taken in the aforesaid meeting. In connection with the amendment suggested in clause 15 of the Bill, it may be stated that in the proposal sent to the Cabinet, it was proposed to reinstate clause 14 of the Bill as introduced in Lok Sabha to provide for a provision that the Act shall not be in derogation of any other law, in place of clause 15, suggested by the Joint Committee to give overriding effect to the provisions of the STs & Traditional Dwellers Bill.

7. Since the proposal is to reinstate the provision of the earlier Bill, it would be sufficient to add the name of the PESA in the proposed clause, which will ensure compatibility between these two laws. In view thereof, there is no need to add a proviso in clause 15 of the Bill.

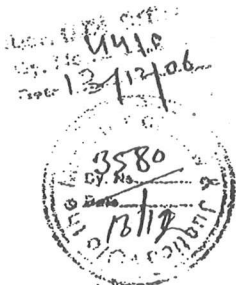
8. A revised copy of the Amendment Notice incorporating the above mentioned amendments/modifications has been prepared and is placed below. As the final decision is required to be taken by the Committee of Ministers consisting of Hon'ble MLJ; we may submit the file for his kind approval.

JS&LC (P-23)
Dy No. 231
Date 13-12-06

Sanjay Singh
(Dr. Sanjay Singh) 13-12-06
JS&LC
13.12.2006

Secretary

MLJ



JS&LC (Dr. Sanjay Singh)
Ministry of Tribal Affairs (Smt. Ruchira Pant) JS
Sanjay Singh
13-12-06

Ruchira Pant
13/12/2006
13/12/2006

reference notes on prepapers. They will sign the
notice addressed to Secy General Lakshmi regarding
moving the amendments after adoption of the notice
that the Scheduled Tribes and Other Traditional
Forest Dwellers (Recognition of Forest Rights) Bill,
2006 as reported by the JPC be taken into
consideration. This has been settled by the legislative
wing of Law Ministry.

Secy (T.D.), - on file

Mr
13/12/06

m

AK 13/12/06

~~Slavo. 8 (Issue) - 3480-86/06~~

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-

COMMENTS OF DGF & SS ON DRAFT BILL ON "THE SCHEDULED TRIBES & FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) BILL, 2005"

Preamble

The preamble speaks about sustainable use, biodiversity conservation, ecological balance etc., but it is not understood that after allocating a large part of forest land for residential rights, agricultural rights, MFP rights in favour of tribals and forest dwellers, how the forests shall be utilised in a sustainable manner and how the biodiversity will be conserved.

*Duties
reg.
Conservation*

Chapter-I : Preliminary

Section 1(2) does not extend this Draft Legislation to the Andaman & Nicobar Islands, which is not understood by me. It may kindly be explained at the time of meeting.

Chapter-II : Definitions

Section 2(1) (c) **Entitlement:** For minor forest produce, a separate legislation is proposed to be enacted by the State Governments. This may be considered.

Section 2(1) (d) **Forest Lands:** The forest land includes all categories of forest lands, national parks and sanctuaries. In the interest of biodiversity conservation and considering the provisions of Wildlife Protection Act, and Supreme Court orders, National Parks and Sanctuaries need to be excluded.

Section 2(1) (h) **Forest Dwellers:** In this section, 'around' word needs to be deleted, as it brings vagueness. Further, 'recognised as STs' phrase needs to be considered for addition after the words 'nomadic and pastoralist communities'. Scheduled tribes who have migrated to non-scheduled areas, should not be considered forest dwellers.

Chapter-III: Rights of Forest Dwellers

Section 3(2) prescribes the cut-off-date as 31-12-1993, which is required to be modified. In this regard, this Ministry has already conveyed to Ministry of Tribal Affairs on 10-2-2005, that the cut-off-date should be 25-10-1980.

Section 3(3) proposes to recognise rights on forest lands not exceeding 2.5 hectare per family. The comments on this section are as follows:


- (i) "Family" has not been defined in the draft.
- (ii) It is not clarified which activities will be taken up on the distributed forest area.

Sl. No.	Provision/Clause	Reasons why the changes are acceptable to the Ministry of Tribal Affairs
5	The number of members of the Sub Divisional Level Committee, District Level Committee and the State Level Monitoring Committee and the procedure to be followed – 6 (9) (v)	<p>The Ministry has no objection to the inclusion of the composition of the Sub Divisional Level, District Level Committees and the State Level Monitoring Committee in the Bill.</p> <p>It is, however, felt that these committees may have one ST male and one female ST member from the appropriate Panchayati Raj Institutions (viz. the intermediate panchayat for the Sub Divisional Level Committee and the Zilla Parishad for the District Level Committee) in addition to the official members, making the total in the Sub Divisional Level Committee and the District Level Committee, five each, i.e. 3 officials and 2 elected ST members.</p>

Sl. No.	Provision/Clause	Reasons why the changes are acceptable to the Ministry of Tribal Affairs
1	Inclusion of new right of in-situ rehabilitation - 3(1)(m)	Since displacements and eviction have been taking place across the country without the settlement of rights and mostly without the provisions of rehabilitation, it is felt that there should be provision in the Bill to recognize the rights of rehabilitation of such displaced people. 'In situ' in this case should mean in the same forest but not necessarily in the same site. This could be accepted in case of forest dwelling Scheduled Tribes' displacement prior to the cut off date as proposed in the Bill as introduced, i.e., 25.10.1980. This right will protect their livelihood and dignity.
2	Conferring right in critical wildlife habitats of national parks and sanctuaries on regular basis - 2(b)	Since there is no statutory backing to the words "Core Areas" at present and the declaration of Core Areas would require involvement of stakeholders and should take place through democratic mechanism, prominently including local community representatives, it is felt that instead of providing for automatic relocation from Core Areas, there should be clear, effective and fair process for deciding [which] such relocation is absolutely necessary and for providing suitable safeguard and how it is to be done. Therefore, the new definition of "critical wildlife habitat" in place of "core areas" is acceptable to this Ministry.
3	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 complete - 4(5)	<p>Since the Joint Committee has suggested this clause because they felt that the procedure for eviction of ineligible forest dwelling Scheduled Tribes from forest land should not be left to the Rules to be prescribed, the Ministry accepts the revision.</p> <p>However, the Ministry is not agreeable to extending the scope of the Bill to "other traditional forest dwellers" because the Bill is meant for STs only. The Ministry does not agree for addition of the words "or other traditional forest dwellers" in the clause.</p>
4	Right to land to forest dwelling STs who can establish that they were displaced from their dwellings and cultivation without land compensation due to State development intervention and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition - 4(10)	Since this clause will benefit those scheduled tribes who have been displaced from their dwellings and cultivation without land compensation due to State development intervention and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition, this Ministry has no objection to the addition of this clause as far as it relates to STs.

Whether

Sent to MTA on 19/7/2018



19/7

No.17014/4/2005-S&M/PC&V
Government of India
Ministry of Tribal Affairs

Copy No. 23.....

New Delhi, July 18, 2006

**NOTE FOR THE GROUP OF MINISTERS ON THE SCHEDULED
TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005**

Subject: The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005.

1. **PROVISIONS IN THE NATIONAL COMMON MINIMUM
PROGRAMME OF THE UNITED PROGRESSIVE ALLIANCE
(UPA) GOVERNMENT**

The National Common Minimum Programme of the United Progressive Alliance (UPA) Government, which, inter alia, emphasises the urgent need to redress the problems of the tribal communities dependent on forests and to undo the historical injustice done to them, states:

“The UPA administration will take all measures to reconcile the objectives of economic growth and environmental conservation particularly as far as tribal communities dependent on forests are concerned”

“Eviction of tribal communities and other forest dwelling communities from forest areas will be discontinued. Cooperation of these communities will be sought for protecting forests and for undertaking social afforestation. The rights of tribal communities over mineral resources, water resources etc. as laid down by law will be fully safeguarded.”

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

2.1. In order to meet the above commitments in the NCMP, it was considered necessary to introduce appropriate legislation on the subject and Ministry of Tribal Affairs was mandated to formulate a comprehensive Central

Sl. No. 100 (Issued)

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MOST IMMEDIATE

COPY NO. 23

No. 17014/4/2005-S&M/PC&V
Government of India
Ministry of Tribal Affairs


Shastri Bhavan, New Delhi-110001
Dated, the 18th July 2006

MEETING NOTICE

Sub: 1ST meeting of the Group of Ministers (GOM) to consider the issues relating to the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 to be held on 20.07.2006 at 1800 hrs. – Agenda papers

In continuation of this Ministry's Meeting Notice of even number dated 14th July 2006, the undersigned is directed to enclose a Note for the Group of Ministers, which will be discussed in the meeting of the Group of Ministers to be held on 20th July, 2006 (Thursday) at 1800 hrs. in Room No. 102, South Block, New Delhi.

2. The undersigned is directed to request all the members of the Group of Minister to kindly make it convenient to attend the meeting.


(Rajeev Kumar)
Joint Secretary to the Government of India
Telefax: 23073489

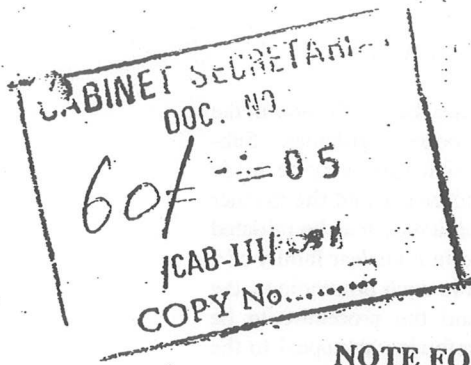
Joint Secretary to the Government of India
Telefax: 23073489

- Issued*
18/07/06
1. Shri Pranab Mukherjee, Minister of Defence ✓
 2. Shri Shivraj V. Patil, Minister of Home Affairs ✓
 3. Shri P.R. Kyndiah, Minister of Tribal Affairs and Minister of Development of North Eastern Region
 4. Shri H.R. Bhardwaj, Minister of Law & Justice
 5. Shri Mani Shankar Aiyar, Minister of Panchayati Raj and Minister of Youth Affairs & Sports
 6. Smt. Meira Kumar, Minister of Social Justice & Empowerment
 7. Shri A. Raja, Minister of Environment and Forests ✓
 8. Shri Kapil Sibal, Minister of Science & Technology and Minister of Ocean Development
 9. Smt. Renuka Chowdhury, MOS (IC) of the Ministry of Women & Child Development
 10. Shri Subodh Kant Sahay, MOS (IC) of the Ministry of Food Processing Industries ✓

SECRET

Secret

No.17014/4/2004-S&M(Pt.)
Government of India
Ministry of Tribal Affairs



Copy No. 2

New Delhi, August 1, 2005

NOTE FOR THE COMMITTEE OF SECRETARIES

Subject: Need for enacting two Bills, namely, "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" and the "Model Bill - State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005" for conferring ownership rights in respect of minor forest produce, including tendu patta, on all those people from the weaker sections who work in forests

As the Committee of Secretaries is aware, this Ministry was mandated to formulate a comprehensive Central Legislation to redress the historical injustice done to forest dwelling Scheduled Tribes by providing for clear assertion of their legal rights on land and other traditional forest rights. This Ministry had accordingly prepared a draft "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" and circulated the same amongst all the Ministries concerned for their comments. The draft Bill was approved by all the concerned Ministries with suggestions in some cases, except by the Ministry of Environment & Forests. The apprehensions of the Ministry of Environment & Forests were duly examined and point-wise comments of the Ministry were offered (Annexure-I). The Ministry had thereafter referred the draft Bill to Ministry of Law & Justice for their advice and vetting of the Bill. On receipt of clearance from the Ministry of Law & Justice, the Ministry had sent a Note for the Cabinet, along with the draft Bill as vetted by the Ministry of Law & Justice, to the Cabinet Secretariat on 28.4.2005 for placing the matter before the Cabinet. The Committee of Secretaries had also discussed the draft Bill in a meeting held on 28.4.2005. A copy of the The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as vetted by Ministry of Law & Justice is at Annexure-II.

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. Sub-clause (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 for and the 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.

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2. The Cabinet Note sent by the Ministry could not, however, be taken up for consideration by the Cabinet. In the meanwhile, it was decided to post the draft version of the above Bill on the internet to enable people to get to know the provisions and allay misapprehensions, if any. The draft Bill was accordingly posted on the website of the Ministry (www.tribal.nic.in), along with a note containing the background of the case, the existing legislative/policy frame of the Ministry of Environment & Forests on the subject, the main features of the proposed Bill and the checks and balances provided in the Bill. The members of the public, the social activists, academicians, anthropologists, the experts working for the cause of environmental protection and welfare of tribal people and other stakeholders were requested to send their views/comments/suggestions on the proposed legislation by 10th July, 2005. Advertisements were also issued in the leading national and regional dailies (in English, Hindi and regional languages) all over the country for this purpose.

3. The Ministry has received an enthusiastic response from the individuals/ organizations from all over the country and as many as 5634 individuals/organizations had sent their comments/ suggestions upto 20.7.2005, either supporting the Bill or opposing the same. These suggestions have been considered by the Technical Support Group in a meeting held on 21.7.2005 for taking a view whether and changes are required to be made in the main draft Bill or whether some of the suggestions could be incorporated in "The Scheduled Tribes (Recognition of Forest Rights) Rules, 2005" to be notified after enactment of the Act for carrying out the provisions of the proposed Act. The Ministry is still in the process of carrying out some minor changes in the draft Bill.

4. Background

The background of the Bill being formulated by this Ministry is that the rights of forest dwelling Scheduled Tribes who are inhabiting the forests

for generations and are in occupation of forest land have not been adequately recognized so far resulting in historical injustice to these forest dwelling Scheduled Tribes who are integral to the very survival and sustainability of the forest eco-system. A decision was, therefore, taken to redress this historical injustice done to tribal community and for clear assertion of their legal rights on land through a comprehensive Central Legislation.

5. Objects and Reasons of the Bill

5.1 There exists a spatial relationship between the forest dwelling scheduled tribes and the biological resources in India. The notion of conservation of ecological resources by forest dwelling tribal communities has been referred to by most ancient manuscripts and scriptures that modern humanity knows. The colonial rule somehow ignored this reality for more economic gains and probably for good reasons prevalent at that time. Post independence, in our enthusiasm to protect natural resources we continued with colonial legislations and adopted more internationally accepted notions of conservation rather than learning from our rich traditions where conservation is embedded in the ethos of tribal life.

5.2 The reservation processes for creating wilderness and forest areas for production forestry somehow left the bona fide interests of the tribal community much to be desired in the legislative frame that we enacted in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting genuine claims to resources where they belong and depended upon. The modern conservation approaches adopted by many countries, who have themselves pushed their indigenous people out of their natural habitat also advocate exclusion rather than integration and advocate survival of only wildlife without a symbiotic interface with humans, in our case the Forest Dwelling Scheduled Tribes (FDST).

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Secret

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5.3 : It is only recently that forest management regimes have in their policy processes realized that integration of tribal communities who depend primarily on the forest resources cannot but be integrated in their designed management processes. The understanding is gaining grounds that forests have the best chance to survive if communities participate in its conservation and regeneration measures. The forest dwelling scheduled tribes, however, face a unique problem of having been alienated from their traditional land holdings in the forests. The forest rights of these tribes have not been adequately recognized and recorded in the consolidation of state forests during the colonial period as well as in Independent India, resulting in historical injustice to them though they are integral to the very survival and sustainability of the forest eco systems, including wildlife. In fact, the tribals are inseparable with the ecosystem. The feeling of isolation and fear of eviction consistently looms large in the psyche of the scheduled tribes who have been very deeply rooted in the forest areas for ages. 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 feeling is further fuelled by the various activist groups spread in the forest areas of Central India, which also happen to be the Scheduled Areas of the country rich in natural resources, including minerals. This historical injustice now needs correction before it is too late to save our forests becoming permanent abode of undesirable elements. The Scheduled Tribes (Recognition of Forest Rights) Bill is a step to correct this historical wrong.

6. **Salient features of the Bill**

The salient features of the Bill are as under:

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Ministry of Tribal Affairs

(1) Rights of Forest Dwelling Tribes:

The Bill seeks to recognize and vest Forest Rights to forest dwelling Scheduled Tribes where they are scheduled, in respect of forest land and their habitat and further provides that no forest dwelling Scheduled Tribes shall be evicted or removed from forest land under their occupation till the recognition and verification procedure is complete. Such forest rights are, however, to be exercised for bonafide livelihood needs and not for exclusive commercial purposes; not to exceed 2.5 ha per nuclear family of the forest dwelling Scheduled Tribe; to include the responsibility of protection, conservation and regeneration of forests to be heritable but not alienable or transferable and in respect of land where a title is vested or recognized to be registered jointly in the name of the husband and wife.

(2) Duties of Forest Right holders

Section 5 of Chapter III of the proposed Bill defines the duties of forest right holders, which include responsibility of not carrying out any activity that adversely affects the wild life, forests and biodiversity.

(3) The Authorities, including their functions

Chapter IV of the proposed Bill defines the authorities and their functions for recognizing and vesting of such rights to forest dwelling Scheduled Tribes.

(4) Offences under the Act

Chapter V of the proposed Bill provides for the penalty for contravention of the provision of the Act and also the offences by Government authorities under this Act. A simple imprisonment up to 30 days with or without a fine of Rs.5000/- has been considered appropriate as the proposed Bill also, in addition, provides for de-

recognition the forest rights in case the offence is committed more than once. The penalties provided under other legislation including Indian Forest Act, 1927, the Forest Conservation Act, 1980 are in any case not barred by this Act.

(5) Miscellaneous provisions

Chapter VI of the proposed Bill contains miscellaneous provisions relating to the Nodal Agency, i.e. the Ministry of Tribal Affairs, which is made responsible for implementation of the proposed Act, and that the Central Government may from time to time, give general and specific directions to the competent authority with regard to the performance of duties and exercise of powers by or under the provisions of the proposed Bill. The operation of other laws to the extent they do not contravene the provisions of this Act would not be barred.

(6) Checks and Balances:

The proposed Bill provides for far more checks and balances than the existing Legislative / policy frame of the Ministry of Environment and Forests. The specific provisions include -

- Recognition of Forest Rights of only the FDSTs, where they are Scheduled; There is no distribution of land involved at all and Bill will not cover the entire 8.2 % ST population. Only tribes scheduled for the area living in the forests will benefit. A tribal from an outside area/State will not benefit. The Bill in actual terms will only benefit the tribal population on "as is where is basis". Only occupations as per the ground situation existing for generations are being given legal recognition so as to avoid day to day harassment by the officials.
- Recognition of the occupations existing prior to cut off date and maximum upto 2.5. ha land only is proposed, which in fact restricts land grabbing by elites even within tribal communities. MOEF guidelines provide no such ceiling.
- All rights would be heritable but inalienable or non-transferable;

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- The use of the forest rights has been restricted to the subsistence and livelihood needs alone;
- The commercial use of any kind has been specifically excluded;
- Cut-off date of 25.10.1980 has been provided in the body of the Bill. It is only a one time exercise to recognise the age old occupations as per the ground situation intended to put an end to so-called issue of encroachment forever. There is no question of abetment of fresh encroachment.
- It has been provided that the forest right holder shall not indulge in any activity that adversely affects the wild life, forest and the biodiversity in the local area.
- Penalties have been provided including de-recognition of the vested right if any offence has been committed more than once;
- Gram Sabha has been made the competent authority to initiate the process of recognition of rights and preparation of the records but it is not the final authority.
- Involvement of the democratic institution is in tune with the provisions of PESA Act, 1996 and aims at empowering the local communities in management of their natural resources;
- The duties of the forest right holders have been provided.
- Specific provision has also been made that the rights so recognized would include the responsibility of protection, conservation and regeneration of forests.
- It has also been specifically included that engagement in any unsustainable use or destruction of wild life, forests, or any other biodiversity or felling of trees would constitute an offence under this Act.
- The Ministry of Environment and Forests will have a role in the process of scrutiny and recognition of rights at all levels which will be clearly spelt out in the rules. In fact, the role of Ministry of Tribal Affairs will be extinguished once land rights are conferred.
- There is no move to convert forest land into agricultural holdings – the vesting of rights will be done on “AS IS WHERE IS” basis and definitely no clearing of forests or felling of trees would be permitted.

It may be further added that 63% of dense forest cover of the country lies in 187 tribal districts.

7. **“The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005” Vs “Model Bill – State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005”**

7.1 A major issue which directly impinges on the interests of the tribals living in and around the forests relates to non-conferment of ownership rights over the Minor Forest Produce (MFP) to the tribal people. The collection of MFP and its marketing thereof constitute the major source of livelihood for a tribal family. It is estimated that up to 70% of the income in most of the cases comes from the MFP. The Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) gives the rights of ownership of MFP to the respective local communities. Despite the transfer of control and management of natural resources to the STs, the collection and trade of MFP is largely monopolized by the Corporations of the Forest Department of the States. There are still a number of cases, such as, in case of Tendu leaves, where trading is being done by Forest Corporations through the contractors. The poor STs are just employed by the contractors as the helpless labourers. This is one of the largest irritants and the source of the exploitation of the STs. The States get major share of revenue from the sale of MFP. For instance, sale of the tendu patta, provides revenue to the State Exchequer of Chhattisgarh, Madhya Pradesh, Jharkhand and Orissa. As a result, social unrest in one form or the other has also been surfacing in most of the scheduled areas of the country where more than 50% of the ST population lives.

7.2.1 In the above background, the comments of the Ministry of Tribal Affairs on the proposed "Model Bill - State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005" (referred to hereinafter as Model Bill) are as under:

- (i) The Model Bill does not define the term "minor forest produce" comprehensively and excludes bamboo and cane from MFPs whereas the ST Bill prepared by this Ministry clearly defines the term "minor forest produce" to include 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;

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- (ii) The Model Bill does not straight away confer the ownership rights of minor forest produce and simply provides guidelines to the States. The PESA Act, 1996 already provides that the Panchayats and the Gram Sabhas shall be endowed with the ownership of minor forest produce but the said Act, being a Model Act, has remained inoperative so far. As per the proposed Model Bill prepared by the Ministry of Environment & Forests, there is no compulsion for the State Governments to come out with State Acts. Even if they do, given the discretion left to States, it may go the PESA way with State Governments which may result in FDCs not actually getting the intended benefits.
- (iii) On the other hand, the ST Bill prepared by the Ministry seeks to recognize and vest various forest rights, including the right of access to, use or dispose of minor forest produce, in the forest dwelling Scheduled Tribes. This is also in consonance with the following provisions of National Common Minimum Programme of the United Progressive Alliance (UPA) Government, which emphasises the urgent need to redress the problems of the tribal communities dependent on forests and to undo the historical injustice done to them, as also in conformity with the PESA Act:

"The UPA administration will take all measures to reconcile the objectives of economic growth and environmental conservation particularly as far as tribal communities dependent on forests are concerned".

"Eviction of tribal communities and other forest dwelling communities from forest areas will be discontinued. Cooperation of these communities will be sought for protecting forests and for undertaking social afforestation. The rights of tribal communities over mineral resources, water resources etc. as laid down by law will be fully safeguarded."

On the basis of the suggestions received by this Ministry on the ST Bill, the Ministry proposes to incorporate the word "ownership" in

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Section 3(c) of the proposed ST Bill to read as "right of ownership, access to, use or dispose of minor forest produce".

- (iv) The Model Bill assumes that people collect MFPs only from the forests immediately adjoining their villages when, in practice, certain communities specializing in collecting particular MFPs collect them from much larger landscapes. Access of such groups to their traditional collection areas would be excluded.
- (v) The Model Bill excludes national parks and sanctuaries from its purview despite little scientific evidence that NTFP collection is harmful for wildlife conservation. Large number of people dependent on NTFPs in these areas would be negatively impacted. The ST Bill on the other hand covers national parks and sanctuaries also.
- (vi) As per the Model Bill, the equation of JFM committees with 'Forest Dependant Communities' (FDCs) is problematic. In most States, JFMCs are not even legal entities. The formation of JFM often excludes the really forest dependent people. The proposed definition also leaves those communities being considered as FDCs who are not part of the JFM Committee. The conferment of community right is better on the basis of well defined identities, such as, village etc.
- (vii) As per the PESA Act, the ownership of minor forest produce is conferred on the Panchayats and the Gram Sabha, which covers all the tribals, whereas the Model Bill prepared by the Ministry of Environment & Forests restricts the Forest Dependent Community to include a few people constituting themselves in JFM Committees.

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- (viii) The Model Bill empowers the State Government to define what a FDC is by recognizing the JFM Committees as per clause 2(d) instead of the communities doing so themselves through an open and transparent process. There is a great danger of genuine FDCs being further deprived of MFP access in the process. On the contrary, the definition and list of STs is very specific without any ambiguity. The ST Bill clearly defines the "forest dwelling scheduled tribes" and the "forest rights" sought to be recognized and to be vested including the MFPs.
- (ix) Clause 2(g) of the Model Bill defines a 'Right Holder' as per forest settlement proceeding though settlements have not been done in large areas. In clause 2(f), ownership of MFPs is only granted to such 'Right Holders'. This would exclude millions of people whose rights have not been settled to date.
- (x) As different communities collect different NTFPs, calculating 'net income', as defined in Clause 2(i) of the draft legislation, would not be possible.
- (xi) The Model Bill provides for 'non-destructive harvesting' on 'Sustained Yield' principle as prescribed in working plans - but working plans are not always specific about most NTFPs.
- (xii) The Model Bill empowers the states to allow MFP Corporations to continue marketing rights. In such a scenario where most of the high value MFPs such as Tendu leaves are being traded by State forests Corporations, NTFP collectors will continue getting only wage labour and not 'ownership' rights.

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(xiii) The Model Bill is somehow more elaborate in conferring powers on Forests and Police officers for search and seizure than the conferment of ownership rights over MFPs on the FDCs.

(xiv) The provisions of the Model Bill are contrary to the provisions of PESA Act.

8. The Ministry of Tribal Affairs is of the view that "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" adequately addresses the issue of conferment of ownership rights over the minor forest produce to the forest dwelling scheduled Tribes, who are dependent on MFPs for their subsistence and livelihood needs. The Ministry, therefore, does not consider the need for enacting the "Model Bill - State/UT Minor Forest Produce (Ownership Right of Forest Dependent Community) Act, 2005", proposed by the Ministry of Environment & Forests. The procedural details may be provided in the rules to be framed after enactment of the ST Bill.

9. The above position is submitted to the Committee of Secretaries for information and consideration.


(RAJEEV KUMAR)

Joint Secretary to the Govt. of India
Ministry of Tribal Affairs
Tele: 23073489

Place: New Delhi
Date: 1.8.2005

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Annexure-I

Comments from various Ministries/Departments on "The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" and views of the Ministry thereon

S. No.	Comments	Views of the Ministry of Tribal Affairs
1.	<p><u>Ministry of Environment & Forests</u></p> <p>The Ministry of Environment & Forests does not agree with introduction of the proposed enactment of "Scheduled Tribes (Recognition of Forest Rights) Bill, 2005" in view of the following facts:</p> <p>1. The approach adopted in the proposed Bill requiring de-notification of vast tracts of forestlands, and elimination of all legal protection for the forest cover, will lead to irreparable ecological damage of immense proportion. Decimation of forests as a result of enactment of proposed Act, is likely to lead to more frequent and intense natural</p>	<p>This Ministry would like to place on record that the Technical Support Group (TSG) that was constituted to draft the said Bill included the DG Forest as the Official Member. The drafting of the proposed Bill in the TSG meetings included extensive consultation, clarification, and suggestion of the MOEF technical head. The present MOEF comments seem to take a stand which is almost opposite to what was substantially accepted and is recorded in the minutes of the TSG Meetings.</p> <p>It would be further appropriate to add that through the proposed Bill this Ministry is only strengthening the stand taken by the MOEF in their own policy statements as recent as December 2004 on the issue of undoing historical injustice to the forest dwelling Scheduled Tribes.</p> <p>Notwithstanding the above, the apprehensions of the MOEF would be further allayed by para-wise comments as below:</p> <p>1. The apprehensions of the Ministry of Environment & Forests are not correct. The proposed Bill does not envisage de-notification of vast tracts of forest lands and elimination of legal protection for the forest cover. The draft bill only seeks to recognize and vest rights on occupation of forest land to forest dwelling Scheduled Tribes where they are scheduled. In any case this intends to reflect only the correct position existing on the ground that tribals have been living and surviving on forestlands since time</p>

calamities like floods, soil erosion, adversely affecting livelihoods of people. The precious biological diversity, wildlife, and the natural resource base for maintenance of the carbon, nitrogen, and oxygen cycles, are also likely to be affected adversely and irreparably.

2. While there is no doubt that the non-recognition of traditional rights of tribals over their ancestral domain, constitutes a historical injustice to them but the approach in the proposed bill is likely to cause more damage, without necessarily being of significant benefit to tribals in the long run. The whole issues needs to be looked at from perspectives of ecological science, equity and overall costs to the society.

immemorial. It is their tenurial rights which has thus far been insecure which is sought to be corrected by the proposed Bill. Further the use of forest rights so vested is primarily meant for subsistence and livelihood needs alone and commercial use of any kind is specifically excluded. In fact, the draft Bill prohibits the forest rights holder from indulging in any activity that adversely affects the wildlife, forest and the bio-diversity in the local area, including clearing of the forest land. The preamble of the proposed Bill itself makes it clear that the rights so recognized shall include responsibility and authority for sustainable use, bio-diversity conservation and maintaining of ecological balance and thereby strengthening the conservation regime while ensuring livelihood and food security of the forest dwelling Scheduled Tribes. The above clearly should dispel any apprehension of 'decimation of forests' or consequent natural calamities which might affect livelihoods of tribal people.

2. It is not correct to say that the proposed Bill is not likely to benefit tribal communities in the long run. It is the tribal community who has been at the forefront of all conservation regime in the past. History is a testimony to the fact that nature conservation is a central theme in tribal culture and ethos. It is also this community, which has been affected most by western notions of conservation that has been followed. The hands off approach has only alienated a community which depends and reveres forests like none of the other population. This fact has been now recognized in all efforts of new conservation strategies. Eco-development, Community Forest Management, Joint Forest Management are all such initiatives by MOEF recognizing this central theme. Most of the recent Policy statements by the MOEF avers that the historical injustice done to forest dwelling Scheduled Tribes who have

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<p>3. Forests are a National Natural Resource. Hence, the whole population of the country enjoys rights over this natural resource either in tangible terms or intangible terms. Also, it is the duty of the every citizen of the country to protect forests and environment as per the Directive Principles laid down in the Constitution. It implies that every citizen of the country enjoys rights over forests.</p>	<p>been residing in the forests for generations and who are integral to the very survival and sustainability of the forest eco-system, including wildlife, should be undone. It is in this light that the draft Bill needs to be assessed. It merely seeks to strengthen the stands accepted by the MOEF in their guidelines/circulars/policies, in the form of a carefully thought out legislative frame which ensures that conservation objectives are achieved not at the cost but with the livelihood security of the people who are most vulnerable and dependent on that resource. In fact, the forests have the best chance to survive if the forests dwelling Scheduled Tribes are allowed to participate in its conservation and regeneration measures. This has been clearly stated in the forest policy as well. It is pertinent to add that the ecological concerns that have been raised are of the highest concern to this Ministry and the proposed bill is conscious of this fact. The recognition of forest rights is not in absolute terms and the scheme of the Bill clearly provides checks and balances to ensure conservation objectives while meeting bona fide livelihood needs. Last but not the least, this Ministry wants to reemphasize that tribal communities' knowledge of traditional ecological science is unmatched and they have been practicing this science without the modern language since time immemorial.</p> <p>3. This Ministry is in total agreement with MOEF's view on forests as a natural resource which has to be enjoyed by every citizen of the country. It is thus clarified that the proposed Bill does not impinge on the rights of the non-tribal population of the country over the forests. There is no fresh allocation of land to tribal communities. It is only the recognition of a pre-existing right over forests and forest land that the tribal communities have been deprived during the forest reservation process. It is well known that the forest rights have not been recorded</p>
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Therefore, it would not be appropriate to allocate disproportionately large areas of natural resource of the country, to only 8.2% of the population.

due to which the forest dwelling tribals have been subject to a historical injustice. Thus there is no question of a disproportionate allocation of large areas of natural resource. In fact the policy of the MOEF till 1988 has been to use forests for production forestry for commercial gains. It is only the new forest policy where for the first time the forest dwelling communities were considered to have a first charge on forests. This paradigm shift was a realization of this historical wrong and subsequent policy statements have only been strengthening this position where tribal communities need to be at the center of any conservation strategy. It is the dependence and not the numbers (8.2 %) that is core to any management regime in forestry. It is further emphasized that this Bill caters to recognition of pre-existing forest rights of forest dwelling Scheduled Tribes only and not the entire population of Scheduled Tribes.

4. The draft bill aims at distribution of 2.5 ha of forest land to each tribal nuclear family which will result in the loss of large chunk of forest cover. This is against the goal of National Forest Policy, 1988 to have one third of the geographical area of the country under forest and tree cover and also the country's commitment to Sustainable Forest Management.

4. The draft Bill does not envisage at any stage distribution of forest lands. As per the draft Bill, the recognition of existing occupation on 2.5 ha land that is proposed is in fact to restrict land grabbing by elites even within tribal communities. In fact, most State forest village rules recognize this basic unit of land for subsistence on forest lands. The proposed Bill emphasizes use of forest rights only for subsistence and livelihood needs and not for commercial use of any kind. Further, the forest right holder has been specifically prohibited from indulging in any activity that adversely affects the wildlife, forest and biodiversity in the local area, including clearing of forest lands. Since the forest dwelling tribes will also be responsible for protection, conservation and regeneration of forests on the land where their title is to be vested or recognized, there would not be any loss of forest cover by such recognition. It is also reiterated that the Forest Policy envisages

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	<p>that "the rights and concessions from forests are to be primarily for <i>bona-fide</i> use of communities living within and around the forest areas, especially tribals" and further envisages a symbiotic relationship of tribal communities with forests. Sustainable forest management has been a way of life for tribal communities and the commitment of tribal communities to forest conservation goes beyond any formal regime on forestry management.</p>
<p>5. In the meeting held on 19.01.2005, the Ministry of Environment and Forests had made it clear that there is no necessity of bringing a fresh legislation as sufficient provisions already exist under Forest (Conservation) Act, 1980, and the guidelines issued in 1990 there under. What is required is modification of the orders of the Supreme Court regarding stay on de-reservation of forests, regularization of eligible categories of encroachments and letter-dated 5.2.2004 of the Ministry of Environment and Forests.</p>	<p>5. After carefully considering the arguments given by the Ministry of Environment & Forests in the meeting of 19.1.2005, a decision was taken to mandate the Ministry of Tribal Affairs to formulate the proposed Bill, 2005 to redress the historical injustice done to tribal communities and for clear assertion of their legal rights on land.</p>
<p>6. The subject "Forests" is the business allocated to the Ministry of Environment and Forests as per Government of India (Transaction of Business) Rules, 1961 and hence it is implied that settlement of rights over forest lands is also the mandate of the Ministry of Environment and Forests and of no other Ministry including the Ministry of Tribal Affairs.</p>	<p>6. It is clarified that the objective of the proposed Bill is not to vitiate the mandate of the settlement of rights process of MOEF. It only proposes to correct a historical wrong of non-recognition of forest rights of tribal communities. Hence the subject of the proposed legislation is not merely forests but forest tribal interface including rights of tribals existing even before the reservation process under forest laws. In fact this Ministry has already proposed to the PMO on 16.3.2005 that "All matters concerning Tribal-Forest Interface, including recognition of forest rights of the forest dwelling</p>

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<p>7. The Ministry of Environment and Forests has already filed an affidavit in the Supreme Court requesting for modification of various orders and have also clarified that 25.10.1980 would be a cut off date for settlement of rights of Tribals while the proposed bill keeps the date open ended which would be against the interests of Forest Conservation.</p> <p>8. The Ministry of Environment & Forests feels that the provisions of Forest (Conservation) Act, 1980 and the guidelines of 1990 have sufficient provisions to address the problem. What is required now, no existent earlier, is a clearly laid down procedure for the implementation of the 1990 guidelines</p>	<p>Scheduled Tribes" may be allocated to this Ministry under the Government of India (Allocation of Business) Rules, 1961.</p> <p>7.The Ministry has simultaneously drafted the Draft Scheduled Tribes (Recognition of Forest Rights) Rules, 2005 and circulated the same to the concerned Ministries for explaining the procedure for carrying out the provisions of the proposed Act. The said Draft Rules provide that "recognition and vesting of forest rights to forest dwelling Scheduled Tribes in respect of forest land and their habitat would be subject to the condition that such forest dwelling Scheduled Tribes have occupied forest land or acquired forest rights before 25.10.80". It is submitted that the proposed Bill contains the substantive provisions of recognition and vesting of forest rights, the mandate to follow a detailed procedure for verification of such rights and the nature of evidence that may be adduced as evidence along with the authorities for implementation. The procedures shall be detailed in the draft Rules which would be notified after enactment of the Bill. Hence procedural requirements shall be taken care of in the proposed Rules.</p> <p>8. The proposed Act does not preclude the operation of the FCA, 1980 or the guidelines of 1990. The guidelines issued by the Ministry of Environment & Forests in 1990 for settlement of rights of forest dwelling Scheduled Tribes over forest land have failed to redress this long-standing problem even after a lapse of nearly 15 years. The historical injustice done to the forest dwelling Scheduled Tribes by not recognizing their rights and occupation in forest land despite their residing on such forest lands for generations needs urgent correction, before it is too late to save our forests becoming permanent abode of undesirable elements. The proposed Bill</p>
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<p>9. The proposed Act will not be effective because the Ministry feels that following orders of the Supreme Court will still be operative even after the intended promulgation of new Act:</p> <ul style="list-style-type: none"> i. Ban on dereservation of Reserved Forests. ii. Ban on regularization of encroachment. iii. Ban on dereservation of National Parks and Sanctuaries. iv. Stay on the operation of order dated 5.2.2004 of the Ministry of Environment & Forests. <p>10. The proposed Act is not in the interest of Forest and Wildlife Conservation as it intends barring the operation of Indian Forest Act, 1927, Forest (Conservation) Act, 1980, and the Wildlife (Protection) Act, 1972 so far as their provisions are in contradiction with the proposed new Act.</p>	<p>seeks to address precisely this problem. The draft Scheduled Tribes (Recognition of Forest Rights) Rules, 2005, to be notified after enactment of the Bill, will lay down the detailed procedure for carrying out the provisions of the proposed Act, namely, the procedure for recognition and verification of the forest rights, the procedure to be followed at all levels under the Act, the authorities under the Act, including their composition and nature of evidences, to be taken into account for recognition and vesting of forest rights of genuine forest dwelling Scheduled Tribes..</p> <p>9. The draft Bill already provides that the operation of other laws to the extent that they do not contravene the provisions of the proposed Act would not be barred. The proposed Bill for instance does not interfere with or advocates dereservation of reserve forests. It does not talk about encroachments or its regularisation, which are after the enactment of Forest Conservation Act or dereservation of national parks or sanctuaries. The comment, however, tends to undermine the Legislative powers of Parliament.</p> <p>10. Here, the operative line is "so far as they are not in contradiction with the proposed Bill". This makes it clear that the Bill is applicable only in so far as recognition of existing forest rights are concerned and in no way interferes with other prohibitive clauses of the Indian Forest Act, 1927, Forest (Conservation) Act, 1980 or the Wildlife (Protection) Act, 1972. In any case this is a general observation without being specific as to which provision of the proposed Bill is violating the specific provisions under the</p>
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	<p>various laws mentioned. The proposed Bill only seeks to provide a human face to the conservation regime by undoing the historical injustice to the forest dwelling STs who are integral to the very survival and sustainability of the forest ecosystem.</p>
<p>11. Further, under Forest (Conservation) Act, 1980, Ministry of Environment and Forests stands committed to regularization of pre-1980 eligible encroachments and conversion of forest villages into revenue villages. This commitment takes into consideration all the forest dwellers including tribals. Fulfilment of this commitment under Forest (Conservation) Act, 1980, will benefit the tribals.</p>	<p>11. The provisions of the proposed Bill do not preclude the Ministry of Environment & Forests from regularization of pre-1980 eligible encroachments and conversion of forest villages into revenue villages under the Forest Conservation Act, 1980. The proposed Bill only supplements the efforts of the Ministry of Environment & Forests in this regard with a special focus on Scheduled Tribes. It is further emphasized that on one hand when the MOEF has taken a stand that they are committed to regularization of pre-1980 encroachments and in doing so it does not envision any violations of existing legislations mentioned in the preceding paras, on the other hand it has all the above objections to this Ministry, which is strengthening their own mandate and is also ready to work in total harmony with the MOEF as the verification procedure in the proposed draft Rules envisages involvement of forest officials at all levels in the process of recognition and vesting of forest rights.</p>
<p>12. Up-liftment of the socio-economic status of the people living in and around the forest areas in terms of providing them education, employment, basic facilities and to give them earning capacity by inculcating various skills, has been the mandate of various Line Departments other than Forest Department. Forests have to be utilized mostly for providing subsistence support to such people, so that the conservation of natural resources is not</p>	<p>12. This is a very narrow view of looking at a community which by far has paid the maximum price for modern conservation strategies which has root in colonial forestry practice emphasizing production forestry and western notions of conservation. It is only in the past one and half decades that the Government of India has taken a stand that people especially those who are directly dependent on forests have the maximum stake in protecting the resource. It is not correct to say that welfare of people should be a refuge to administrative convenience. It is due to a extreme prohibitive regime of forestry laws which has precluded any</p>

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<p>compromised. Failure on the development front should not be compensated by any mechanism which leads to irreparable damage of our natural resource base. The Draft Bill, inter alia, proposes to compensate the failure on the developmental/welfare fronts by distributing natural resource base of the country.....</p>	<p>developmental benefits to flow to communities living in the forests both in terms of creation of infrastructure and also beneficiary oriented schemes and programmes of different line agencies. In fact the tribal areas have lagged behind in the process of development and it is due to realization of this fact that MOEF have recently allowed developmental activities such as construction of schools, hospitals, roads, water harvesting structures, etc. inhabitations in forest areas, and given a general exemption under the FCA. It is further reiterated that there is no distribution of natural resource base. It is rather recognition of rights of STs existing even before the notification of forests. It is only through security of tenure and recognition of forest rights that any meaningful development can take place.</p>
<p>13. The draft bill puts a question mark on the very existence of National Parks and Sanctuaries where the current policy is to shift the habitations outside the protected area under a suitable rehabilitation plan/package.</p>	<p>13. No national park or sanctuary is put to risk by the proposed Bill. There is a detailed procedure of settlement of rights in both national parks and sanctuaries. It is well known that in most of the national parks and sanctuaries this process is still on going under the supervision of the Supreme Court. There is a clear provision within the settlement of rights process by a Collector or his authorised officer for continuance of any right with the permission of the Chief Wildlife Warden within a sanctuary. The whole purpose of this Bill is the recognition of such rights which have not been recognized in such settlement process. As regards the National Parks, most of the national parks are not finally notified hence the settlement of rights process is still on. It is this opportunity that may be utilised in correcting the historical wrong by accepting ground realities. Even the amendments to the Wildlife Act in 2002 accepts that forest produce that may be removed for betterment of wildlife may be utilised for the bona fide use of tribal communities. Thus the existence and dependence of tribal communities is</p>

<p>14. In the proposed Act, the power of settlement of claims has been vested in Gram Sabha/Sub divisional Committee/District Committee which is a local level institution and there is every likelihood that for practical reasons, the interests of forest and wildlife conservation would be overlooked and taken over by local vested interests.</p>	<p>embedded in every policy and legal instrument. Hence the apprehension of the MOEF has no basis.</p> <p>14. As provided in the proposed Draft Rules, there is no power of settlement proposed to be given to the Gram Sabha. However, the most participative democratic institution of Gram Sabha at the grass roots level is proposed to be empowered to initiate the process of recognition of rights and also identify ineligible encroachers. Empowerment of Gram Sabha is in tune with the provisions of PESA Act. The Gram Sabha resolutions are only recommendatory. The authorities proposed at the Sub Division and District Level consist of officials, including forest officials and the proposed administrative structures in the form of Committees are even more representative than provided in the existing guidelines of MOEF on this subject.</p> <p>The Scheduled Tribes (Recognition of Forest Rights) Rules, 2005, to be notified after enactment of the proposed Bill for carrying out the provisions of the proposed Act, would further prescribe an elaborate procedure with inbuilt checks and balances for recognition and verification of forest rights, the procedure to be followed by the authorities at all levels under the Act and the nature of evidence to be taken into account for recognition and vesting of forest rights, etc. which would ensure that the interests of forest and wildlife conservation are not overlooked.</p>
<p>15. There is no cut off date fixed in the proposed Bill which is very desirable.</p>	<p>15. Same comments as indicated against item No.7 above.</p>
<p>16. The proposed Act is likely to encourage fresh encroachments and destruction</p>	<p>16. The basis for this apprehension is not clear. When the cutoff date has specifically been provided in the draft rules along with</p>

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<p>of forests and it is feared that the situation may also become difficult to control.</p>	<p>the nature of evidences required to corroborate the existing forests rights existing prior to cut off date, there is no question of recognition of any forest right after the cut off date; leave alone the fresh encroachment. The proposed Bill does not preclude the Ministry of Environment & Forests from taking action against ineligible encroachers. Procedure is well thought out for process of verification and thus there is little likelihood of any fresh encroachment.</p>
<p>17. There is no role for Ministry of Environment & Forests which is the Nodal Ministry for all matters related to Forests, Wildlife and Environment.</p>	<p>17. The main objective of the draft Bill is to recognize and vest the forest rights and occupation in forest land of forest dwelling Scheduled Tribes. It is, therefore, appropriate that the Ministry of Tribal Affairs should be the nodal Ministry for administering the proposed Act. It is proposed to provide in the draft Rules a clear role for the Forest Department in the entire process of recognition and recording of the forest rights.</p>
<p>18. Last but not the least, the Ministry of Environment & Forests has issued a circular on 21.12.2004 restraining the eviction of tribals from the forest lands and as such there should not be any immediate problem to be addressed. Ministry has also issued a circular on 03.01.2005 for one time dispensation under Forest Conservation Act, 1980 for certain developmental works for a period of two years aiming at a balance between development and forest conservation.</p>	<p>18. The proposed Bill also aims at strengthening the existing guidelines in the form of legislative mandate.</p>
<p>In view of the above mentioned points and the discrepancies in the proposed legislation, there</p>	<p>This Ministry is of the view that there are no discrepancies in the proposed legislation which go against the basic tenets of a sound</p>

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<p>is no need of the any new legislation in the matter. There are good chances that the proposed legislation may act against the basic tenets of the National Forest Policy, 1988 and the goals as enshrined in Directive Principles of our Constitution, posing thereby, a threat to the ecological security of the country. The Ministry of Environment & Forests strongly feels that the subject should be dealt by no Ministry other than Ministry of Environment and Forests, and there is no need to bring a separate legislation and the solution lies in modification of the orders of the Supreme Court coupled with a well laid down procedure for the implementation of 1990 guidelines.</p>	<p>conservation regime. It is only proposed to provide a legislative framework to various guidelines/policies/circulars issued by the Ministry of Environment & Forests under which historical injustice to the STs could not be undone.</p>
<p>2. Ministry of Panchayati Raj</p> <p>In regard to Clause 4(2) of the draft Bill, relating to composition of Sub Divisional Level Committee, it is suggested that in the Committee, there should be two Members of the Intermediate Panchayats in addition to the Members mentioned in the composition.</p> <p>In regard to Clause 4(3), it is felt that with the Collector as the Chairman of the District Level Committee, the concern of Tribal may not get articulated. It would, therefore, be appropriate if the</p>	<p>The proposed Bill provides that the Gram Sabha shall be the authority for recognition and vesting of forest rights to forest dwelling Scheduled Tribes and also shall regulate access to the community forest resources. The concerns of the Ministry of Panchyati Raj would be duly taken care of while finalizing the Rules to be notified after enactment of the Bill.</p>

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	<p>Chairperson or the Deputy Chairperson of the District Level Committee is a Tribal Member of the Panchayat.</p> <p>Panchayats in all the three tiers have been given a marginal role in the recognition and vesting of forest rights of the Forest Dwelling Scheduled Tribes. Further, empowering the Gram Sabhas without the organizational framework of the Gram Panchayats will be difficult to work. The preclusion of the Sarpanch and other functionaries of the Panchayat in the Gram Sabha committee will also act to nullify the authority of local self Government since some of the items vested in the Panchayats as per Eleventh Schedule such as collection and marketing of Minor Forest Produce have a direct bearing on the recognition and vesting of Forest Rights. Expansion of principles of PESA to the tribal villages will meet both ends.</p> <p>With these modifications, the Ministry supports the objectives and the format of the draft.</p>	
<p>3.</p>	<p>Ministry of Rural Development (Department of Land Resources)</p> <p>This Department agrees with the provisions of the proposed Bill.</p>	<p>No comments.</p>
<p>4.</p>	<p>Ministry of Law & Justice (Department of Legal Affairs)</p>	

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<p>The Ministry of Law & Justice (Department of Legal Affairs) have stated that there seems to be no legal and constitutional objection to the proposals contained in the Cabinet Note and conveyed their concurrence, subject to the following amendments in the proposed Bill :</p> <p>(i) Clause 3(1) of Chapter III provides the non-obstinate provision with regard to any other law, it may be made to include any judgment or orders of any authority.</p> <p>(ii) Clause 3(3) contains the provision with regard to denying the individual and/or community right but it did not provide for further remedy, i.e. appeal etc. So a suitable provision may be made for further remedy against such orders.</p> <p>(iii) Clause 4(1)(i) provides that the Gram Sabha shall be the authority for recognition and vesting of such rights to forest dwelling Scheduled Tribes. But it is apprehended that the revenue record used to remain with the revenue authorities, so Gram Sabha without their help could not be successful. This provision needs to be amended suitably so that the revenue authorities may be made responsible for the preparation of the record of rights on the names of the dwelling Scheduled Tribes.</p> <p>(iv) Clause 5(1) provides the</p>	<p>The suggestions of the Ministry of Law & Justice (Department of Legal Affairs) have been considered and the Legislative Department of that Ministry prepared a tentative Scheduled Tribes (Recognition of Forest Rights) Bill, 2005. After obtaining the approval of the Minister of Law & Justice, the same has been sent to this Ministry for further necessary action.</p>
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<p>powers to Gram Sabha to award the punishment against the guilty. It is suggested that the powers should be given to the courts for the purpose of the cognizance of the offences and awarding the punishment. The minimum/maximum limit of the fine may also be fixed.</p> <p>(v) Clause 5(2) pertains to the offences and the penalties, for which it is suggested that a minimum/maximum punishment may be prescribed.</p> <p>(vi) Clause 5(3) may be made a proviso to clause 5(2) clearly spelling out as to when the dispute relating to a resolution of Gram Sabha will amount to an offence.</p>	
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1/N

Subject: Scheduled Tribes (Recognition of Forest Rights) Bill 2005

1. Prime Minister wanted a brief of the major issues of deviation from the consensus that emerged prior to this Bill (based on which the Bill was formulated) and JPC recommendations. A GoM has been constituted to examine this and report to Cabinet. The key issues are the following:

(a) Expanding the scope of the Bill to cover non-tribals forest dwellers.

This was considered and it was felt that the Bill should be allowed to go in its present form and be limited to tribes. In the case of tribes there is clarity through a schedule as to who is a tribal where as "non-tribal forest dwellers" is a fuzzy category that encapsulates genuine forest dwellers belonging to other castes to settlers and those who dispossessed tribals of their land. To account for the genuine forest dwelling communities who are not tribal, it was suggested that after a thorough scrutiny of such groups a second Bill would be introduced regarding their rights. This proposition would allow the Bill to go through in its current form as well as provide justice to those genuine claimants who may get overlooked (later)

(b) JPC recommended cut off date as 2005 as against 1980. This was considered as inappropriate.

(c) No ceiling of 2.5 hectares of occupation of forest land. This recommendation of JPC is likely to be partially accepted by the GoM but on the basis of "as is where is" or 4 hectares whichever is lower.

2. These are the major points of difference and notes on each item are placed in Annexure 1, 2, and 3.

(R. Gopalakrishnan)
November 27, 2006

Prime Minister

Bill now cleared by cabinet mt.

BVVV
10/12

SECTION
23 132

18/12/06
JS (6)

3031/Dir/AF-2
925/PM/9166
27/11

ES x
KI 11/12

Subject: Implementation of Scheduled Tribes and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

1. The Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act 2006 is a landmark legislation passed by the Parliament in its Winter Session 2006. Rules have to be formulated early and the implementation does as a campaign. High visibility will ensure effective implementation. With this in view, a calendar of implementation as below is proposed:

2. (1) Finalization of draft Rules - 28th February 2007
- (2) Discussion of draft with select stakeholders/state governments and collaborative preparation of calendar of implementation - 10th March 2007
- (3) Notification of the Act and communication of calendar for implementation to states - 30th March 2007
- (4) Preparation of MIS by NIC and sharing with states - 30th March 2007
- (5) Advertisement campaign of key provisions of Act and rules in multiple media with focus on states with maximum likely coverage under the Act - 1st to 30th April 2007
- (6) Gram Sabha meetings across the country on a single day for intensive communication of the Act - 1st May 2007
This gram sabha will widely disseminate provisions.
- (7) Gram Sabha meetings to prepare list for passing resolution of vesting of rights, again on a single day across the country - 1st June 2007
- (8) Screening at Sub-Divisional level - 15th to 30th June 2007
- (9) District level confirmation - 1st to 15th July 2007

(10) Publication of lists at the district level and sharing it with elected representatives of district-level, panchayat leadership, etc. and making the list open - 30th July 2007

(11) Distribution of pattas at Tehsil, Sub-Divisional and District-level by elected political representatives- 15th August 2007

3. It has been orally suggested to Ministry of Tribal Affairs to draft into the rule-making group, Secretaries of Revenue and Forests of selected states.

4. After perusal, this schedule of implementation could be discussed with Secretary, Ministry of Tribal Affairs, finalized and put into implementation.

[Handwritten signature]

.. (R. Gopalakrishnan)
.. February 3, 2007

[Handwritten signature]

AS(P)

Principal Secretary to PM

Pl. discuss with the Secy MTA as proposed.

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*Disc. by DA has scheduled s
needs - at 12 noon on 11/2/07
Re-write the draft as per sent
on an informal note*

[Handwritten signature]
12/2

No 2005
13/2/07

0/AS(P)/14/07
13/2/07

Pri. Secy. to PM
Dy. No 137/5/07

Meeting attended. It was
expressed upon by AITA that the
line taken in the final award of
rates need to be the minimum
possible.

POIi chart prepared by Mo was
shared.

The Trade Group to formulate Rules
will meet on 18th Nov & 19th Nov.
It is expected that Rules would be
ready on schedule — i.e., before the
end of the Parliament session.

h

18/12

Internal

Subject: Communication plan for Tribal Land Rights Bill

Reference: Letter from Shri Ajit Jogi, MP

1. As stated by the MP, the Tribal Land Rights Bill is a major milestone in the history of tribal development and welfare in India. After the passing of the Act the exercise is currently on to formulate Rules under the Act. A TAG has been constituted by Ministry of Tribal Affairs and it is expected that the rules would be ready by 30th April, 2007.

2. In the Rules we could clearly provide for a national format of the title deed with appropriate wording to address concerns raised by Shri Jogi. [Spoken to Secy MHA. The Rule-making TAG meets on 14 March]

3. Effective communication would help improve delivery of the programme to be conducted on a campaign mode to provide land rights to all genuine claimants. A suggested calendar of action proposed for this is enclosed on Flag A. This would be amended based on when the Rules get finalized. An effective communication plan can only follow the formulation of Rules since the details that need to be communicated would be contained in the rules. It is therefore essential that the Rules are formulated latest by 30th April, 2007.

4. Presuming the issue of Rules by 30th April, the following activities may be considered

- (i) ▪ Address to ST Members of Parliament on the Act by UPA Chairperson, PM, Minister : April (during Parliament Session)
- (ii) ▪ Promotional Campaign on key provisions and Calendar of Implementation through Media : April – May 2007 (Phase 1)
: June-July (Phase 2)
- (iii) ▪ State-level ^{Public Hearings} Conference in selected states of ST/Forest Dwellers to be addressed by UPA Chairperson/PM/Minister of Tribal Affairs
(Chhattisgarh, Madhya Pradesh, Jharkhand, Maharashtra, Andhra Pradesh) : June-July 2007

- (iv) Distribution of *patta* on Appointed Day in August across the country for undisputed allotment (rest on 14th November) to be held at district and below district levels with participation by MPs/MLAs etc. : 15th August – 14th November, 2007

[R. Gopalakrishnan]
13th March, 2007

(iii) may be difficult for the Government UPA will focus on to other four programmes. Rest as proposed.

~~AS(P)~~

~~Principal Secretary to PM~~

For consideration of the purpose
in para (4) except + (ii)
13/3

PM has seen. He
has pamphlets could
be printed highlighting
the benefits of the Act.

P.M

~~AS(P)~~ ~~BMM~~
27/3
For follow up please.

~~JS(G)~~ ~~JS~~
Rules are finished
31/3/07

v.p. b/c

Reference notes on prepaper. Enclosed are also the copies of letter dated 12.12.06 from Additional Secretary, Cabinet Sect. directing that Ministry of Tribal Affairs continue to hold and introduce the Bill as approved by the Cabinet; minutes of the meeting of the Cabinet held on 7.12.06 regarding the modifications to be brought in the proposed Bill and the finalisation of the amendments by a Minister of Tribal Affairs, Minister of Law & Justice and Minister of Panchayati Raj, Youth Affairs & Sports & M.A.R.E.R., and also Minister of Environment and Forests; minutes of the meeting held at the residence of Minister of Tribal Affairs with the presence of the Minister of Law & Justice, Minister of Panchayati Raj and Minister of Environment and Forests etc. final to the proposed amendments to the Bill.

Keeping in mind the urgency, it is requested that the draft notice placed below may be better issued Hindi version be also provided to all concerned.

DFA
Dy. No. 5353 JS (FA) 106
Dated 13.12.06

Ministry of Law, Legislative Deptt.
JS & L.C. - Dr. Sanjay Singh

M
13/12/06

Legislative Department

Ministry of Tribal Affairs has forwarded us the Minutes of the Meeting of the Ministers of Tribal Affairs, Panchayati Raj and Environment and Forests held on 11.12.2006 in connection with the amendments to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of both the Houses of Parliament.

2. It may be recalled that a Bill, namely, the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, was introduced in Lok Sabha on 13.12.2005. Thereafter, it was referred to the Joint Committee for examination and report. The Joint Committee made comprehensive amendments to the Bill introduced in the Lok Sabha and reported a revised Bill entitled "the Scheduled Tribes and Other Traditional Forests Dwellers (Recognition of Forest Rights) Bill, 2006 (the STs & Traditional Dwellers Bill).

3. Initially, the Cabinet in its meeting held on 1.12.2005, while approving the Bill (which was introduced in Lok Sabha) decided that a Group of Ministers be constituted to – (a) harmonize the issues brought up during discussions in the Cabinet, and (b) to consider official amendments to the Bill. The Group of Ministers (GOM), after detailed discussions, decided to make certain recommendations to the Cabinet with regard to the STs & Traditional Dwellers Bill as reported by the Joint Committee. Accordingly, a Note for the Cabinet was prepared taking into account the recommendations of the Joint Committee and the GOM, for moving official amendments in the said Bill.

4. On 8.12.2006, the Ministry of Tribal Affairs had forwarded a note giving details of the Cabinet meeting held on 7th December, 2006, while deliberating upon and approving the STs & Traditional Dwellers Bill, with the following changes:-

“(a) Other traditional forest dwellers would also be included for recognition of forest rights, provided they have lived in the forests for three generations. A “generation” in this context will mean 25 years.

(b) The role of the Gram Sabha would be strengthened in line with PESA.

no need not create multiple files

This has been identified / as

a monitoring item we

need not monitor

separately

hms

3/11

~~Dr A~~

ES-x

KA

3/5

1/2

Internal

Subject: Implementation of STs and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

This is with reference to AS(P)'s Note dated 27.4.2007, wherein PM had directed that certain problematic areas on which legislative and administrative action may be vigorously followed up by PMO with the Ministries concerned. PM desired that he be briefed on the action taken on the file through Principal Secretary to PM on need-based priority. The priority area for "distribution of title deeds under the Tribal Rights Act" was also flagged. In this regard, the implementation schedule of STs and other traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 through formulation of Rules has been prepared in consultation with the Ministry of Tribal Affairs. The suggested schedule of activities is placed at F/A. Ministry of Tribal Affairs subsequently under the Thrust Area Item No.53 submitted the revised schedule (F/B)

2. When the file was submitted to PM on 13.3.2007 for kind information on the Communication Plan for this Act, he felt that the pamphlets for highlighting the benefits of the Act could be printed. In this regard, it is stated that the M/o Tribal Affairs had already got the approval of Media Adviser to PM on disseminating the general (F/C) provisions of the Act through a poster. However, as regards the possibility of printing of pamphlets for disseminating the details of rules can be initiated only after their finalization by the Ministry of Tribal Affairs by 15.8.2007.

3. File is submitted for kind information of PM, please.

KA
(Kalpana Awasthi)
1.5.2007

~~JS(G)~~

AK
SPL

MS

1/1

D. (A)

Spl. Sec.

This is in the MP / District level

for D/A/07.

No.17014/4/2005-S&M/PC&V
 Government of India
 Ministry of Tribal Affairs

4.8 The Ministry of Law & Justice (Department of Legal Affairs) have advised that there appears to be no legal or Constitutional objections to the proposals contained in the draft Bill and conveyed their concurrence with the same.

4.9 The Ministry of Law & Justice (Legislative Department) has sent a revised draft Bill as vetted by that Department on 21.11.2005, a copy of which is at Annexure-C.

5. Requirement of funds

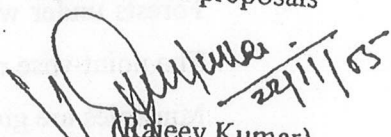
Sub-clause (7) of clause 4 of the Bill provides for appointment of an officer or authority as competent authority to deal with disputes relating to forest rights. Sub-clause (3) of clause 6 of the Bill *inter alia* provides for the constitution of Sub-Divisional ^{Level} Committee by the State Government. Sub-clause (5) of clause 6 provides for the constitution of District Level Committee by the State Government. Sub-clause 7 of clause 6 provides for the constitution of State Level Monitoring Committee by the State Government. The above Authorities and Committees shall consist of Government officers. The expenditure towards holding of meetings, etc. would be negligible and it is not possible to make an estimate of them. A Financial Memorandum to this effect has accordingly been annexed to the draft Bill.

6. Approval of the Cabinet is solicited to the tentative 'Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, at Annexure-C.

7. The Statement of Implementation Schedule is enclosed (Appendix).

8. The Minister of Tribal Affairs has seen and approved the proposals contained in this note.

Place: New Delhi
 Date: 22.11.2005


 (Rajeev Kumar)
 Joint Secretary to the Govt. of India
 Ministry of Tribal Affairs
 Tele: 23073489

No.17014/4/2005-S&M/PC&V
Government of India
Ministry of Tribal Affairs

and prohibits the forest rights holders from indulging in any activity harmful to wildlife, forest and bio-diversity in the area, and at the same time makes them responsible for protection, conservation and regeneration of forests on the land where their title is to be vested or recognized; (vii) did not preclude the operation of the Forest (Conservation) Act, 1980 and the guidelines issued by the Ministry of Environment & Forests in 1990 for settlement of rights of forest dwellers over forest land; (viii) did not interfere with the prohibitive clauses of Indian Forest Act, 1927, Forest (Conservation) Act, 1980 or the Wildlife (Protection) Act, 1972; (ix) supplemented the efforts of the Ministry of Environment & Forests in regard to regularization of pre-1980 eligible encroachments and conversion of forest villages into revenue villages under the Forest (Conservation) Act, 1980 by providing a legislative frame to the existing date; (x) provided penal provisions against holders of the forest right, including de-recognition of their forest right; and (xi) facilitated flowing of developmental benefits to the communities living in the forest both in terms of creation of infrastructure and also beneficiary oriented schemes and programmes of different line agencies, which were not available to them due to an extreme prohibitive regime of forestry laws. The draft Bill also did not put any national park or sanctuary to a risk as there was a detailed procedure of settlement of rights in both national parks and sanctuaries. The Bill also did not preclude the Ministry of Environment & Forests from taking action against the ineligible encroachers of forest land. It, in fact, provided a legislative frame work to various guidelines/policies/circulars issued by the Ministry of Environment & Forests under which historical injustice to the STs could not be undone. The point-wise comments of this Ministry to the issues raised by different Ministries are given in Annexure - A.

4.7 As indicated in para 2.7 above, further suggestions received from the Ministry of Environment & Forests have also been examined and addressed. The point-wise comments are given in Annexure - B.

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

Preamble

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

The rights so recognized shall include responsibility and authority for sustainable use, biodiversity conservation and maintenance of 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 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 ecosystems.

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:
- "Claim" is an assertion for recognition of a forest right to a Competent Authority, submitted in writing along with evidence thereof
 - "Claimant" means forest dwellers or Scheduled Tribes who have migrated to an area other than where they are scheduled who file claim (s) for rights under this Act.
 - "Competent Authority" includes the Gram Sabha, Sub Divisional Level committee, District Level Committee and all Appellate authorities under this Act.
 - District Level Committee is a Committee as defined under Section 4(3) of this Act
 - "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 who depend on the forests and/or forest lands for bonafide livelihood needs.
 - "Forest land" means land of any description falling within the legal definition of forest and forest land and includes unclassed forests, existing, proposed and deemed, protected forests, reserved forests, sanctuaries and national parks.
 - "Forest Rights" mean secure individual and/or community tenure and/or ownership rights of Scheduled Tribes and Forest Dwellers over forest land and their habitat as enumerated in Section 3(3) of this Act.
 - Forest villages- mean such settlements which have been established inside the forests by the forest department 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 and by whatever other name called for such villages. It further includes lands for cultivation and other uses, permitted by the forest departments.
- i) Gram Sabha - means 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. For North Eastern States where there are no Panchayats, Gram Sabha would mean traditional village institution.
 - j) "Minor Forest Produce" means 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 their like, which are used by the Scheduled Tribes and forest dwellers for their bonafide and livelihood needs.
 - k) State Monitoring Committee- is a Committee as defined under Section 4(4) of this Act
 - l) Nodal agency- means the Ministry of Tribal Affairs, or any other designated agency appointed on their behalf.
 - j) "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.
 - k) Shifting Cultivation means a traditional form of agriculture practice including rotational cultivation in upland slopes and other landscapes requiring lands being left fallow for various periods for restoration/rejuvenation.
 - l) "Shifting cultivation lands" means arable lands including lands under cultivation along with land left fallow in the cultivation cycles for restoration and rejuvenation.
 - m) Shifting Cultivator- means those individuals and/or communities who practice shifting cultivation by whatever name called.
 - n) Sub Divisional Level Committee- is a Sub Divisional Level Committee as defined under Section 4(2) of this Act
 - o) Village- shall mean as defined under the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 for schedule V areas and under the respective State Panchayat Acts for areas other than Scheduled Areas. It may further include forest villages, old habitation/settlements and unsurveyed villages, whether notified or not For North Eastern States where there are no Panchayats, village would mean traditional village.
- (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 their habitat including minor forest produce.

Pursuant to the vesting of the forest rights under this Act, the Gram Sabha shall determine the nature and extent of such rights after intimation to the neighbouring Gram Sabhas and Sub Divisional Committee as per the Rules. The forest rights so determined shall then be forwarded to the District Collector for effecting necessary entries in the revenue and forest records in a time bound manner as prescribed under the Rules under this Act.

Provided that in case of conflicting resolutions of the neighbouring Gram Sabhas with respect to the nature and extent of forest rights, the sub divisional level committee shall be the deciding authority.

The District Level Committee shall be the final appellate authority against any such decision.

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 pass a reasoned order before denying the individual and/or community right.

- (2) The rights of forest dwellers including Scheduled Tribes who have migrated from the area where they are scheduled would be recognized after they present claim(s) to the Competent authority and

Handwritten signatures and initials:
M. S. Sami
[Other illegible signatures]

Draft Not to be Quoted - 17/02/05

the same has been recognized after a due verification procedure under the Rules made under this Act and after giving due regard to nature of evidence under Chapter V of this Act.

Provided that such forest dwellers or migrated Scheduled Tribes have occupied forest land or acquired forest rights 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 self cultivation for livelihood needs and/or
- b) rights such as nistar by whatever name called and /or uses 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, fishing and/or
- e) shifting cultivation, rotational cultivation and shifting cultivation lands and/or
- f) habitat and habitation for Primitive Tribal Groups/ pre agricultural communities
- g) disputed lands such as orange areas in Madhya Pradesh and Chhatisgarh, Dalli lands in Maharashtra, Gair Mazarua Lands in Bihar and, Khuntkatti Lands in Jharkhand and such lands where claims are disputed under any other nomenclature in any State and/or
- h) conversion of Pattas or leases or grants issued by any local authority or any State department on forest lands to permanent titles,
- i) conversion of Forest villages into revenue villages and includes those where process of conversion into revenue village is not complete.
- j) settlement of old habitation and unsurveyed villages, whether notified or not
- k) access to bio diversity and community right to intellectual and traditional knowledge related to forest biodiversity and cultural diversity
- l) right to protect, regenerate and /or conserve or manage any community forest resource which they have been traditionally protecting and conserving, including the authority to impose penalties on such persons who contravenes the rules of conservation laid down by the community.
- m) 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 in the North Eastern States
- n) 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 nuclear 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.

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

5) Duties of Forest Right Holder- Whoever, under Section 3(1) and Section 3(2) is vested or whose forest rights are recognized shall ensure that

- a) save as those activities that are permitted under the terms of such rights no activity shall be carried out that adversely affects the forest and the biodiversity in the local area
- b) catchment areas, water sources and other ecologically sensitive areas are adequately protected
- c) their habitat is preserved from any form of destructive practices affecting their cultural and natural heritage
- d) any activity that adversely affects the forest and the biodiversity is intimated to the Gram Sabha or the Forest Authorities
- e) appropriate measures are taken in the Gram Sabha to regulate access to community forest resource and stop any activity which adversely affects the forest and the biodiversity.

CHAPTER IV

Madhur
Sarin

[Signature]

[Signature]

Authorities and their Functions under the Act

- 4(1) (i) The Gram Sabha shall be the authority for receiving and recognising claims.
ii) The Gram Sabha shall be the authority to impose penalties on such persons who contravenes the rules of conservation laid down by the community.
iii) Regulate access to the community forest resources.

- 4(2) (i) Sub Divisional Level Committee - There shall be a Sub Divisional Level Committee consisting of
a) Sub Divisional Magistrate who will be the Chairperson
b) Sub Divisional Level Forest Officer who shall be the Vice Chair Person
c) Tribal Member of the Panchayat from the Sub Division nominated by the Zilla Parishad.
d) Two respected civil society members from the Sub- Division/ Block/Taluka, atleast one of them shall be a woman, recognized for their understanding of forest rights tenurial issues in the area to be appointed by the District Collector.
e) Sub Divisional Level Assistant Tribal Welfare Officer or Asst. Project Officer (ITDP) who will be the Member Secretary.

(ii) The Sub Divisional Level Committee shall be the authority for recommending the resolution of the Gram Sabha on the claims to the District Level Committee and to hear appeals from claimant(s) aggrieved by the resolution of the Gram Sabha.

4(3) District Level Committee-

- (i) There shall be a District Level Committee comprising
a. Collector who shall be the Chairperson
b. Divisional Forest Officer who shall be the Vice Chair Person
c. Tribal Member of the Zilla Parishad nominated by the Zilla Parishad
d. Two respected civil society members, atleast one of them being a woman, at the district level known for her/his understanding of tribal-forest issues nominated by the Tribal Commissioner/Director
e. In the case of the North Eastern States a representative selected by the confederation of tribal councils such as autonomous regional councils.
f. District Level Tribal Development /Welfare Officer, who shall be the Member Secretary
(ii) The District Level Committee shall be the final appellate authority. under this Act.

(iii) The Collector as the Chairperson of the District Level Committee shall issue the Order for effecting necessary entries in the revenue and forest records specifying the nature and extent of such accepted forest rights

(iv) The District Level Committee shall furnish an annual record of forest rights to the State Level Monitoring Authority.

4(4) State Level Monitoring Committee-

- (i) There shall be a State Level Monitoring Committee comprising
a) Secretary in charge of Tribal Welfare shall be the Chairman
b) Principal Chief Conservator of Forests who shall be the Vice Chair Person
c) Director Revenue
c) Two renowned non-government person known for her/his understanding of tribal-forest issues nominated by the Nodal Agency.
d) Commissioner/Director Scheduled Tribe who shall be the Member Secretary.

ii) The State Level Monitoring Committee shall examine the annual record of settled claims submitted by the District Level Committee and conduct at least one annual inquiry into the process of settling claims through random selection of sites.

iii) The State Level Monitoring Committee shall submit an annual report to the Nodal Agency along with their recommendations for appropriate action.

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) includes.
- Government Records published or not and would also include Gazetteers, Census, Settlement Records Governments Orders, Commission Reports, Circulars, Quasi Judicial and Judicial Records including preliminary offence report by whatever name called and/or
 - Documentary evidence from any prior research or documentation of a reputed institution, including survey maps and/or
 - Relevant circumstantial evidence including witnesses of neighbours, senior citizens and local inquiry by a local committee of at least three members, of whom, at least one should be a woman, and appointed by the Gram Sabha and/or
 - Any authentic record from erstwhile princely state or province and /or
 - Oral evidence of those claimants, who cannot read or write, reduced to writing
 - Traditional structures and symbols establishing its antiquity.
 - Prior Resolution of the Gram Sabha on any forest right.

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 In Scheduled V Areas the Collector shall be empowered to take up correction of land records relating to forests rights even after expiry of the period of limitation.
- 5(3) The forest rights so vested or recognized in respect of land where a title is vested or recognized shall be registered jointly in the name of the husband and wife.

CHAPTER VI

Offence under the Act

6. Penalty for contravention of the Provisions of the Act-

- 6(1) If any forest right holder or any other person
- contravenes or abets the contravention any of the provisions of Section 3 or
 - who commits a breach of any of the conditions of the forest right so vested or recognized under this Act, or
 - who engages in unsustainable use or
 - destroy biodiversity or
 - fells trees for any commercial purpose
- shall be guilty of an offence against this Act and be punished with a fine as decided by the Gram Sabha and /or District Level Committee and/or in case of offence repeated more than once their forest right be de recognized after a due process followed by the District Level Committee on the recommendation of the Gram Sabha..

- 6(2) Offences by Government or Authorities under this Act- Where any competent authority or officers/members of such authority do not follow the due process prescribed under this Act and Rules made thereunder he/shes shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with a fine of five thousand rupees and /or imprisonment upto thirty days Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

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CHAPTER VII

Miscellaneous

7. Officers to be public servants

Every authority referred to in Chapter IV including the chairperson, members, member-secretary and other officers referred to in the same Chapter 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).

8. 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.

9. The Ministry of Tribal Affairs shall be the Nodal Agency and shall be responsible for implementation of this Act.

10. 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.

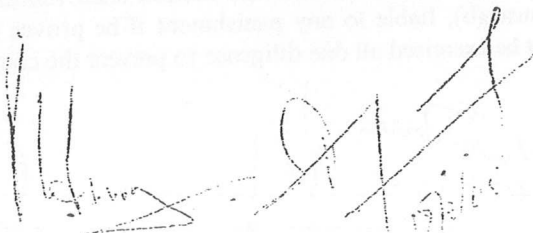
(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such rules may include measures with respect to all or any of the following matters, namely

- a) procedure for filing of claims,
- b) publicity for hearing in transparent manner,
- c) verification of claims, appeals,
- d) time frame for effecting necessary entries as a consequence of vesting or recognizing forest right, as the case may be.

(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.

11. Operation of other laws not barred - Save as provided under this Act the operation of other laws to the extent they do not contravene the provisions of this Act would not be barred.

Madhu
Sarin



The Draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005:
A Critique¹

A sympathetic reading of the draft Bill, the Statement of Objects and Reasons and Explanatory Note conveys an impression that the draft Bill is aimed at creating a framework to recognize and vest the forest rights and occupation in forest land in Forest Dwelling Scheduled Tribes (FDST) who have been reportedly residing in such forests for generations but whose rights on their ancestral lands could not be reportedly recorded at the stage of consolidation of State forests during the colonial period as well as in independent India, and thereby undoing "historical injustice" to the FDST and addressing the long standing insecurity of tenurial and access rights to FDST. The proposed forest rights include, among other things, a right to meet *bonafide* livelihood needs from forests and forestlands. The Explanatory Note further suggests that this is a one-time attempt to regularize only those forestland encroachments, which have occurred before 25th October 1980 with a view to assisting the process already initiated by Ministry of Environment and Forests.

Tribal-Forest Interface: Hotspots of Poverty ~

2. Tribals are concentrated mainly in the hilly terrains of Andhra Pradesh, Chhatisgarh, Jharkhand, Madhya Pradesh, Maharashtra, North-east and Orissa. These are also the regions, where forests abound and, which are dotted with hotspots of poverty that is both severe and chronic. Despite the facts that these regions have low agricultural potential, fragile ecology, weak infrastructure, poor connectivity, poorly developed markets and weak governance and that the main resource in these regions is forest wealth, sustained efforts are made in certain quarters to convert the existing forestry land uses to cultivation and other land uses. Forests are viewed by many a low value resource. It is not well understood that if forests are managed well; if forest-use is continuously guided from low value uses to high value uses; and if benefits of this wealth creation exercise are shared with forest dwelling communities in an equitable and sustainable manner, the livelihood needs and overall well-being of the people in these regions can be significantly improved². This will also help alleviate poverty in these regions.

1978

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² Forests also generate environmental values, watershed values, life-support values and other positive externalities. However, this Note focuses mainly on social and economic values of forests, given the nature of problems that are discussed in the Note.

3. However, forests do not receive desired societal attention and investments in terms of resources and efforts. Two examples of this neglect are worth mentioning here. Though the Ministry of Tribal Affairs has passionately argued that forests and tribals are inseparable, they do not seem to have included forest development in their overall tribal development strategies. The Ministry of Rural Development guidelines for NREP during mid-1980s mandated allocation of 25% of district funds for social forestry programmes. However, when these guidelines were revised and discretion was given to Gram Panchayats (GP), they hardly allocated any funds for social forestry or forestry development schemes. This should be indicative of attitudes that GP have towards, or priorities that they accord to, forest development.

4. If we accept the premise that: (i) India, like other enlightened societies, requires well-managed and well-stocked forests, and (ii) people in general and forest dwelling communities in particular should benefit from those forests in an efficient and equitable manner, there is a felt need to revamp our current institutional arrangements for sustainable forest management. **At present, there is a marked divergence between legally recognized forest tenures and the ones practised by the people on ground.** The author conducted a careful study of 329 households in four Forest Fringe Villages in different parts of Orissa to analyze the composition of their incomes / sustenance from various sources and observed that on an average each household derived 49.2% of its annual income / benefits from nearby forests, only 18.6% from agriculture, 7.6% from cattle and cattle products and the rest 24.6% income from wage employment, trade and other activities. About half of the forest income / benefits can be treated as illegal as per the current institutional arrangements for forest management and in fact 40% of this income is not captured in Gross Domestic Product. The draft Bill and Explanatory Notes take no cognizance of this type of divergence between *de jure* and *de facto* forest tenures and that of the circumstances that have led us to this situation. The proposed legislation falls short of addressing the felt need to revamp our current institutional arrangements for sustainable forest management and from the perspective of meeting *bonafide* livelihood needs of forest dwellers.

5. People expect from their rulers that they devise resource management institutions which: (i) remain functionally efficient, (ii) are equitable, (iii) are sensitive to ecological imperatives, and (iv) do not unduly constrain their freedom and creative energies. These expectations are not always consistent with each other. Nor can a single institution meet expectations of all stakeholders at all times. Therefore, crafting appropriate institutions is a challenging and on-going task. Many times societies become burdened with stagnant institutions and belief systems, which do

not address current socio-economic problems. Such societies pay the price of this failure. The Bill also does not meet these expectations.

6. A careful scrutiny of the Bill and Explanatory Notes does not inspire confidence that the proposed Bill shall meet its expressed objectives. There is, on the other hand, considerable possibility that this Bill, if converted into an Act, may open up scope for undermining the foundations of forest management in India; adversely affect the health of forests, even sustainability of many forests; and reduce livelihood options of several forest dwelling communities. The weakest part of the Bill and Explanatory Note is their excessive reliance on rhetoric. The Bill seems to have been informed by poor research; does not appear to be based on objective analysis of ground realities; and lacks proper understanding of the evolution of forestry institutions in India and the requirements for sound forest management. This paper explores some of the conceptual underpinnings, and examines some objectionable provisions, of the Bill.

Conceptual Underpinnings of the Bill

Evolution of Forest Management in Colonial India: Bogey of Historical Injustice

7. Historically speaking, the dominant behaviour of the rural people in India has been "to convert forest lands into agricultural lands". Land for cultivation has been perceived as the most important value in India's forests. Both Muslim and British rulers had aggressively encouraged the rural people to convert as much forestland into cultivable land as possible³. This was a crucially important element of their fiscal policies, land revenue being the most important source of revenue for them. Those lands which could not be assigned for cultivation, pastures or any other purpose and from which the rulers derived no revenue or benefit were classified as WASTELANDS. Most wastelands were not waste in an ecological sense, they being capable of sustaining production (e.g., forestlands). They were rather so classified as the State was not in a position to derive any revenue or other benefit from them.

³ Around 1600 AD, the Gorakhpur suba (of Mughal Empire) had only about 10% of its area under cultivation and about 80% forestlands. Cultivation was, however, extended to about 74% by 1895. Well-managed forests were reduced to about 4% and remaining 22% land included degraded forests and other uses (Singh, 1997). The case of Konkan region, which was very thinly populated in 1800s, is even more interesting. The Collector, Thana described pre-1818 Konkan as "a thinly inhabited forest from which character it has even now but partially emerged...look forward to the improvement of the hitherto unproductive island of Salsette by respectable and opulent natives of Bombay settling in it; and that some years before this...it was seriously proposed to import Chinese immigrants to bring the same Salsette under cultivation... waste land was every where so abundant as to create a feeling of despair as to the future of district, that the increase in cultivation was so much desired that the poorest people were allowed to cut down as many trees they liked merely for the purpose of clearing the land, and the wood itself was so abundant that every one cut where and as he liked" (Bombay Forest (Inquiry) Commission, vol. I p.21).

Forest tenures (e.g., property rights in forests) in colonial India grew out of the concept of wastelands and have thus remained intimately connected with the land revenue administration. The general tenor of depositions of many cultivators in Bombay Presidency, who had claimed ownership of forestlands before the Bombay Forest (Inquiry) Commission in 1880s, when cotton cultivation had already picked up, was summed up by the Commission as follows:

"...We were strongly urged [before the change in policy towards assignments of waste lands in favour of Forest Department]...to take up *varkas* or hill lands. We only took up lands then actually under cultivation. We did not take up the fallow *varkas* as we did not see what benefit we should derive from it. We refused because we should have had to pay assessment on fallow as well as lands under crops. We could have got as much land allotted to us as we wanted, even all the land now included in forests..."

8. Though people in India have historically increasingly used various forest products including grazing in forests, forestry as a "land use", i.e., management of "nature" for productive purposes was not, and has still not been, very well ingrained in Indian thought process and behaviour. When the British initiated "forest conservation", it was recognition, for the first time, of "forestry as a land use, a source of value in its own right" on earmarked lands to be so managed. Like other productive activities (e.g., agriculture), management of "nature" for productive purposes also required investment of efforts and resources in forests that needed to be tended and allowed to be grown. Moreover, annual removals should not exceed annual growth if forests were to be sustained on earmarked lands. If annual removals remain less than annual growth, forests shall continue to be enriched, and if annual removals are more than annual growth, forest shall degrade. The cap on annual removals from forests as well as active management of forestlands called for imposition of restrictions on, and substantial modification in behaviour of, the people who had hitherto been free to enter into, and take as much forest products as they pleased from, forests. These restrictions effectively interfered with old habits and practices of the rural people. It is in this sense that the introduction of western model of forest management in India was controversial and, at the same time, a revolutionary concept, not as well understood as it was in Europe, Japan and other regions⁴. This was rather seen by many as a source of irritation and an act of usurpation.

⁴ It may be worth mentioning that in Continental Europe, concerns regarding declining forests and their possible adverse impact on social welfare had been already been addressed more than a century before. Many countries in Europe, in particular France and Germany, had successfully managed their forests for more than two centuries based on scientific principles. Similarly, forests in Japan faced serious degradation

9. The evolution of systematic forestry and the creation of Forest Department in India were very slow and remained controversial. Many specialists (e.g., botanists, nature lovers, doctors, engineers and other intellectuals) and some colonial administrators exhorted East India Company to take steps for arresting forest degradation and introducing forest conservation. However, the Company continued to ignore their exhortations for over 60 years up to mid-nineteenth century.

10. A large section of colonial administrators was opposed to the idea of "forest conservation" and in fact actively opposed it for several reasons. First, the administration was apprehensive of any fluctuations in their land revenue. They thought that any undue interference with old habits and practices of conservative rural people might encourage them to desert their cultivated lands as they traditionally used to do whenever their past rulers became oppressive. Second, it was perceived in some quarters that creation of Forest Department, as a second land managing Department, might undermine the importance and influence of all-powerful Revenue Department. For example, Strachey, then Secretary to the Govt. of India, PWD to which Forest Branch was attached in 1864 observed, "...Brandis's general principles...seem to me beyond dispute...I attribute the dislike to the idea to the dislike to any change which shall abridge the present omnipotence of the civil officers and the Board of Revenue" (Progs. No.113-6 PWD(Rev-Forest), Sept 1869, NAI). In opposing the creation of the Forest Department, the Board of Revenue, Madras, for instance remarked, "The Board deprecate the multiplication of specialist departments in the rural districts..." (Prog.No.43-142/LD March 1878, NAI). A civil officer deposed before the Bombay Forestry Commission, "...There was no necessity for a separate...Forest Department...When the Revenue Department is qualified and able to look after the forest revenue..." (BFC vol. III pp101-4). Third, several colonial administrators were also keen on attracting European investment for plantation crops on forestlands several of which were allocated to them in Madras and North-east regions for tea, coffee and other plantations.

11. Government of India was convinced of the usefulness of the proposal of Brandis for initiating forest conservation. In the face of mounting challenges and accusations from timber merchants, Brandis, a German Botanist and Forester, had already demonstrated in 1856 that it was possible: (i) to protect and improve the forests which were capable of generating sustained yield; (ii) to seek confidence and co-operation of forest dwellers on a symbiotic basis; and (iii) to generate an annual surplus revenue as soon as possible. However, in view of stiff opposition from

in 13th Century and their degradation was contained through effective State interference. Today, Japan, one of the most populated country and one of the most advanced and diversified economy, has about 76% land under forest cover.

different quarters, both Govt. of India and Brandis proceeded very carefully and conservatively. Brandis (1874) argued, "the trouble of effecting the settlements of forest rights and privileges on limited well defined areas is temporary and will soon pass away, whereas the annoyance to the inhabitants by the maintenance of restrictions over the whole area of large forest tracts will be permanent, and will increase with the growth of population".

12. Therefore, wastelands were classified into three categories: (1) forest lands in which there were no or few individual or community user rights, (2) forest lands in which some individual or communal user rights existed, and (3) forest lands in which significant individual or communal rights existed. Creation of "reserve forests" was generally restricted to only the first category of wastelands. Efforts were also made to extinguish, by compensation or commutation, rights claimed by people in "reserved forests" so that possibilities of interference by forest officials with regard to their rights were minimized and forest conservancy measures could be applied in the settled forests without let or hindrance. For example, in forest regions of Orissa, not more than one-third of the total forest area was settled as "reserved forests". The rest of the forest areas were left under the control of Revenue Department, which till today has about 40% of the total forestland under its administrative control. By the year 1946-47, British India had only 7.7% of total area as "reserved forests".

13. People's grievances in many provinces were further examined and addressed by several Forestry Commissions and Forest Grievance Redressal Committees (e.g., Bombay Forest (Inquiry) Commission, Madras Forest Committee, Orissa Forest Inquiry Committee). In several areas, "reserved forests" were suitably modified by way of exclusion of disputed areas (e.g., some reserved forests in Angul Forest Division of Orissa) with a view to addressing people's grievances. In some other cases, forestland related disputes were also adjudicated by courts (e.g., V. Bapuji vs the Govt. of Bombay reported in Bombay High Court Reports vol.xii, 1875). In Orissa, several tribal communities (e.g., Kandhs in Kandhamal region, Mundas and Santhals in Northern Orissa) were co-opted in undertaking forest protection and management in 1923.

Post-Independence Developments

14. However, State Governments have, in general, always remained under political pressures to ease restrictions with regard to forest rights and concessions of rural / tribal people or to extend such rights / concessions to those who were not legally entitled to them. Whenever such demands were made, the bogey of "historical injustice" was invoked from time to time. In fact, State Governments

continued to ease restrictions and to liberally grant fresh concessions and privileges. As a result, forests in India have already become heavily right burdened. The Chowdhury Committee⁵ (Govt. of India, 1984:24), which reviewed in early 1980s the question of people's rights and concessions in forests summed up the post-independence scenario as follows:

"...In the euphoria of Independence, expectations of people to get more and more from forestlands increased. With the approach of every election, these pressures culminated in arbitrary and irrational use of forest resources and forestlands through liberalization of concessions. The re-organization of States in 1956 led to further complications of the issues of forest management, as units with widely differing systems of privileges, rights and concessions, came together in the new States. The liberal concessions in one integrating unit became the norm for other units; while the discipline in management slackened, the demand on forest resources intensified..."

15. Forest encroachments were liberally legalized in many States before 1980 when the Forest Conservation Act was enacted with a view to arresting diversion of forestlands for non-forestry purposes. For example, MP legalized more than 200,000 ha of forest encroachments in three phases in 1960-70s. In Karnataka, forest encroachments were regularized twice. Their third attempt to further regularize 18,000 ha of forestlands could not materialize because of the imposition of the Forest Conservation Act, 1980. Many State Governments also distributed forestlands under the control of Revenue Department among landless during the period 1950-1980 under "Grow More Food" and other programmes.

16. A discerning researcher can easily ascertain that in many cases tribals are encouraged by local vested interests to encroach forestlands so that vested interests could benefit from timber from such lands and derive other political mileage out of it. The author has detected many such cases in KBK region of Orissa over the years. Such vested interests often articulate their interests as those of tribals. For example, MFP traders in some parts of Orissa, who trade in finished sal leaf products have been resisting imposition of sale tax on such finished products, which are exported out of Orissa and from which such traders earn huge margins. The protests of such traders are often made under the garb of protecting the interests of tribals. These protests have considerable political support though it is well known that incidence of such tax shall be on traders out of their profits, and incomes of tribals would not be affected. Similar examples can also be culled from the records of several Commissions / Committees set up by the colonial administration. When Bombay

⁵ The Committee was chaired by Shri M.S. Chowdhury, Former Chief Secretary of Madhya Pradesh.

Presidency imposed a tax on timber in 1885, Gujarati timber merchants shipped more than 300 *varli* tribals to Bombay and used them for demonstration before the gates of the Legislative Council. In another representative example, a Police Inspector of the *Mahadev Koli* tribe, who was also the head of their tribal panchayat deposed before the Bombay Forestry Commission that "...evilly disposed people of other castes were instigating his tribemen to disturb peace...against forest restrictions..." (BFC, vol ii:42-43).

17. There are several other dimensions to the issue of forest encroachments by tribals. For example, in 1960s a group of tribals was displaced from *Dandakamaya* Project in Koraput district (now Malkangiri district) with a view to settling East Pakistani (now Bangladeshi) migrants. Those displaced tribals were duly compensated in accordance with the provisions of the Land Acquisition Act. Those displaced tribals migrated to another part of Koraput district (now Nabrangpur district) and encroached forestlands and settled there. This was strongly resented by local tribals who wanted them to be evicted from the encroached forestlands. The controversies between these two different tribes often escalate into serious conflicts and law and order problems. How would the proposed Bill attempt to resolve such tricky situations?

18. In many areas where economic activities were brisk, pastures and thinly wooded waste lands were converted into cultivated lands, and pastures shifted to outlying forests which were also used for collection of firewood, timber and other products. Those villages, which exhausted their forests, would direct their efforts to forests of other villages or the unassigned ones if there were any in the vicinity. If no such forest or pastures were available, they searched for substitutes (e.g., cow dung for fuel, stall feeding for cattle) to meet emerging scarcities. In any case, the wastes were subjected to shifting frontiers.

19. Forestry issues in India are generally multi-dimensional and, therefore, very complex and misunderstood. While commenting on the 1989 reprint of Ribbentrop (1900, 1989 reprint)⁶, Rawat (1989:9) rightly observed:

"...The history and evolution of scientific forestry in British India is complex and therefore poorly understood, a situation that gives rise to fallacies and misconceptions..."

20. It is, therefore, hard to accept the bogey of "*historical injustice*" and the argument that traditional rights of FDST were not adequately recognized and

⁶ Ribbentrop, B (1900, 1989 reprint): Forestry in British India. New Delhi: Indus Publishing

recorded in the consolidation of state forests during the colonial period as well as in Independent India. Most disputed claims on forestlands, at least in reserved forests, are encroachments, which have occurred in the recent past. It is likely that some encroachments are pre-1980. However, we may perhaps find a better solution to this serious problem if we accept the fact that these are recent encroachments, which cannot be easily evicted in view of the socio-political dimensions, and law and order aspects, of this serious problem. On the other hand, if we continue to invoke "historical injustice" each time we confront with this type of problem, we shall keep the nature of property rights in forests in inchoate condition and this will encourage further encroachments, and degradation, of forestlands.

Marked Shift in the Stand of Govt. of India

21. Provincial / State Governments benefited from forest conservation as they were the main recipients of forest revenues. They, however, faced day-to-day irritation of people, and were in many cases opposed to a forestry model, which called for substantial state interference with the daily lives of people and militated against their other governance policies. They would often take short-term view of the situation and ease forest restrictions to deal with public grievances. The Indian Government, on the other hand, far removed from the scene of action and free from day-to-day local pressures always took a detached long-term view of the social and economic worth of an important resource such as forest. For example, the Government of India overruled the objections of Madras and Bombay Presidencies and actively encouraged forest conservation all over the country during the second half of the nineteenth century. More recently, when State Governments continued to divert forestlands for various non-forestry uses including settlements or encroached forests, the Union Government under the leadership of then Prime Minister Indira Gandhi brought forestry to the Concurrent List of Indian Constitution in 1976 and enacted Forest Conservation Act in 1980. However, the Indian Government has, for the first time, invoked the concept of "historical injustice". This is a marked departure in the long-term stand of the Indian Government on forests and forestry.

Tribal Resource Management Systems' vs. the Western Forestry Model

22. It is fashionable in India to make very generalized anecdotal comments that Tribal Resource Management Systems were superior to the Western Forest Management Model. However, various characteristics of tribal resource management systems and their suitability for the present times have not been adequately studied. Tribal resource management systems are often described or quoted in a romantic manner.

The Author has also studied some tribal resource management systems and their tenurial characteristics.

23. Tribal communities, in general, had no notion of direct "Nature" management in the sense it has been inherent in the Western Forest Management Model. However, their resource management systems were generally superior to those practised by many non-tribal communities in India, particularly when tribals had exclusive control over their resources. They had good knowledge and understanding of their environmental resources. Multiple resource values were carefully articulated and communicated through carefully devised legends, which had tenorial overtone. Resource use restrictions were ritually enforced. They were aware that continued use of a resource might degrade it and further continued use of the degraded resource might render it useless forever. They were also concerned for their survival in the face of rising populations, increasing inter-tribal or tribal-caste conflicts, and decreasing resources. They were particularly sensitive to their population sizes. When their population sizes, and resource scarcities, increased, some of them would move to other areas. When a resource got degraded on account of continued use, they would move to other resource sites and leave their degraded resource to be naturally regenerated. Shifting cultivation and seasonal migrations of nomadic pastoralists are some survivals of such practices.

24. All tribal communities would, however, not have access to the same resource, as this would result in over-use, and thus degradation, of the resource. With a view to avoiding inter-tribal and intra-tribal conflicts and degradation of resource base, they would specialize in specific regions or species or parts of the resource. For example, the *Todas*, the *Kotas* and the *Badagas* in South India generally shared the same hilly tracts. However, the *Todas* (only 800 in 1906) focused on pastoralism and occupied the hilltops. The *Kotas* (only 1200 in 1906) occupied middle position. On the other hand, the *Badagas* (about 34,000 in 1906) who were expert hill farmers occupied lower hills and professed agriculture and cattle breeding. Their numbers also convey a significant observation. Pastoralism could not support large populations on a limited resource, whereas agriculture with some kind of intensification could. Another example is taken from legends of the *Khandhas*, a warrior tribe in Orissa, that the mother earth ordained them to collect *mahua* flowers and cook and eat them, and *paiks* (a cultivating caste) to take *mahua* seeds for oil. In 1850s, the population in *Khandhamal* region was only 4-5 persons / sq. km.

25. The major limitation of these systems, however, was that they depended on extensive resource base and were effective only so long as population sizes were small and levels of economic activities very low. They were unsuitable when tribal communities did not enjoy exclusive control over the resource and shared them with other communities. Even when conditions were favourable, tribal systems often broke down due to inter-tribal or tribe-caste conflicts

or when extensive margin was not available. Therefore, traditional resource management systems shall not be successful in the present times when the prevailing circumstances are so different.

26. The Western model, on the other hand, is a "capital theoretic" model and relies on investment of efforts and resources for direct management of Nature with a view to increasing its productivity. It is, therefore, better suited for making intensive use of a given resource base and can support population sizes. The system, however, works well only so long as the capital base is kept intact and we live only on the flow of income out of the given capital base and do not drain the capital base.

27. In Europe, the State invested resources and efforts in forests to enhance them by way of regeneration and to add value to them, and allowed people to benefit from well-managed forests. The State also created capacities in people to manage forests as a land use and modified their behaviour through appropriately crafted forestry management institutions. Flow of timber and other forest products from these well-managed forests provided means to diversify their economies and created additional opportunities for employment and income generation. This helped absorb increasing labour force; afforded higher levels of living to the people; and relieved pressures from agriculture. Naturally, people accepted "forestry" as valid a land use as agriculture or any other one.

28. In India, on the other hand, State Governments increasingly⁸ benefited from forests, but did not adequately invest in them for their regeneration. Nor did they share benefits of forest conservation with people in an efficient and equitable manner. Whenever people actively pursued their grievances and successfully lobbied for their cause, State Governments continued to relax restrictions and kept most forests in low value uses. The combined effect of these situations has been that forests continue to degrade. Many in India still advocate conversion of forestlands for cultivation as a source of livelihood. It is not well understood that today when forest values are increasing, they could also become a valid source of livelihood of many provided that forest values are sustained, managed, captured and distributed in an economically efficient, socially equitable and ecologically sensitive manner. The value of lost forest wealth, in case of shifting cultivation for example, far exceeds the total value of coarse grains, which are generally raised on a converted land. In due course, this land gets further degraded and become

⁸ During the colonial periods, earning of revenues by the State was much less, and consistent with accumulated annual growth in forests. On the other hand, State Governments earned more and more revenues from forests in the post-independence period and many times without any regard to accumulated growth in forests. Investments in forests have progressively declined in the post independence period.

unproductive for a longer period. And this resource degradation is repeated on other sites. If the stakes of the affected tribal or other person in a forestland were accepted and she were to be made a stakeholder in forest management, annual entitlement of only few trees to such a person would have generated more income and better livelihood than shifting cultivation. This would have helped naturalization of acceptance of forestry as a valid land use, which could also be a better source of livelihood than cultivation. In contrast to the European situation, the increasing population in India continues to add pressure on agriculture and to swell the landless labour force. Extensive resource use systems, which are often advocated are not suited for increasing populations and diversified economies and more often contribute to perpetuation of poverty.

Evolutionary Trends in Property Rights in Natural Resources

29. A property right or tenure in a natural resource (e.g., land, forest, water and mineral) is a *recognized* and *enforceable* claim of a person, a community, a corporate body or whole society with regard to an identified value in the resource (e.g., timber, non-timber product, medicinal plant, wildlife, scenic beauty, watershed values or biodiversity in a forest resource). Property rights in a resource are dynamic and, therefore, evolve over time. Each society needs to consciously consider and decide from time to time which values in the resource should be recognized (i.e., economic considerations), whose claims on the recognized values should be accepted and to what extent (i.e., social and ecological considerations), how the recognized values should be managed, sustained, captured and distributed among the recognized claimants (i.e., ecological and management considerations), and how conflicts (among competing values, disputed claims or management practices) should be adjudicated (i.e., enforcement considerations). An appropriate property right in a natural resource is the one, which takes a comprehensive and objective view of the aforesaid considerations⁹. Appropriateness of a "resource tenure" can also be judged from a perspective whether it can be economically and easily enforced.

30. A large array of property rights regimes can be thought of, and has actually emerged in many societies, through a mix of permutations and combinations of the

⁹ One reason of misunderstanding of property rights in natural resources is that people often tend to have a partial look at them. For example, economists often focus on economic efficiency in the sense that how resource value could be enhanced. Sociologists, on the other hand, are more concerned with "equity" or "distribution" question. Technically trained resource managers remain pre-occupied with ecological or managerial issues. A political scientist argues from the perspective of entitlements or power structure inherent in a property right. Policy-makers are generally guided by the considerations of political economy. Debates on property rights often become emotional when questions regarding which values and / or whose claims should be recognized are discussed.

aforesaid considerations. A property right in a natural resource can be analyzed and prescribed as a "bundle of characteristics" such as: comprehensiveness, ownership, duration, transferability, right to economic benefits, use restrictions, security, managerial or operational requirements and operational controls. It may be noted that "ownership" is just one of the many characteristics of a property right. Moreover, ownership and management may be separately located (e.g., a shareholder in a corporate body is the owner of the body to the extent of her shareholding, but may have no right to interfere with day-to-day management of the body). Similarly ownership and use rights may be separately located. For example, a scientist may own an invention, but may allow it, subject to a right to benefit, to be used by those who venture to add further value to it. On the other hand, a claimant whose right to benefit is recognized may enjoy the identified resource value without owning it. Other attributes in the bundle of characteristics may also be considered in the similar manner.

The Bill: Some Observations

31. The Bill and Explanatory Note are driven largely by "demand side" considerations (e.g., a tendency to admit as many rights as demanded by people irrespective of their legitimacy, inherent conflicts among them and their other implications). The "supply side" issues (e.g., whether a given resource has the capacity to sustain admitted rights on a long term basis) have not been given due weightage. The mismatch between "demand" and "supply" sides is a serious limitation of the Bill. The definition of "forest rights" (section III) is too diffused. There is also no consideration in the Bill to induce the desired behaviour among right holders to respect admitted property rights. Property rights on public lands, and in some cases even on private lands, are poorly respected in India. Examples of such deviant behaviour can always be found (e.g., repeated encroachments by rehabilitated slum dwellers in urban areas, forced occupations of private / public properties by unauthorized persons, taungya lands in forests). The Bill has a considerable scope to encourage this deviant behaviour. There is also no attempt to reconcile conflicting rights. Several traditional forest use practices which are proposed to be admitted as rights are inefficient¹⁰ and, therefore, inappropriate even from the livelihoods perspective.

¹⁰ The author analyzed household economies of 329 households in 4 forest fringe villages and observed that each cattle owned by a household, on an average, needed grazing / fodder worth Rs. 4,200 per annum as per estimations of households. However, a household, on average, derived an annual income of only about Rs.1,700 per cattle. There is clearly inefficiency in this case. Why should one maintain a cattle, yielding annual benefits / income worth only Rs.1,700, at an annual cost of Rs.4,200. The explanation is the divergence between social cost and private benefit. The costs of grazing are passed to the society in the form of free grazing in forest and benefits are privately appropriated. This social cost does not include the cost of lost forest regeneration. In any case, the society has become poorer to that extent. Now so long as

32. Definitions "Bonafide livelihood needs" (clause 1(a)) and "commercial purpose" (clause 1 (b)) are inconsistent. The elements of value addition and profit are inherent in barter and sale both of which are commercial activities. Up to what stage a right holder's activity of barter and sale remains "bonafide livelihood need" and at what stage it becomes a "commercial purpose" cannot be easily determined and administered. Clause 1(b) perhaps needed to be deleted. The Forest Act, however, does not provide for barter and sale by a right holder. Inclusion of "...all types of taungya settlement..." in the definition of "forest village" (clause 1(f)) is also problematic, as the taungya holders were "lease holders of the given land" and not traditional residents of the sites in question. They violated the terms of leases and forcibly occupied the areas which were leased to them on the condition that they would protect and tend plantations and would at the same time use the land for raising agricultural crops so that their livelihoods needs were satisfied. The expression "traditional village institutions" in definition 1(g) appears to be vague. Gram Sabha may rather be defined independent of Gram Panchayat as a village assembly, which shall consist of all adult members of a village who are entitled to vote in Gram Panchayat elections. This modification shall permit inclusion of those who are entitled to vote but somehow have not been included in the voters' list.

33. The proposed forest rights 3(a) i.e., "right to hold and live in the forest land...for habitation and cultivation..." are clearly inconsistent with forestry land use. We need to understand that habitation and cultivation as land uses are generally in conflict with forestry land use. They cannot coexist over a long period. Even after the existing encroachments up to the cut off date are regularized, any one may invoke this right to further occupy forests for habitation and cultivation. Given that we poorly respect property rights and have weak governance in tribal pockets, this provision has great potential to create chaos and open up new avenues for increasing conflicts between forest dwellers and forest managers. As population grows with time, there is more likelihood of this happening and then again the bogey of "historical injustice" may be used to settle new encroachments. Equally problematic is the proposed forest right 3(f) i.e., "right in or over disputed lands under

the costs of grazing are borne by the society, an individual would have no incentive to adopt stall-feeding. Another example of inefficiency could be "shifting cultivation". In the long past when forests were not in a market economy and people perceived no direct livelihood value in them, it was perfectly valid "livelihood" option to clear forests and cultivate those agricultural crops (usually coarse grains), which they needed for their sustenance. To-day when forests already have market value, the total loss of biomass far exceeds the total value of agricultural crop. The costs of shifting cultivation shall be still greater if costs of site degradation on hilly terrains are also taken into account. The practice of shifting cultivation encourages resource degradation and is clearly inefficient. In both these cases, it may be socially appropriate if two individuals are encouraged not to indulge in the aforesaid inefficient, resource degrading and poverty inducing behaviour and they are compensated for their losses of income by way of recognizing their rights to benefit from the forest so saved.

any nomenclature...claims are disputed". It is not understood how it would be a property right if the claim is disputed. It would become a right only after the disputed claim is settled and recognized in the prescribed manner. The proposed forest rights provided under the clauses 3(a) and 3(f) shall seriously undermine the foundations of forestry and forestry land use.

34. The logic of inclusion of the provisions 3(e) and 3(i) as rights is also not evident. If primitive tribal groups have disputed claims or old settlements and un-surveyed villages are disputed, let these disputed claims be settled and recognized in the prescribed manner. Once settled and recognized in the prescribed manner, they will automatically become rights. Calling a disputed claim as right is, however, inappropriate.

35. *Pattas*, leases and grants are particular forms of property rights. The logic of inclusion of the provision 3(h) as right for conversion of these property rights into titles is also not evident. These property right types will lose their relevance if there is an automatic right to convert them into titles, which probably means granting absolute ownership. This will, for example, encourage lease holders to forcibly occupy a property of which she is not an owner, but had acquired a use right subject to mutually agreed terms and conditions. On the other hand, this provision will discourage actual property owners to grant lease of their property to some one else on specified terms and conditions. In any case, such a provision would constrain the choices for enhancing livelihood options for forest dwelling communities.

36. Rights such as *nistar* (clause 3(b)) were granted by *zamindars*, princely States and other intermediary right holders generally to encourage people to clear as much forests for cultivation as possible so that they could derive maximum possible revenue from cultivated land. Such rights were subjected to the condition that they would cease to exist if the relevant forest resource got exhausted. They were also not restricted only to forest dwellers. Other farmers were also entitled to them. Such rights have already lost their relevance and cannot be sustained. For example, in Orissa a tenant paying *nistar cess* up to Re.1 per year should be entitled to the following quantities of forest materials: (A) Materials to be given free of royalty per year – (a) timber 3 cubic feet for making two ploughs, (b) firewood 6 cartloads, (c) brushwood including thorns – 2 cartloads, (d) one log of 25 feet length and 16" girth for making *tenda*, (e) sabai grass – one standard load, and (f) a cart load of bamboo not exceeding 100 numbers. (B): Building materials which should be given at half the sanctioned rates of royalty (once in every 10 years): 20 large logs of specified girth, and 2 loads of bamboo. The total value of this material is estimated to be above Rs.2000 per year. Would the society like to create so huge a liability (*nistar*

material worth Rs.2,000 per year per cess payer) for so little a gain (cess of Re.1)? Would it help sustain livelihoods of tribals in particular and forest dwellers in general? Similarly, the proposed rights 3(l) and 3(m) are also too vague, too diffused and too large to be sustained. Such heavy burden of forests rights on already degraded forests shall soon jeopardize livelihoods of the forest dwellers.

37. The clause 4(1) excludes non-tribal forest dwellers and is, therefore, iniquitous to that extent. For reasons given in para 30 above, the expression "and not for exclusive commercial purposes" needs to be deleted. The clause 5, which defines duties of right holders, is also problematic. For example, it is difficult to grasp how a right holder (tribal) will ensure that catchment areas, water sources and other ecologically sensitive areas are adequately protected (see clause 5(b)). How will an individual right holder ensure that a Gram Sabha discharges duties prescribed in the clause 5(e)? These prescriptions are very vague and difficult and costly to administer. They will legally expose a poor tribal to be harassed. There is also no provision to deal with the cases in which wildlife, forests and biodiversity are adversely affected due to permitted activities. Duties would have been simple, understandable and doable by individual right holders (e.g., they would not set fire to a forest, help extinguish forest fires, and report the incident of forest fires to the prescribed authorities).

No Role for State Government or for Ministries Having Jurisdiction over Land

38. Land is the State subject. However, the Bill envisages no role for the State Government. There is also no explicit role for those Central Ministries, which have jurisdiction over land including forestland. The functions and authorities of Gram Sabha, Sub-divisional Committee and District Level Committee, as provided in clause 6, also appear to be ill defined. It seems that the District Level Committee shall be the final authority to settle and recognize forest rights. A case for forest rights shall be processed by the Gram Sabha, which will submit the same for examination to the Sub-divisional Committee, which will make its recommendations to the District Level Committee for their final decision. If this is the case, greater clarity is needed in the draft. It would have perhaps been better if claims needed to be filed directly by individual claimants and Gram Sabha could offer their considered views in the matter. Moreover, clause 4 and clause 15 seem to have conflicting elements.

Asymmetric Penalties

39. The clause 8 (penalties on right holders for infringing the provisions of the proposed Act) and clause 9 (penalties on public authorities) are asymmetric. The

purpose of any penalty provided in a law is, and should be, to induce desired behaviour among the people and dissuade them from indulging in undesirable behaviour. The question one should ask is whether the penalties provided in clause 8 are sufficient enough to deter a potential offender from indulging in undesirable behaviour? For example, if a right holder kills a tiger, is the proposed penalty of a fine of Rs.1,000 enough? Similarly, the question also is whether penalties proposed in the clause 9 would deter a well meaning, efficient and just authority to discharge its duties properly. What are the protections available to such an authority? Such provisions are often used by vested interests against honest and good authorities to demoralize and deter them from discharging their duties in a proper manner, rather than against dishonest and bad authorities.

40. The Bill requires more efforts and better understanding of forests and forest dwelling communities. In its present form, it leaves much to be desired. There is, on the other hand, a possibility that this Bill, if converted into an Act, may undermine the foundations of forest management; adversely affect the health of forests, even sustainability of many forests; and reduce livelihood options of tribals. This will happen at a time when the social and economic value of well-managed forests is very high and at a time when Professor Jared Diamond in his very well received book: *Collapse: how societies decide to fail or survive* has demonstrated beyond doubt that those societies which allow their forests to be wasted and destroyed face impoverishment and some times even extinction. It is, however, not the first time that the question "whether a society needs well-managed forests" has been addressed. *Kāmandaka* in his *Nītisāstra* also asked "which is a better kingdom, that with thorny scrub forests (*kaṇṭaka-vana*) or that with dense forests (*kuñjara-vana*)?" He argued for maintenance of dense forests in a kingdom.

A Way Forward

41. While granting a property right in a natural resource, every Government has to strike a judicious balance between two conflicting demands: a claim of an individual duly informed by her present and future expectations from the given resource vs the concerns of the State for other competing uses of the resource and for the State's future growth and survival. The central question attempted to be addressed by the Bill may be rephrased as follows: (i) whether a society desires to protect and sustain its forests, and (ii) if the answer to the question at (i) above is yes, how tribals and other forest dwelling communities should benefit from well-managed forests in a sustainable manner. If these two questions are satisfactorily answered, then we can find better solutions to the following two questions i.e, (i) how to deal with forest encroachments, and (ii) how livelihood concerns of tribals and

other forest dwelling communities are addressed in a sustainable manner. Several approaches are possible to address these questions. The Ministry of Environment and Forests and Ministry of Tribal Affairs should jointly development appropriate mechanisms. However, all approaches should have the following basic framework.

Guiding Criteria

42. People's rights in forests should be guided by three criteria: (a) **economic efficiency**, i.e., whether the proposed option would enhance the value of the resource, (b) **equity**, i.e., whether the proposed distribution of benefits expected from the new option would be fair to all stakeholders, and (c) **ecological sustainability**, i.e., whether the proposed option shall help conserve forest resources.

43. Forest villages and other old permanent settlements in the vicinity of which forests have already been converted into permanent cultivation should be settled in favour of the present occupants. This could be made subject to the condition that further encroachment of nearby forests either by the recognized settlers or abetted by them may debar them from the settled lands. Un-surveyed settlements and forests should be surveyed and settled in a fair manner following the aforesaid guiding criteria. This may be done by effecting suitable amendments to the Forest (Consevation) Act, 1980 so that the current elaborate procedures prescribed in the FCA may not be insisted upon while settling and recognizing the aforesaid claims. On the other hand, small patches of encroached forests here and there within forests would trigger further encroachments as the populations of encroachers grow or as the diversification of economic activities takes place and, in due course, shall affect ecological sustainability of forests. Such encroachers may be encouraged to abandon their encroached forest areas and be allotted equivalent lands outside forests. If that is not possible for whatever reason, they may be adequately compensated for their loss of livelihood. They may also be allowed as a matter of right to participate in joint forest management over the assigned forests and to benefit from them.

44. A legal framework needs to be developed to encourage forest dwelling communities to participate in protection and management of assigned forests and ensure that they would benefit from their efforts and investment. That is community rights to forests and forest benefits should be given preference over individual rights. Those rights such as *nistar* rights, which have already lost their significance and very adversely impact the health of forest, should be done away with.

Evergreen Forest Tenures

45. The FCA, though a very useful legislation, has been implemented largely as a regulatory tool, which has so far focused only on conservation of forestland, and not on conservation of forests. Its developmental aspects have not yet been realized. This deficiency needs to be rectified. There are a large number of degraded forestlands many of which do not support any vegetation. Such forestland should be assigned to those rural communities, which are willing to regenerate them as forests with or without financial support from the State. They should also be technically supported and legally assisted by Forest Department and liberally benefit from their assigned and well-managed forests. Such communities may be granted forest leases for a specified period, say 10 years at a time and their performance may be reviewed in the 6th year. If they discharge their obligations well, their leases may be renewed for a further period of 10 years and this cycle may continue as long as they satisfactorily discharge obligations of their assigned property rights. This evergreen provision will ensure reasonable security of tenure. JFM arrangements may also be made under these evergreen provisions. The assigned areas of those communities, which do not satisfactorily discharge their obligations, shall not be renewed and the State would resume the assigned areas at the normal expiry of the lease period. If it is observed that the conduct of a community harms social welfare, the State may resume assigned areas at the close of the 6th year or in the prescribed manner. A suitably devised mechanism shall ensure that forestlands are managed under forestry land use, and local communities have sufficient incentives to well-manage, and benefit from, their assigned areas and have in-built disincentives for any deviant behaviour. Those communities, which display competence and capacity to well-manage their assigned area, shall continue to do so in perpetuity and may also be assigned larger forest areas.

46. The State should adequately invest resources and efforts in forests and build capacities of forest managers so that they effectively and persuasively interact with local communities and win their trust and respect. The State should also invest in enhancing capacities of local communities so that they manage their forests in an efficient, equitable and sustainable manner, learn to respect property rights and are engaged in productive and life-enriching pursuits.

7.11.11/22 VIII

Statement of Object and Reasons

Forest Dwelling Tribal people and forests are inseparable. One cannot survive without the other. The notion of conservation of ecological resources by forest dwelling tribal communities have been referred to by most ancient manuscripts and scriptures that modern humanity knows. The colonial rule somehow ignored this reality for more economic gains and probably for good reasons prevalent at that time. Post independence, in our enthusiasm to protect natural resources we continued with colonial legislations and adopted more internationally accepted notions of conservation rather than learning from our 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 left the bonafide interests of the tribal community much to be desired in the legislative frame that we enacted in the regions where tribal communities primarily inhabit. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting genuine claims to resources 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 land 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 becoming abode of undesirable elements.

The Scheduled Tribes (Recognition of Forest Rights) Act, 2005 is a step to correct this historical wrong. The recognition of forest rights enjoyed by the forest dwelling Scheduled Tribes on all kinds of forest lands for generations and which includes both bonafide needs of forest land for sustenance and usufructs from forest based resources are the fundamental bases on which this legislation stands. The Act reinforces and seeks to utilise the rich conservation ethos that tribal communities have traditionally shown and cautions against any form of unsustainable or destructive practices. It further describes a simple procedure so that rights which stand vested in forest dwelling tribal communities become legally sound through corrective measures in the formal recording system of the executive machinery. The Act also provides adequate safeguard 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.

This Act hopes to address a long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depend on right to forests and there by strengthening the entire conservation regime by giving a permanent stake to scheduled tribes dwelling in the forests for generation in symbolic relationship with the entire ecosystem.

**Schedule I
FORM A**

See Rule 3(4)

District:

Sub Division:

Panchayat:

Village:

S. No.	Name of the head of the ST family	Name of the Forest Right Holder including Community	No. of Persons in the Family: (including no. of adults)	Extent of land occupied prior to 1980	Nature and Extent of Forest Right other than land acquired prior to 1980 under Section 3 (3) of the Act	Evidence in favour of right		Current Land Holding
1	2	3	4	5	6	7	8	9

Signature of the Forest Right Holder:

**Signature of the Witnesses:
(Two Adult Neighbours of different families, one of which is a woman)**

1.

2.

THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) RULES 2005

In exercise of the powers conferred by the sub section 6 of Section 6 of the Scheduled Tribes (Recognition of Forest Rights) Act 2005, the Central Government hereby makes the following Rules: -

**Chapter I
Preliminary**

1. **Short title and Commencement** - (1) These Rules may be called Scheduled Tribes (Recognition of Forest Rights) Rules 2005
- (2) They shall come into force on the date of publication in the official Gazette

Chapter II

Definitions

2. a) Act- means Scheduled Tribes (Recognition of Forest Rights) Act 2005
- b) Gram Sabha Committee- means a Committee of not less than seven members, of which two shall be women, headed by a Village elder other than Sarpanch, Up Sarpanch, Panhayat Secretary or Panchayat member as agreed by the majority of the Gram Sabha especially called for this purpose.

Chapter III

Recognition and Verification Of Forest Rights

- 3(1) The recognition and vesting of Forest Rights to forest dwelling Scheduled Tribes where they are scheduled, in respect of forest land and their habitat is subject to the condition that such forest dwelling Scheduled Tribes have occupied forest land or acquired forest rights before 25.10.80.
- 3(2) Pursuant to the vesting of the forest rights under this Act, a meeting of the Gram Sabha shall be convened not later than three months after the Act is notified, subject to quorum and constitute a Gram Sabha Committee specially for this purpose.
- 3(3) The Gram Sabha Committee shall initiate the process of determining the nature and extent of such rights after intimation to the neighbouring Gram Sabhas and Sub Divisional Committee in a prescribed format.
- 3(4) The Gram Sabha Committee along with village level revenue official shall prepare a map for each area where the forest right is vested clearly delineating the area for exercise of such rights in a format as prescribed in Schedule I. Such mapping shall also include rights or right holders who are ineligible.
- 3(5) The various departments of the State Government at the village, taluka (by whatever name called), block and district level shall provide all government records as enumerated in Section 5(1) (a) of the Rules and further assist in explaining, when necessary, to the Gram Sabha Committee for understanding such records.
- 3(6) The delineation, mapping shall be completed within a maximum period of six months.
- 3(7) The rights and maps that are prepared shall then be passed through a Resolution of the respective Gram Sabha especially convened for this purpose within a period of one month of mapping and delineation of forest rights.

Provided that in case of conflicting resolutions of the neighbouring Gram Sabhas with respect to the nature and extent of forest rights, the Sub Divisional Level Committee shall be the deciding authority.

ernment or any of its officers or other employees for any damage caused or likely to be caused anything which is in good faith done or intended to be done under this Act.

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.

9. **Nodal Agency:** The Ministry of Tribal Affairs shall be the Nodal Agency and shall be responsible for implementation of this Act.

10. **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 provisions of sub-section (1), such rules may include measures with respect to all or any of the following matters, namely

- i) procedure for recognition and vesting forest rights,
- ii) publicity for hearing in transparent manner,
- iii) verification of forest rights, appeals,
- iv) time frame for effecting necessary entries as a consequence of recognition and vesting of forest right.

(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.

11. **Central Government to provide directions** – In the performance of duties and exercise of powers by or under this Act, the Competent Authority shall be subject to such general or special directions, as the Central Government may, from time to time, give.

12. **Operation of other laws not barred** – Save as provided under this Act the operation of other laws to the extent they do not contravene the provisions of this Act would not be barred.

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.

Draft Not to be Quoted - 12/02/05

(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 Mazarua Am Lands in Bihar and, Khuntkatti 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.

(57)

THE SCHEDULED TRIBES & FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT 2005

An Act to record and recognize the rights of Scheduled Tribes and forest dwellers, and to provide for a procedure for verifying and recording their rights in forests and on forest land. This is because these rights were not verified, recognized or recorded during the declaration of many tribal and other areas as state forests during the colonial period as well as in Independent India either due to faulty and incomplete settlements or settlements not being undertaken. This has resulted in historical injustice to these communities, rendering them as 'encroachers' on their ancestral lands in the eyes of the law. The Act also seeks to confer title on holders of leases and pattas on forest land issued by Revenue Departments under due legal authority and on those in possession of forest land and conferring title to land and homesteads to residents of forest villages and other old habitations on forest land besides converting such settlements into revenue villages with adequate land for meeting other essential community needs.

The Act defines a verification procedure and clarifies the evidence that may be used to decide the period of enjoyment of rights. As Preliminary Offence Reports/First Information Reports are not necessarily a proof of the claim or otherwise, an assessment of the ground realities as they existed at the relevant time is necessary and is possible by a verification of natural and situational evidence of the subsisting claim. Hence the Act creates a responsible local committee, conversant with ground realities, to verify the same, which can record the evidence of the claimant and other knowledgeable villagers about the length of time that the rights in question have been enjoyed by the claimant.

CHAPTER-I PRELIMINARY

- 1 (1) This Act may be called THE SCHEDULED TRIBES & FOREST DWELLERS (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 dates as the Central Government may, by notification in the Official Gazette, appoint.
- 2 (1) In this Act, unless the context otherwise requires
- (a) "Rights" means individual and/or community (or communal) title to land and/or minor forest produce, including other use rights such as grazing and rotational cultivation and/or use permitted by earlier princely state/zamindari regimes, claims of shifting cultivators and pre-agricultural communities.
 - (b) Such title shall be inheritable but not alienable.
 - (c) "Pattas and Leases" means temporary or permanent leases on forest land granted by the competent authorities,
 - (d) "Entitlements" means access and usufruct to land or minor forest produce, including grazing and includes concessions, privileges and unrecorded customary practices.
 - (e) "Forest land" means land of any description coming within the legal definition of forest, including village forests, protected forests, reserved forests, deemed reserved forests, proposed reserved forest, unclassed forests, all lands recorded as forest in govt.

last class this
will tell us about
why the act
was made
what it
helped of
create?

58) records, protected areas including national parks and wild life sanctuaries including 'deemed' national parks and wild life sanctuaries.]

NP included
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(f) 'Verification' means the process of verification of rights and entitlements as provided for in Chapter III of this Act

(g) Tribal areas means areas or regions inhabited by tribal communities and shall include the Vth and VIth Schedule areas as well as tribal habitations in Modified Area Development Approach, Mini Modified Area Development Approach and Additional Tribal Sub Plan / Outside Tribal Sub Plan areas]

STUCK

(h) PESA means the Panchayats (Extension to the Scheduled Areas) Act 1996

(i) 'Claim' is a prayer for recognition of a right, either submitted in writing or stated orally and subsequently reduced to writing, including a description of the nature of the right enjoyed.

(j) Claimant means such persons or communities filing a claim for rights under this act whose subsistence and livelihood are or were dependent on the claimed land and belong to the Scheduled Tribes or Scheduled Castes and other local inhabitants with established long standing residence in the concerned area claiming marginal land holdings.

(k) Words and expressions used but not defined in this Act and defined in the Indian Forest Act, different State Forest Acts, Forest (Conservation) Act, Wildlife Protection Act shall have the meaning assigned to them respectively in the Acts.

(l) 'Forest dweller' shall ordinarily mean Scheduled Tribes, Scheduled Castes and other deprived communities living in or near forests and substantially dependent on forest resources for their subsistence and survival.]

CHAPTER-II

RIGHTS OF TRIBALS & POOR FOREST DWELLERS

- 3 (1) Title shall be conferred in respect of forest areas notified as 'deemed Reserved Forests' without observing the due process of settlement as provided in Forests Acts provided that these pertain to:
- (i) tribal areas, or affect a whole cross section of rural/poor in non-tribal areas;
 - (ii) the claimants are in possession of the 'disputed land'; or
 - (iii) the claimant was in possession of the disputed land when the notification declaring 'deemed reserved forests' was issued but was subsequently forcibly displaced due to lacking title
- (2) Title shall be conferred wherever the process of settlement is over and notification under Section 20 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) has been issued but there is *prima facie* evidence that the process of forest settlement has been vitiated by incomplete or incorrect records / maps or lack of information to the affected persons, as prescribed by law, provided that.
- (i) The claimants are in possession of the 'disputed land' and
 - (ii) The claimant was in possession of the disputed land when the notification showing Government intention to declare Reserve forest or Protected forest was issued under Section 4 or Section 29 of the Indian Forest Act, 1927 (or corresponding section of the

- (57)
- relevant Act) or notification of 'deemed Reserve Forest' was issued under Section 20A dispensing with the requirement of a settlement.
- (3) Title shall be granted wherever the process of settlement is over but notification under Section 20 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act) is yet to be issued, particularly where considerable delay has occurred in the issue of final notification under Section 20,
 - (i) provided that the claimants are still in possession of 'disputed land.' or
 - (ii) the claimant was in possession of the disputed land when the notification showing Government intention to declare Reserve forest or Protected forest was issued under Section 4 or Section 29 of the Indian Forest Act, 1927 (or corresponding section of the relevant Act).
 - (4) Title shall be conferred in all the cases of *pattas*, leases, grants of any description or nomenclature involving forest land having been given by the Revenue department whether by intent, omission, oversight or accident.
 - (i) Provided the assignees continue to be in possession of the land or can prove that they were forcefully evicted despite having such *pattas*/leases, etc.
 - (5) Title shall be conferred in all those cases, where *pattas* / leases / grants of any description or nomenclature have been given by the Government departments to Scheduled Tribes or rural poor either individually or collectively, but inter departmental disputes have prevented the conferment of titles to the *lessees*
 - (i) Provided the assignees continue to be in possession of the land or can establish through the verification process that they were forcefully evicted despite having such *pattas*/leases; etc.
 - (6) Title shall be conferred in all those cases, where Leases of any description or nomenclature of a period prior to 25.10.1980 which were granted to the Scheduled Tribes or to other rural poor for agro-forestry, tree plantation or alike but could not be renewed, despite the State / UT government's intention to do so, on account of enactment of the Forest (Conservation) Act, 1980.
 - (7) Title shall be conferred to land and homesteads in all forest villages and old habitations on forest land and the said villages or old habitations shall be converted into revenue villages with provision of land for essential social welfare activities such as schools, health centers, common land, etc., provided
 - (i) the said forest village or old habitation was in existence prior to 1980 and the assignees or their heirs continue to be in possession of the land & homesteads, or can prove that they were forcefully evicted after 1980 but their rights were not commuted or extinguished in accordance with due process of law.
 - (ii) village or old habitation in existence after 1980 inhabited by tribal and other forest dwelling oustees of development projects, who were orally allowed to reside in the area by forest or other government officials, and the assignees or their heirs continue to be in possession of the land & homesteads and can establish through the verification process that they were allowed to reside by the forest or other government officials at the time.
 - (8) Title shall be conferred to land and homesteads to all tribals and rural poor in possession of and cultivating the land, in cases where the state/UT government have passed orders to regularize such encroachment or cultivation provided
 - (i) the said possession & cultivation was in existence prior to 1980 and

- 601
- (ii) the assignees or their heirs continue to be in possession of the land & homesteads or can prove that they were forcefully evicted from these after 1980 but their rights were not commuted or extinguished in accordance with due process of law.
 - (iii) provided the area in possession and cultivation to be regularized shall not exceed the limit permissible under ceiling laws and
- (9) Communal property rights shall be recognized and conferred on pre-agricultural 'Primitive Tribal Groups' and shifting cultivators through communal titles, who, under no circumstances are to be treated as 'encroachers' on their ancestral lands. FAO's practice of classifying shifting cultivation lands as 'forest fallows' shall be adopted instead of classifying their customary lands as 'forests'. A forest governance system for these lands shall be evolved under the purview and authority of the concerned Gram Sabha as per the provisions of Section 4(d) of PESA in consultation with the concerned communities to enable combining their livelihood uses with maintaining ecosystem integrity.
- (10) All families of tribal and rural poor who are not found eligible for endowment of rights under the provisions of this Act at 3(1) to 3(9) above shall be rehabilitated in situ through granting them heritable but inalienable conditional pattas through a Community Managed Forest Conservation Program by gram sabhas as per the provisions of PESA Act 1996 and permitting them to practice agro-silvi operations pursuant to their protecting mutually demarcated forest areas.
- (11) The Tribal Welfare Department shall involve peoples' organizations, CBOs and NGOs in building upon indigenous technical knowledge to evolve appropriate agro-silvi practices that can provide adequate vegetative cover as well as sustainable livelihoods to the poor on degraded forest lands to be designated as Village Forests u/s 28 of the Indian Forest Act and brought under the purview and authority of the concerned Gram Sabha, as per the provisions of Section 4(d) of PESA.
- (12) Usufructory rights to minor forest produce, grazing, firewood, water, fishing, and other activities shall be conferred on tribals and other forest dwelling communities who have traditionally enjoyed them and they shall accept responsibility for developing community controlled systems for ensuring sustainable use and management.

CHAPTER-III

PROCEDURE FOR VERIFICATION OF CLAIMS

- 4 (1) A Local Committee shall be established to verify the claims arising from disputed settlements or lack of settlements, pattas and leases and for regularization of encroachments on forestlands constituted by the following members:
- a. Sarpanch / Dy. Sarpanch from the village who will be the Chairperson of the Committee. In the case of a Group Gram Panchayat and for villages other than the main village, a member of the Gram Panchayat from the concerned village will be the Chairperson. In the case of forest settlements not coming under any Gram Panchayat, the traditional/locally accepted Village Elder shall be the chairperson.
 - b. 2 knowledgeable Village Elders or Senior Citizens from the community of the claimants, selected in the Gram Sabha/Gaon Sabha/Palli Sabha/Ward Sabha specifically called for the purpose.

- (61)
- c. One woman representative from a Mahila Mandal / Self Help Group / Gram Panchayat/Gram Sabha selected in the Gram Sabha/Gaon Sabha/Palli Sabha/Ward Sabha called as stated above in b.
 - d. Talathi or Patwari, representing the Revenue Department who will be the Secretary of the Committee.
 - e. Forest / Beat Guard
 - f. Local staff (Supervisory/Inspector level) member of Tribal Welfare Department/ITDA/ITDP in the case of tribal areas.

(2) Block or Taluka Level Review Committee

In cases where the claimant is aggrieved by the decision of the local committee, such claimant will have the opportunity to present his/her views to a Review Committee established by the District Level Committee for the purpose, consisting of

- a. Member of Zilla Parishad who will be the Chairperson
- b. Member of Panchayat Samiti (at least one of a or b shall be a woman)
- c. Naib Tehsildar representing the Revenue Department who will be the Secretary
- d. Assistant Tribal Welfare Officer or Asst. Project Officer (ITDP)
- e. Range Forest Officer
- f. 2 respected civil society members from the Block/Taluka (at least one of them being a woman) recognised for their understanding of tenurial issues in the area to be appointed by the District Collector (?) from names recommended by advocacy groups/NGOs active in the block.

(3) District Level Committee

All decisions taken by the Local Committee and decisions on appeals made to the Block Level Review Committee will be forwarded to the District Level Committee for final ratification. The District Level Committee shall not alter decisions taken at the lower level unless a conflict exists between the Local committee and Block Level Committee, or which on the face of the record appears to be blatantly illegal, and the aggrieved claimant applies to the District Level Committee. In such cases, the District Level Committee should refer the matter to the Local Committee to reconsider the matter in the light of the observations of the Block Level and/or District Level Committee and the decision of the Local Level Committee shall be deemed to be final. The District Level Committee shall forward their proposals to the State Government which will put the proposals of the district committees together and forward them to the Central Government for approval within a maximum period of one year. The District Level Committee will be appointed by the District Collector consisting of

- a. Dy. Collector,
- b. Sub-Divisional Forest Officer
- c. Project Officer, nominated by the Tribal Commissioner
- d. Tribal Member of Parliament (if any) or other Members of Parliament of the District
- e. A renowned non-government person known for her/his understanding of tribal-forest issues (make this also 2?).

(4) Procedure to be followed by the Committees

- a. The Committees should follow procedures that ensure that
 - i) all concerned claimants, including those claiming communal titles, are informed,

- ii) all claimants have an opportunity to make their claims in their language,
 - iii) the weaker sections of the community are spared the time and expense of travel,
 - iv) all claimants are covered and no person is not given an opportunity to be heard. Calling for and verification of claims shall be done in the gram sabha of the village specifically called by the Local Committee held to ensure maximum participation of the women and men of the community. Every effort shall be made to secure the presence of at least 50% of the village adults with half of them being women.
- b. A timetable giving the dates and time of meetings of the gram sabha should be prepared and publicized in advance within a fixed time period.
 - a. to select two village elders or senior citizens to act as members of the committee
 - b. for the Local Committee to invite claims supported by evidence
 - c. for the Local Committee to verify the claims and present their findings
 - c. An inspector and an Area Officer must be appointed to ensure that the program is conducted in a disciplined and regulated manner to enhance local women and men's participation.
 - d. Traditional methods of publicity in the local language as well as advertisements in the local newspapers must be used to inform the people about the program of deciding the eligibility of claims giving due emphasis to the option of claiming communal property rights. Field staff of rural development, social welfare, ICDS, etc should be involved in disseminating information about the process, particularly to village women through their organizations such as SHGs and Mahila Mandals.
 - e. Information of the task of the committee, its aims, objectives and procedure should be made available in the village square, Gram Panchayat office of all villages, Panchayat Samiti and Tehsile office as well as to ICDS, RD, health and education department staff. Special attention should be given to reaching remote settlements and unsurveyed villages which may not be covered by the PRI structure.
 - f. After publicizing the program of the gram sabha atleast two weeks in advance a gram sabha calling for claims should be conducted by the village committee.
 - g. On receipt of the complete application of the concerned claimant in Gram Sabha, all claims should be verified in the presence of the assembly in a subsequent Gram Sabha specifically called for the purpose.
 - h. The Local Committee will give its findings and decision in writing to the claimants in the gram sabha called for the purpose.
 - i. All appeals will be heard by the Block Review Committee or District Committee as the case may be after 2 weeks notice to the appellant.

CHAPTER IV

EVIDENCE & CRITERIA FOR ACCEPTANCE OF CLAIMS

5. Nature of Evidence to be Adduced before the Local/Block Committees
 - (1) A variety of evidence, both oral and/or documentary, establishing the claim period can be regarded as proof of the claim, hence the Committee can accept the following as evidence.
 - i) Documentary evidence from any Governmental / Semi-Governmental source

- ii) Documentary evidence from any prior research or documentation of a reputed institution, including survey maps.
 - iii) Relevant circumstantial evidence gathered by more than 3 members of the committee from a spot verification
 - iv) Resolution of the Gram Sabha
 - v) The evidence of neighboring cultivators and of senior citizens of the villages
 - vi) An affidavit submitted in the village assembly by the claimant.
6. **Criteria for Accepting Claims**
- (1) While deciding on the claim, the village level committee should pay attention to the following guidelines.
 - i) All claims where the claimant has government/ semi government/ other relevant documentary evidence in support should be accepted.
 - ii) If a claimant does not have documentary evidence in support of her/his claim but the Gram Sabha on the basis of other relevant evidence is of the opinion that the claim is legitimate, such claims should be carefully examined by the Local Committee and the benefit of doubt should be given to the claimant. Decisions of the Local Committee shall be by simple majority.
 - iii) If the claimant does not have relevant documentary evidence and the Gram Sabha has also rejected her/his claim, then the veracity of such claims should be carefully examined by the local committee and such claims should be specifically referred to the Review Committee.
 - iv) All claims that are upheld within the purview of the guidelines laid down by the Government of India in its orders dated 18/9/1990, 3/2/2004 and 5/2/2004 be forwarded to the State government for appropriate action.
 - v) Necessary steps be taken for in situ rehabilitation, in cases of ineligible claimants belonging to Scheduled Tribe, Scheduled Caste or other poor families.

CHAPTER V

PUBLICITY & TRAINING OF COMMITTEE MEMBERS

7. Training and Publicity Workshop at Taluka Level

The following process be adopted with a view to expedite the process and ensure fairness.

- (1) Pre-planned publicity and training workshops be organized by the District Committee with the assistance of knowledgeable NGOs at the taluka level for Sarpanchas, Dy. Sarpanchs, Panchayat Samithi and Zilla Parishad members, Forest Officers and Functionaries, Tribal Welfare Officers and functionaries, Traditional Leaders, Senior Citizens, Journalists, Revenue Officials and Functionaries, Talathis and members of the Taluka / Village level Committees, after due publicity prior to the initiation of the process of verification. These training workshops must give due emphasis to ensuring equal importance being given to women's independent claims and claims related to communal property rights.
- (2) All Officials should be invited to these workshops and should be given the information of the procedures and processes of the village level inquiry.
- (3) A separate session should be held for NGOs, CBOs, Activists, Advocates and Journalists

- (4) The Gram Sabhas should be held after the program is planned and announced

CHAPTER-VI

MISCELLANEOUS

- 8 (1) The Verification of Rights and Resolution of all conflicts related to forest lands, disputes resulting from defective Settlements, leases/pattas etc, completing settlements where these have still not been undertaken, regularization of pre 1980 encroachments and conversion of all forest villages and other older settlements into revenue villages shall be completed within two years from the passage of this Act, which period may be extended by the government if circumstances so require.
- (2) All Claimants whose claims have been accepted after verification will be issued a laminated certificate by the District Committee specifying the location and area of the accepted claim.
- (3) Appropriate entries shall be made in the relevant land records regarding the acceptance of claims.
- (4) Completed proposals shall be forwarded to the Ministry of Environment and Forests, which will complete all formalities within six months.
- (5) The Endowment of Rights and Entitlements may be done in such a manner as to avoid honey combing of the forests, as far as possible. In case of honeycombing, the claimant will be provided alternative land on the fringes of the forest and financial support to develop the said land. No claimants shall be moved from their present location till provided with a title-deed and possession of land in the new location.
- (6) Title shall be conferred free of all encumbrances, including requirements of Net Present Value and Compensatory Afforestation for diversion of forest land.
- (7) The conferment of Rights may be made conditional on the right holders accepting responsibility for protecting/regenerating mutually demarcated degraded forest lands in the vicinity of their endowments in order to integrate livelihoods with conservation.
- (8) The Ministry of Tribal Affairs shall be designated as the Nodal Agency and shall be responsible for implementation of this Act in Vth and VIth Schedule areas as well as tribal habitations in Modified Area Development Approach, Mini Modified Area Development Approach and Additional Tribal Sub Plan / Outside Tribal Sub Plan areas. The Ministry of Rural Development shall be designated as the Nodal Agency and shall be responsible for implementation of this Act in all other areas.
- (9) A high powered inter-sectoral Committee under the Prime Minister shall be responsible for monitoring and ensuring time bound implementation. The Committee shall be empowered to take measures for quick addressal of inter-sectoral problems and for smoothening out unanticipated problems, undertaking spot verification to ensure that the procedure is being followed, and being responsible for time bound implementation.

Minutes of the Meeting chaired by Principal Secretary to PM to discuss the ST(Recognition of Forest Rights) Bill, 2005 on 17th November, 2005 in South Block, New Delhi

Based on the decisions at the One-Day Consultation Workshop held in the PMO on the STs(Recognition of Forest Rights) Bill, 2005 on 28.10.2005, a meeting of the Secretary, Ministry of Tribal Affairs and Secretary, Ministry of Environment & Forests was chaired by the Principal Secretary to PM on 17.11.2005 in this office. After detailed discussions the following position emerged:

- i) Ministry of Tribal Affairs has accepted the cut-off date of 25.10.1980 for recognition and vesting of forest rights to forest dwelling Scheduled Tribes and agreed to delete the provisions of "or such other date as Central Government may, by notification in the Official Gazette, specify".
- ii) Ministry of Tribal Affairs has accepted the recognition and vesting of forest rights in the core areas (as defined by the Ministry of Environment & Forests) of the National Parks and sanctuaries to be on a provisional basis for a period of 5 years instead of the initially proposed period of 3 years within which MoEF would plan and implement their relocation.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Section 15 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. Sub-section (2) of section 15 enumerates the matters in respect of which rules may be made under the said clause. These matters, *inter alia*, relate to the procedure for and the 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 Level 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 Level 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 Monitoring Committee and the reports and returns to be submitted to the nodal agency by the State Level Monitoring Committee. Sub section (3) of section 15 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.

- iii) The non-tribals and other forest dwellers would not be brought within the purview of the proposed Bill at present.
- iv) Ministry of Tribal Affairs agreed to formulate a provision in the Bill, by which variations observed in different parts of the country would be accommodated through Rules, which could be framed considering the ground-level situation.
- v) Ministry of Tribal Affairs accepted the suggestion of Ministry of Environment & Forests that in addition to ground level verification of lands in actual occupation of the tribals in the forested areas, it could also take the aid of aerial photographs available for the period around 1980. This would be suitably incorporated while formulating the Rules.
- vi) On the suggestions of MoEF, Ministry of Tribal Affairs agreed to reformulate provisions relating to "bonafide livelihood need" and "commercial purpose" so that the rights of Tribals to access rights vested are not hampered in any manner.

The Ministry of Tribal Affairs would now take appropriate follow up action to finalize the Bill at the earliest.

No. of 2005

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 recognised 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 including those who were forced to relocate their dwelling due to state development interventions.

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

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

Short title,
extent and
commencement.

(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.

Amendments proposed by Ministry of Panchayati Raj

December 11, 2006

I. Clause 6 (8)

(already approved by Cabinet in the listing of modified amendments. However, Ministry of Panchayati raj proposes the addition of the words, duly under-lined)

The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government and four members of the Panchayati Raj Institution at the appropriate level, 'appointed by the respective Panchayati Raj Institutions' of which at least two shall be from Scheduled Tribes and one shall be a woman, as may be prescribed.

Explanatory Notes :-**6 (8)**

The insertion of these words will enable the chosen representatives of the ST community and the woman selected, to gain a sense of empowerment, while participating in the Committee deliberations, at different levels. This is in keeping with PESA

II. Clause 7 (1)

The Gram Sabha or the Panchayats at appropriate level shall be consulted before making acquisition of land in the Forest Villages for any project, and before re-settling or rehabilitating persons affected by such projects in Forest Villages.

III. Clause 7 (2)

The actual planning and implementation of the project in the Forest Villages shall be co-ordinated by a Committee appointed by the Gram Sabha of the Forest Village, comprising not less than 4 members of which two shall be ST and one a woman member of the Gram Sabha.

Explanatory Notes:

7 (1) and (2)

- i. As stated, Section 6 delineates the rights of the Gram Sabha relating to rights of the Gram Sabha in vesting Forest Rights in Forest Dwelling Scheduled Tribes and prescribing the procedures thereof. However, this Section does not take into account the provisions of land acquisition and rehabilitation of the persons displaced in consequence thereof. Such possibilities have to be accounted for in the enactment.
- ii. The existing Sections 7 and 8 which related to the Committees of Gram Sabha and Rehabilitation have since been deleted and the Section 7 stands merged with the provisions of proposed Section 6. Hence, there is no covering provision for land acquisition, displacement and rehabilitation of the displaced persons. One of the principal modalities of alienation of the tribal land has been recognized as the State led land acquisition process.
- iii. The proposed clause 7 makes it mandatory to consult the Gram Sabha before undertaking any acquisition of land for development projects and before undertaking any resettlement or rehabilitation measures. The PESA has brought these provisions-exclusively within the domain of the Gram Sabha.
- iv. Likewise, the Gram Sabha need to constitute a committee of which not less than 50% shall be tribals and not less than 50% women. This provision is necessary as the Bill relates to the rights of the tribals which must be safeguarded.
- v. A separate Section 7 is being proposed although Section 6 and its sub-clauses address the issue of vesting of forest rights in the Forest Dwelling Schedules Tribes in the Gram Sabha. However, the provisions of Section 6 are subject to appeal, review and revision. On the other hand Section 4 (i) of PESA is not subject to appeal. Had it been placed as sub-clauses (1)&(2) of Section 6 it would become subject to the same provisions of appeal, review and revision. This would render it inconsistency to the provisions of PESA. That is why a separate Section 7 is being proposed.

IV. Clause 15 (2)

Nothing contained in this Act shall in any way abridge, curtail or diminish the powers of the Gram Sabha under the Panchayat Extension (Scheduled Areas) Act, 1996, wherever in force.

Explanatory Note : 15 (2)

- i. There appears to be no contradictions between PESA, 1996 and the proposed Scheduled Tribes (Recognition of Forests Rights) Act, 2006. Yet, it is possible that with the roll out and implementation of the Scheduled Tribes Act, 2006, some inconsistencies

(H)

may become apparent. This would lead to incompatibility between the Implementation of PESA, 1996 and the Scheduled Tribes Bill, 2006. The soul of PESA resides in its Gram Sabha. The tribal communities also have community spirit as their main driving force and their life is organized around community institutions. It is, therefore, only appropriate that a saving clause be provided in the proposed Act, to ensure continued compatibility with PESA, 1996.

Item 14

Case No. 128/2006

Proposal for amendments to the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 reported by the Joint Committee of Parliament

The Cabinet considered the note dated 05.12.2006 from the Ministry of Tribal Affairs (Tribal Affairs) and approved the proposal contained in paragraph 11 thereof with the modification that only one bill be introduced incorporating all elements, including a provision that the non-forest dwellers with a minimum stay of three generations in forest areas, the cut-off date, be also dealt with rights.

2. The Cabinet directed that appropriate amendments in the Bill as required be finalized by the Minister of Tribal Affairs, the Minister of Law & Justice, the Minister of Panchayats, Youth Affairs & Sports and the Minister of Environment and Forests.

SECRET

2 Copies

In accordance with the Rules of Procedure in regard to Proceedings of the Cabinet (para 10) progress of action to implement the decision may be included in the Ministry's monthly summary for the information of the members of the Council of Ministers.

Action taken to implement the decision may be communicated to the Council Secretariat for reference to the Press Information Bureau for inclusion in the reports.

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SECRET

No.50/CM/2006

Copy No. _____

CABINET SECRETARIAT

EXTRACTS FROM THE MINUTES OF THE MEETING OF
THE CABINET HELD AT 1830 HOURS, ON THURSDAY,
7th DECEMBER, 2006, IN PANCHVATI, 7, RACE COURSE
ROAD, NEW DELHI.

Case No.429/50/2006

Item 14

**Proposal for amendments in the Scheduled
Tribes and Other Traditional Forest Dwellers
(Recognition of Forest Rights) Bill, 2006
reported by the Joint Committee of Parliament**

The Cabinet considered the note dated 05.12.2006 from the Ministry of Tribal Affairs (Janjatiya Karya Mantralaya) and approved the proposal contained in paragraph 8 thereof with the modification that only one Bill be introduced, incorporating all elements, including a provision that the non-tribal forest dwellers, with a minimum stay of three generations in forest areas, as on the cut-off date, be also vested with rights.

2: The Cabinet directed that appropriate amendments in the Bill, as required, be finalized by the Minister of Tribal Affairs, the Minister of Law & Justice, the Minister of Panchayati Raj, Youth Affairs & Sports and Development of North Eastern Region and the Minister of Environment and Forests.

SECRET

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8 Copies.

In accordance with the Rules of Procedure in Regard to Proceedings of the Cabinet (Rule 10), progress of action to implement the decision may be included in the Ministry's Monthly Summary for the information of the Members of the council of Ministers.

Action taken to implement the decision may be communicated to the Cabinet Secretariat with reference to the Implementation Schedule attached to the agenda note.

Government of India
Ministry of Tribal Affairs

Shabbir
Corroborated by
Secretary (TA)
Sr. JST/10/06

Statement showing the key differences between the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, as introduced by the Ministry of Tribal Affairs in the Lok Sabha on 13.12.2005, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, reported by the Joint Committee of Parliament

S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
1.	<p style="text-align: center;">THE SCHEDULED TRIBES (RECOGNITION OF FOREST RIGHTS) BILL, 2005</p> <p style="text-align: center;">A BILL</p> <p><i>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 and 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.</i></p>	<p style="text-align: center;">THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) BILL, 2006</p> <p style="text-align: center;">A BILL</p> <p><i>to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers 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.</i></p>	<p>The Bill introduced by the Ministry had sought to recognise and vest the forest rights and occupation in forest land in respect of forest dwelling Scheduled Tribes only. The Bill reported by the Joint Parliamentary Committee seeks to cover other traditional forest dwellers also in addition to forest dwelling Scheduled Tribes.</p> <p>The non-tribals and other forest dwellers were kept out of the purview of the Bill introduced by the Ministry for the following reasons:</p> <p>(i) While there may be cases of forest dwellers other than scheduled tribes who had occupied forest land before the cut off date, there is a strong need to appreciate and recognise the distinction between the scheduled tribes who are living in forests for generations and in occupation of forest land much before the cut off date and those non-tribals and other forest</p>

S. No.	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p> <p>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;</p> <p>AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised 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;</p> <p>AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes including those who were forced to relocate their dwelling due to state development interventions.</p> <p>BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p> <p>WHEREAS the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers 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 other traditional forest dwellers;</p> <p>AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised 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 and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystems;</p> <p>AND WHEREAS it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to state development interventions.</p> <p>BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
	<p>dwelling Scheduled Tribes with the other forest dwellers for the purpose of recognition and vesting of forest rights under the Bill would be a negation of this distinction and put the original rights of age old STs' inhabitants existing prior to enactment of Indian Forest Act, 1927 on the same footing as that of the much later entrants.</p> <p>(ii) The Constitution of India provides specific and exclusive provisions for STs and areas inhabited by STs, such as, V Schedule, VI Schedule, which is a recognition of separate historical, social and political identity of STs. Similarly, the Provisions of the Panchayats (Extension to the Schedule Areas) Act, 1996 enacted in 1996 by way of Constitutional Amendment also treats the Schedule V Areas on a separate pedestal. Thus, there exists reasonable classification even under Article 14 of the Constitution to treat the case of recognition of rights of STs and others separately and on different footing through different procedure.</p> <p>(iii) STs form the majority of the population of forest dwellers, and as per estimates more than 70%. To equate the needs of this 70% or more with that of the 30% or less population is not appropriate.</p>		

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		<p>(iv) The statement of objects and reasons of the Bill clearly brings out that the Scheduled Tribes are living in forests for generations and are integral to the very survival and sustainability of forests, forest eco-systems and wildlife. It is well known that the forest dwelling scheduled tribes are residing on their ancestral lands and their habitat for generations and there exists a spatial relationship between the forest dwelling scheduled tribes and the biological resources in India. In fact the tribal people are inseparable from the ecosystem and cannot survive in isolation. Such inherent oneness and relation/inter-dependence with nature is non-existent in case of non-STs. There are numerous documents, research works, and writing to highlight the way of life of STs that revolves around forests and nature. The symbiotic relationship of STs with forests, recognised and enunciated in many policy documents including the National Forest Policy, is the way of life and ethos of the tribal communities. It is not so for others who certainly moved in later than STs. This kind of relationship with environment and forests is non-existent in case of non-STs and therefore they can not be placed on the same footing.</p> <p>(v) Section 4(i) of the Bill provides for recognition and vesting of forest rights in the forest dwelling scheduled tribes, where</p>	

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			<p>they are scheduled, in respect of forest land and their habitat, including right to collect, utilize or transfer minor forest produce. This is the <u>basic criterion</u> for recognition and vesting of forest rights in the forest dwelling scheduled tribes under the Bill. Since this criterion would not be satisfied in the case of non-tribals and other forest dwellers, who are not scheduled for an area, such non-tribals and other forest dwellers cannot be covered for recognition and vesting of forest rights under the Bill.</p>
			<p>(vi) The Scheduled Areas where most of the forest villages/forest settlements are existing have a population mix of which the scheduled tribes at one time constituted more than 50%. The States having such scheduled areas are required to protect the alienation of land belonging to the scheduled tribes and check inward migration of non-tribals to such scheduled areas. Regulations to this effect exist in most of the Schedule V States. The Government under these regulations is duty bound to protect the interest of STs and also kind of non-violate nature/separate identity of scheduled areas. The recognition of rights of non-tribals and others in occupation of forest lands in such tribal areas on the same footing would have an adverse impact on the population mix in such scheduled areas as the States have failed in many cases</p>

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p> <p>to check the alienation of the ST lands and inward migration of non-tribals. Formally equating the STs and non-STs together would amount to negating such protection available to STs and result in double jeopardy where inward migration into scheduled areas due to developmental, industrial and mining activities could not be regulated resulting into decreasing ratio of ST population and alienation of their land against the various state specific regulations. In fact, the settling of non-STs and occupying/buying of ST land in violations of regulation would in a way get in principle legal backing of equating STs and non-STs together thereby denying the entire concept of separate identity of STs.</p> <p>(vii) Inclusion of the non-tribals and other forest dwellers within the purview of the Bill for recognition of their forest rights may lead to a <u>flurry of claims</u> from all such non-tribals, who are in any case more vocal and vociferous as compared to the <u>scheduled tribes</u>, which may be difficult to manage. This may lead to a situation where political dynamics, as they exist on the ground, may come into play in full swing at Gram Sabha level, the authority now as per the recommendations of JPC designated to decide the nature and extent of forest rights for recognition and vesting, and the recognition of the rights of the scheduled tribes for whom the Bill is conceived may</p>
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<p>lose focus. The possibility of mutual support to each others exaggerated false claims is obvious.</p> <p>(viii) The operation of the 1990 guidelines issued by M/o Environment & Forests for regularization of encroachment of all persons occupying forest land prior to 25.10.1980 was not barred by the Bill introduced by the Ministry and the same would continue to apply to those forest dwellers who are non-tribals.</p> <p>In a nutshell, the Bill as reported seeks to cover other traditional forest dwellers also in addition to forest dwelling Scheduled Tribes that too who are residing not only on forest land but also in close proximity of the forest land and are primarily dependent on forest land or forest resources for their livelihood needs. The Bill as reported does not prescribe any limit in respect of the area of forest land under occupation for recognition and vesting of forest rights and provides a cut off date of as recent as 13.12.2005 for recognition and vesting of forest rights in respect of such forest dwellers and empowers the Gram Sabha to take a final decision on the record of forest rights. As per the Bill as introduced, when a Gram Sabha was to initiate the process of recognition of forest rights of individuals/community only for the Scheduled Tribes with</p>			<p>lose focus. The possibility of mutual support to each others exaggerated false claims is obvious.</p> <p>(viii) The operation of the 1990 guidelines issued by M/o Environment & Forests for regularization of encroachment of all persons occupying forest land prior to 25.10.1980 was not barred by the Bill introduced by the Ministry and the same would continue to apply to those forest dwellers who are non-tribals.</p> <p>In a nutshell, the Bill as reported seeks to cover other traditional forest dwellers also in addition to forest dwelling Scheduled Tribes that too who are residing not only on forest land but also in close proximity of the forest land and are primarily dependent on forest land or forest resources for their livelihood needs. The Bill as reported does not prescribe any limit in respect of the area of forest land under occupation for recognition and vesting of forest rights and provides a cut off date of as recent as 13.12.2005 for recognition and vesting of forest rights in respect of such forest dwellers and empowers the Gram Sabha to take a final decision on the record of forest rights. As per the Bill as introduced, when a Gram Sabha was to initiate the process of recognition of forest rights of individuals/community only for the Scheduled Tribes with</p>

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 <i>(hereinafter called the "Bill as introduced")</i></p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament <i>(hereinafter called the "Bill as reported")</i></p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported", and the comments of the Ministry of Tribal Affairs</p> <p>evidence prior to 25.10.80 and for more 2.5 hectares of forest land per nuclear family of a forest dwelling Scheduled Tribes, it would have been a different scenario. Now euphoria would be created where every one might claim to be a forest dweller to be primarily dependent on forest land or forest resources for his livelihood needs and might claim as much area of forest land as he can occupy and prove to be in possession just prior to 13.12.05, that too only in the Gram Sabha, of which he himself may be a member. Mutual support to each other's claim on land encroached with effect from 13.12.05 is most likely when no body is to lose anything. Rather, every one would be gaining at the expense of forest land. It is likely to be a free for all situation to claim some forest land. The contractors engaged by the Forest Corporations in forestry operations, the owners of Saw Mills and those engaged in other forest based industrial activities would also be considered as dependent on forest land or forest resources for their livelihood needs and might claim recognition and vesting of forest rights under the Act</p> <p>The enactment of the Bill as reported will have nothing to do with undoing of the historical injustice to the forest dwelling Scheduled Tribes as everybody, whose occupation of forest land may be as recent as 13.12.2005, would be covered for</p>
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			<p>recognition and vesting of forest rights. The entire Preamble of the Bill as reported does not match with the Statement of Objects and Reasons of the Bill as introduced.</p> <p>The amendment introduced by the JPC in the Bill as reported, therefore, cannot be accepted and the original provision as in the Bill as introduced needs to be retained and the term "other traditional forest dweller" needs to be deleted from wherever it is reported in the Bill as reported.</p>
<p>3.</p>	<p>Definitions</p> <p>2. In this Act, unless the context otherwise requires, -</p> <p>(a) "competent authority" means any officer or authority appointed by the Central Government, by notification, to deal with disputes referred to in sub-section (7) of section 4;</p>	<p>Definitions</p> <p>2. In this Act, unless the context otherwise requires, -</p> <p>*** ***</p> <p>(a) "community forest resource" means customary common forest land within the traditional or customary boundaries of the village, or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected National Parks to which the community had traditional access.</p>	<p>(a) The Bill as introduced contains the definition of the term "competent authority" to deal with disputes referred to in sub-section (7) of section 4, which has been deleted by the Joint Committee.</p> <p>(a) May be accepted.</p>

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<p>purposes of wildlife conservation as may be determined, by notification, by the Ministry of the Central Government dealing with Environment and Forests;</p> <p style="text-align: center;">.</p> <p>(c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest lands for bonafide livelihood needs;</p>	<p>the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the Central Government after open process of consultation by an Expert Committee, which includes experts from the locality appointed by the Ministry of the Central Government dealing with tribal affairs, and shall also be according to the procedural requirements arising from sub-sections (1) and (2) of section 4.</p> <p>(c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in or in the close proximity of forests and includes the Scheduled Tribe pastoralist communities who depend on the forests or forest lands for bona fide livelihood needs;</p>	<p>forest rights in forest dwelling Scheduled Tribes, whereas the Bill as reported has deleted this term and replaced it with the term "critical wildlife habitat" of National Parks and Sanctuaries for recognition of forest rights, as the "core areas" have not been defined. Further, the "critical wildlife habitat" are to be determined by an Expert Committee, which include experts from the local community appointed by the Ministry of the Central Government dealing with the Tribal Affairs.</p> <p>While this Ministry may have no objection to the inclusion of the term "critical wildlife habitat" in the Bill, it may be stated that the Expert Committee to be appointed for determination and notification of such "critical wildlife habitat" should rightfully be appointed by the Ministry of Environment & Forests where a representative of the Ministry of Tribal Affairs at sufficiently senior level could be included. The amendment introduced by the JPC in the Bill as reported, may, therefore, be accepted subject to this modification.</p> <p>(c) The Bill as reported has revised the definition of "forest dwelling Scheduled Tribes" to include such members of Scheduled Tribes who reside in the close proximity of forests also, whereas the Bill as introduced did not cover such lands other than forestland.</p>

<p>S. No.</p>	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced") depend on the forests or forest lands for bonafide livelihood needs;</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
<p>(d) "forest land" means land of any description falling within any forest</p>	<p>lands for bona fide livelihood needs;</p>	<p>also, where Bill as introduced did not cover such lands other than forest lands.</p> <p>It may be mentioned that the Bill as introduced seeks to recognise and protect the forest rights and occupation in forest land. The Bill as introduced does not seek to recognise the rights of such Scheduled Tribes who are residing around such forests because the Scheduled Tribes who are residing in the forests for generations are mainly facing the threat of eviction from the land under their occupation for centuries and have been denied access to development programmes primarily due to non-availability of clear title of land in their favour, such as 'Indira Awas Yojana', etc. The scope of the Bill cannot be extended to cover lands around forest as such lands would then be under Revenue Department and the objects of the Bill as enunciated in the Statement of Objects and Reasons is to undo historical injustice by recognizing rights in forest land which has otherwise become difficult due to various restrictions, including under Forest (Conservation) Act, 1980. The revenue lands are in any case under the jurisdiction of States. The amendment introduced by the JPC in the Bill as reported, therefore, cannot be accepted and the original provision as in the Bill as introduced needs to be retained.</p>	

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	<p>deemed forests, protected forests, reserved forests, sanctuaries and national parks;</p> <p>(e) "forest rights" means the forest rights referred to in section 3;</p> <p>(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 <i>lanjya</i> settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;</p> <p>(g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, the traditional village institutions;</p>	<p>or deemed forests, protected forests, reserved forests, Sanctuaries and National Parks;</p> <p>(e) "forest rights" means the forest rights referred to in section 3;</p> <p>(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 <i>lanjya</i> settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government;</p> <p>(g) "Gram Sabha" means a village assembly which shall consist of all adult members of a village and in case of States having no Panchayats, <u>Padas</u>, <u>Tolas</u> and other traditional village institutions and elected village committees, with full and unrestricted participation of women.</p> <p><u>Explanation</u>:- For the purposes of this clause, the term "village assembly" shall be construed according to the definition of "village" as given in</p>	<p>classified. The definition given in the Bill as introduced is very liberal treating all bushes as forests. The amendment introduced by the JPC in the Bill as reported, therefore, cannot be accepted and the original provision as in the Bill as introduced needs to be retained.</p>

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	<p>(h) "habitat" includes the area comprising the customary habitat and such habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;</p> <p>(i) "minor forest produce" includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like;</p> <p>(j) "nodal agency" means the nodal agency specified in section 12;</p> <p>(k) "notification" means a notification published in the Official Gazette;</p> <p>(l) "prescribed" means prescribed by rules made under this Act;</p> <p>(m) "Scheduled Area" means any Schedule Area referred to in clause (l) of article 244 of the</p>	<p>clause (p) which applies also to areas covered by the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996;</p> <p>(h) "habitat" includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of primitive tribal groups and pre-agricultural communities and other forest dwelling Scheduled Tribes;</p> <p>(i) "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, fuel wood and the like, stones, slates and boulders and products from water bodies including fish, weeds and the like;</p> <p>• • •</p> <p>(j) "nodal agency" means the nodal agency specified in section 11;</p> <p>(k) "notification" means a notification published in the Official Gazette;</p> <p>(l) "prescribed" means prescribed by rules made under this Act;</p> <p>(m) "Scheduled Areas" means the Scheduled Areas referred to in clause (l) of article 244 of the</p>	<p>(i) The inclusion of "stones, slates and boulders" in the definition of the term "minor forest produce" may not be desirable as it may be interpreted to include minor and major minerals like granite, marble, etc. The intention is to define minor forest produce of plant origin over which STs had traditional rights which were to be recognised and vested in the subsequent sections.</p>

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<p>(m) "Scheduled Area" means any Schedule Area referred to in clause (1) of article 244 of the Constitution;</p> <p>(n) "sustainable use" shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002;</p>	<p>(m) "Scheduled Areas" means the Scheduled Areas referred to in clause (1) of article 244 of the Constitution;</p> <p>(n) "sustainable use" shall have the same meaning as * in the Biological Diversity Act, 2002;</p> <p>(o) "traditional forest dweller" means any member or community that is residing in, or in close proximity of, the forest land and primarily dependent on forest land or forest resources for their livelihood needs, which term includes-</p>	<p>(n) May be accepted.</p> <p>(o) This is a new category of persons sought to be covered in the Bill as reported for recognition and vesting of forest rights, which were not covered in the Bill as introduced. This category would include all non-tribals and other forest dwellers. The reasons for which the non-tribals and other forest dwellers were kept out of the purview of the Bill as introduced and the impact they would have on the forest and STs are already indicated in the comments column against Preamble.</p> <p>Further, the term "residing in, or in close proximity" used in this clause is also very vague and does not specify how close to forest land such members of community should be residing for being covered under the term "traditional forest dweller". Further, it is also not clear from this clause as to whether a member or a community has to satisfy all the conditions mentioned in sub-clauses (i) to (v) or any one of these</p>

S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
		<p>(i) communities who have been traditionally living in or adjacent to forests for at least three generations;</p> <p>(ii) such communities which have settled or been located in the forest land as a result of government policy or the failure thereof such as all those who were settled by or encouraged to settle by any government department or policy on forest land, and all such bodies of people settled under with lease, <i>paata</i> or assignment on forest land for forestry or other work or use, including all residents of forest villages, <i>tanjya</i> settlements and the like defined in any manner whatsoever, regardless of whether they are recorded or not;</p> <p>(iii) if he or she or his or her family have been forcibly displaced from their original habitats because of development projects, natural calamities, or other circumstances;</p>	<p>conditions, for being covered under the term "traditional forest dweller".</p> <p>(i) As regards this sub-clause, it may be mentioned that no communities are living on communitarian basis other than the Scheduled Tribes, since individual rights of occupations are to be recognised, it is not in any case enough that community resides for three generations. Presuming communities of forest dwellers other than STs are living for three generations, does it give right to everyone belonging to that community to claim rights? Further, the cut off date is likely to be different for every village as a period of three generations may be different.</p> <p>(ii) It is not clear as to what does settlement of communities due to failure of Government means? Does it mean negation of clause (i) above by interpreting that even if a community (not necessarily individual/forest right holder) never traditionally lived for three generations, it would be covered in clause (ii) because they have encroached forest land as failure of Government's policy?</p> <p>(iii) Extension of the scope of the Bill to cover such category of persons will open the floodgates for staking claims for</p>

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs.</p> <p>recognition and vesting of forest rights. Further, this clause is without any specific cut off date with reference to displacement by development projects. It is again not clear what "other circumstances would actually mean/include</p> <p>(iv) This seems to be a vague definition as to who and on what basis would one decide "his or her original habitat".</p> <p>(v) It is not clear from this sub-clause as to under what circumstances a person could be forced to purchase forest land and how the term "a group of persons" used in this sub-clause is different from a community. This sub-clause means if livelihood is not available/provided to a person by the Central Government or a State Government, the occupation, encroachment or purchase of forest land by him would be treated as valid. It is also not clear from this clause, as to who will be the competent authority to decide the failure of the Central Government or a State Government in providing land or other livelihood resources to an individual or a group of persons to which that individual belongs. In fact, this definition does not exclude any conceivable person/ group of</p>
	<p>(iv) if his or her original habitat has been declared as forest Sanctuary, National Park or Protected Area under the Indian Forest Act, 1878 or the Indian Forest Act, 1927 or Wild Life (Protection) Act, 1972 or is otherwise considered as forest area under Forest (Conservation) Act, 1980 or other applicable laws; and</p> <p>(v) if he or she has been forced to occupy or purchase forest land or resources for livelihood purposes as a result of a failure of the Central Government or a State Government to fulfill its commitment to provide land or other livelihood resources made to that individual or to a group of persons to which that individual or group belongs;</p>	

S. No.	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
	<p>(o) "village" means—</p> <p>(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996; or</p> <p>(ii) any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or</p> <p>(iii) forest villages, old habitations or settlements and unsurveyed villages, whether notified as village or not; or</p> <p>(iv) in the case of States where there are no Panchayats, the traditional village, by whatever name called;</p> <p>(p) "wild animal" means any species of animal specified in Schedules I to IV of the</p>	<p>(z) "village" means—</p> <p>(i) a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, regardless of whether the area involved is a Scheduled Area or not;</p> <p>*** *** ***</p> <p>(ii) forest villages, old habitations or settlements and unsurveyed villages, whether notified as village or not; or</p> <p>(iii) in the case of States where there are no Panchayats, the traditional village, by whatever name called;</p> <p>(g) "wild animal" means any species of animal</p>	<p>persons from inclusion in the category of "traditional forest dwellers" who is justified in encroaching any land (forest or even revenue land in close proximity). The amendment introduced by the JPC in the Bill as reported, therefore, cannot be accepted and the original provision as in the Bill as introduced needs to be retained, and the term "traditional forest dweller" needs to be deleted from wherever it is used in the Bill as reported.</p> <p>(p) The sub-clause (i) of the Bill introduced by the Ministry which gives the same definition of "village" as in the Panchayat Acts of different States cannot be changed as it would mean (i) imposing definition of PESA in non-Scheduled Areas, and (ii) in non-Scheduled Areas, different meanings of "village" under different Acts. The amendment introduced by the JPC in the Bill as reported, therefore, cannot be accepted and the original provision as in the Bill as introduced needs to be retained.</p>

<p>S. No.</p>	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
<p>2.</p>	<p>Wildlife (Protection) Act, 1972 and found wild in nature.</p> <p>Forest Rights</p> <p>3. For the purposes of this Act, the following rights, which are secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes, namely:-</p> <p>(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;</p>	<p>specified in Schedules I to IV of the Wild Life (Protection) Act, 1972 and found wild in nature.</p> <p>Forest Rights</p> <p>3. (1) For the purposes of this Act, the following rights, which are secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-</p> <p>(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 or other traditional forest dwellers;</p>	<p>The Bill introduced by the Ministry defines the forest rights of forest dwelling Scheduled Tribes only, whereas the forest rights reported by the Joint Committee defines the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers. The Bill reported by the Joint Committee has further modified the forest rights, as indicated in the Bill introduced by this Ministry and has also included certain other forest rights, such as, right of access to bio-diversity and community right to intellectual property and traditional knowledge, right to in-situ rehabilitation, diversion of forest land for developmental projects, etc.</p> <p>So far as the question relating to extending the scope of the Bill to cover other traditional forest dwellers is concerned, the Ministry has already indicated above the reasons for which it does not consider necessary to extend the scope of the Bill to cover other traditional forest dwellers also. As regards the modifications/additions made in the forest rights by the Joint Committee, the following comments are offered:</p> <p>(b) The term "that occur in forest land", used in this sub-</p>
<p>(b) community rights such as <i>nistar</i>, by whatever name called, and used in</p>	<p>(b) community rights such as <i>nistar</i>, by whatever name called, including those used in</p>		

S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	erstwhile princely States, Zamindari or such intermediary regimes;	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
	(c) right of ownership access to use or dispose of minor forest produce;	(c) right of ownership access to collect, use, transport and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;	clause is redundant as every thing as per clause 3(1) above is on forest lands. The amendment introduced by the JPC in the Bill as reported, therefore, cannot be accepted and the original provision as in the Bill as introduced needs to be retained.
	(d) other community rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;	(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;	(c) May be accepted.
	(e) rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;	(e) rights, including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;	(d) May be accepted.
	(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;	(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;	
	(g) rights for conversion of Patta or leases or grants issued by any local authority or any State Government on forest lands to titles;	(g) rights for conversion of Patta 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;	(h) rights of settlement of all forest villages, old habitations, unsurveyed villages and other villages in forests, whether ** recorded, notified or not, into revenue villages;	(h) There is no settlement in case of forest villages. It is conversion of forest villages. Therefore, this amendment may
	(i) rights of settlement of old	(i) rights of settlement of old	

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 <i>(hereinafter called the "Bill as introduced")</i></p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament <i>(hereinafter called the "Bill as reported")</i></p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
<p>Initiations and unsurveyed villages; whether notified or not;</p> <p>(j) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;</p>	<p>(i) <u>community right and authority to use, protect, regenerate, conserve, control, or manage any community forest resource, provided that such right shall include the right to all produce and benefits such as timber, minerals, environmental and cultural services.</u></p>	<p>(i) The meaning of the term "authority to use" in this sub-clause is not clear. The extent, the purpose and the mechanism for enforcing the authority to use would need to be spelt out and how such an authority would be exercised when more than one villages are involved. It may also not be possible to include timber and minerals in the forest rights as right to major minerals was never traditionally enjoyed. The meaning of the environmental and cultural services right is also not clear. Therefore, the amendment introduced by the JPC in the Bill as reported cannot be accepted and the original provision as in the Bill as introduced needs to be retained.</p>
<p>(k) 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;</p>	<p>(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 the concerned tribals of any State;</p>	<p>(j) May be accepted.</p>
<p>(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes which are</p>	<p>(k) <u>right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;</u></p> <p>(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be,</p>	<p>(k) May be accepted.</p>

S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
	<p>not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal.</p>	<p>which are not mentioned in clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;</p> <p>(m) right to <i>in situ</i> rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation.</p>	<p>(m) This sub-clause does not specify any date/period for eviction or displacement for the Scheduled Tribes and other traditional forest dwellers to be entitled to the right to the <i>in situ</i> rehabilitation including alternative land. However, this may be accepted in case of forest dwelling Scheduled Tribes' displacement prior to the cut off date as proposed in the Bill as introduced, i.e., 25.10.1980.</p>
	<p>(2) The vesting of rights shall include the lands occupied by the families of forest dwelling Scheduled Tribes and other traditional forest dwellers earlier or leased to them by the Forest Department and taken away subsequently by the Forest Department or other agencies for plantation or any other like purposes.</p>		<p>(2) This clause seems to be similar to sub-clause (m) above. The term "taken away" used in this sub-clause is vague which may mean any period after 1927 (the date of notification of the Indian Forest Act, 1927) or 1972 (the date of notification of the Wildlife (Protection) Act, 1972, etc. The legislation cannot have such vague and undefined periods, such as, "occupied by the families of forest dwelling Scheduled Tribes and other traditional forest dwellers earlier" and "taken away subsequently", which may technically go back to even 1927.</p>
	<p>(3) The Central Government shall ensure that the provisions of developmental requirements of food, fibre, education, health, communication and the like of</p>		<p>(3) Specific legislation on giving recognition to age old occupation and other traditional forest rights cannot be</p>

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p> <p>the forest dwelling Scheduled Tribes and other traditional forest dwellers are met and the land requirements from the forest lands to provide such basic and essential developmental facilities in forests or in the proximity of forests shall be provided.</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p> <p>charged to guarantee other general things in such vagueness as shall ensure food, fibre, education, health, communication and the like. It is not part of Directive Principles of State Policy towards overall welfare and development of STs. The effect of such wide and sweeping rights would be that all forest dwelling communities, and persons living in and around forests, may as a legal right demand through Gram Sabhas the food, fibre, education, health, communication, etc. The proposed legislation is not intended to cover everything and to be inclusive of all developmental needs. One needs a separate legislation for this purpose, if that is the intention. The amendment introduced by the JPC in the Bill as reported, therefore, cannot be accepted.</p>
	<p>(4) Notwithstanding anything contained in the Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the government which involve felling of trees not exceeding seventy-five trees per project, namely:-</p> <p>(a) schools;</p> <p>(b) dispensary or hospital;</p> <p>(c) anganwadis;</p> <p>(d) fair price shops;</p> <p>(e) electric and telecommunication lines;</p> <p>(f) tanks and other minor water bodies;</p> <p>(g) drinking water supply and water pipelines;</p> <p>(h) water or rain water harvesting structures;</p>	<p>(4) The general approval has already been given for a period of two years by the Ministry of Environment & Forests under the Forest (Conservation) Act, 1980 allowing these activities. The intention of JPC is to give legislative backing to such exemptions meant for creating basic infrastructure for habitations inside forests. May be accepted.</p>

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	<p>(i) minor irrigation canals;</p> <p>(j) non-conventional source of energy;</p> <p>(k) skill upgradation or vocational training centres;</p> <p>(l) roads; and</p> <p>(m) community centres;</p> <p><u>Provided such diversion of forest land shall be allowed only if-</u></p> <p>(i) <u>the forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and</u></p> <p>(ii) <u>the clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.</u></p>	<p>(5) Notwithstanding any custom or usage, the female members of the Scheduled Tribes and Other Traditional Forest Dwellers shall have equal rights vested, with special provision for female-headed households and widows.</p>	<p>(5) The provision in this clause is redundant in view of sub-clause (4) of clause 1 of the Bill as reported. Therefore, amendment introduced by the JPC in the Bill as reported cannot be accepted here.</p>
3.	Rights of Forest Dwelling Scheduled Tribes 4. (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,	<p>Recognition, restoration and vesting of forest rights and related matters</p> <p>4. (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-</p> <p>(a) the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights</p>	

S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
		<p><u>said species and their habitat;</u></p> <p><u>(c) the State Government, after obtaining the consent of all the holders of rights and in consultation with independent ecological and social scientists familiar with the area, has concluded that other reasonable options such as co-existence, where even in critical wildlife habitats, human use is not incompatible with conservation values, or where some changes in resource use patterns could make them compatible with conservation values, or partial relocation, where complete relocation is not necessary for the mitigation of such impacts are not available;</u></p> <p><u>(d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfills the requirements of such affected individuals and communities given in the National Relief and Rehabilitation Policy of the Central Government;</u></p> <p><u>(e) the free informed consent of the Gram Sabhas in the area concerned, and of the concerned individuals, to the resettlement and to the package provided has been obtained in writing;</u></p> <p><u>(f) no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package;</u></p> <p><u>Provided that the critical wildlife habitats from which rights holders are thus relocated for purposes of wildlife conservation shall not be subsequently diverted by the State Government or the Central</u></p>	<p>The amendments introduced by the JPC in the Bill as reported may, therefore, be accepted with following deletions and additions :-</p> <p>2(b) - Deletion of the words "and with the consent of all the right holders" used after the words "the Wildlife (Protection) Act, 1972".</p> <p>2(c) - Deletion of the words "after obtaining the consent of all the holders of rights and" after the words "the State Government" in the opening line.</p> <p>2(d) - Deletion of the words "National Relief and Rehabilitation" after the words "such affected individuals and communities given in the" and addition of words "relevant legislation" before the words "Policy of the Central Government".</p> <p>2(e) - Deletion of the words "and of the concerned individuals" after the words "in the area concerned" and addition of the words "proposed to be" before the words "provided has been obtained in writing".</p> <p>2(f) - The acquisition of land and displacement therefrom is a process completed after following due legal process. The</p>

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p> <p><u>Government or any other entity for other uses.</u></p> <p><u>Provided further that the community shall have the right to their original habitation if unsatisfied with the rehabilitation.</u></p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p> <p>rights once extinguished legally and as per safeguards provided in this Bill as well, the right to return cannot be granted on the basis of subjective satisfaction. The proviso "Provided further that the community shall have the right to their original habitation if unsatisfied with the rehabilitation", therefore, needs deletion.</p> <p>The amendments introduced by the JPC in the Bill as reported, therefore, cannot be accepted.</p>
<p>(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 Scheduled Tribes or tribal communities had occupied forest land before the 25th day of October, 1980.</p>	<p>(3) The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.</p>	<p>(3) The Bill as introduced provides for a cut off date of 25.10.80 (i.e., the date of coming into effect of the Forest (Conservation) Act, 1980) for recognition and vesting of forest rights in forest dwelling Scheduled Tribes in respect of occupation of forest land. Whereas the Bill as reported provides for the cut off date of 13.12.2005 (i.e. the date of introduction of the Bill in the Lok Sabha) for recognition and vesting of forest rights to the forest dwelling Scheduled Tribes and to other traditional forest dwellers in respect of occupation of forest land.</p> <p>The position in this regard is as under:</p> <p>➤ The Bill originally prepared by the Ministry had provided for the cut off date of 25.10.1980 or such other date as the Central Government may, by</p>

S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2006, as reported by the Committee of Parliament (hereinafter called the "Bill as reported")	Key differences between the "Bill as reported" and the comments of the Ministry of Tribal Affairs	Notations in the Official Gazette, specify for recognition and vesting of forest rights under the Act.
			<ul style="list-style-type: none"> ➤ The Ministry of Environment & Forests were, however, not agreeable to keep the cut off date open ended on the ground that they had filed an affidavit in the Supreme Court clarifying that 25.10.1980 would be the cut off date for settlement of rights of tribals and that the open ended date proposed in the Bill would be against the interest of forest conservation. ➤ On the insistence of the Ministry of Environment & Forests and as per the decision taken in a "One Day Consultation Workshop" on 28.10.2005 with the Wildlife Experts/Environmentalists and Experts on Tribal Rights, the flexibility in the cut off date was retained. ➤ The rationale behind fixing the cut off date of 25.10.1980 was that the Forest (Conservation) Act, 1980 had come into effect on this date. The cut off date of 25.10.1980 has thus been recognised in practice as the cut off date. 	

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p> <p>➤ The Ministry of Environment & Forests had issued a circular on 5.2.2004, extending the cut off date till 31.12.1993 for regularization of the rights, but the Supreme Court has stayed the operation of this Order resulting into as the Ministry of Environment & Forests stated, halt of the entire process of recognition even of prior to 1980. Hence, the Bill also did not provide for the cut off date of 31.12.1993.</p> <p>➤ Providing any recent cut off date, such as, 13.12.2005, census or from the date of passing of the Bill would lead to fresh encroachment as it would be much easier to generate evidence for proving occupation as recent as 13.12.2005 as against the cut off date of 25.10.1980.</p> <p>➤ The Bill as introduced in any case seeks to undo historical injustice existing much prior to 25.10.1980. Moreover, the Bill as introduced is for undoing the historical injustice and recognizing age-old occupations and, therefore, in case of STs who are scheduled for the area, it did not make very material difference.</p>
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S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
			<p>It would not be desirable to prescribe the cut off date of 13.12.2005 for recognition and vesting of forest rights. Or the following reasons:</p> <ul style="list-style-type: none"> (i) This cut off date would be too recent; (ii) By recognizing and vesting forest rights in respect of forest land in occupation as on 13.12.2005, we would not be undoing any historical injustice done to the forest dwelling Scheduled Tribes. (iii) All people who have encroached land till 13.12.2005 will be demanding recognition of their rights over such encroached land; (iv) The Courts have also accepted 25.10.80 as the cut off date for regularisation of encroachment over forest land. (v) Evidence in support of the claim over forest land can be created when the cut off date is so recent and when Gram Sabha is to decide claims where individuals may easily support each others evidence created to justify occupation as recent as 13.12.2005. <p>The amendments introduced by the JPC in the Bill as</p>

S. No.			
S.	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
	<p>(3) A right conferred by sub-section (1) shall be heritable but not alienable or transferable.</p>	<p>(4) A right conferred by sub-section (1) shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of the single head in the case of a household headed by a single person and in the absence of a direct heir, the heritable right shall pass on to the next of kin.</p>	<p>(4) May be accepted.</p>
	<p>(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.</p>	<p>(5) Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is completed**</p>	<p>(5) May be accepted with deletion of the words "or other traditional forest dweller".</p>
	<p>(5) Where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of section 3, -</p> <p>(i) such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of two and one-half hectares per nuclear family of a forest dwelling Scheduled Tribe;</p> <p>(ii) the title to the extent given shall be registered jointly in the name</p>	<p>(6) Where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation.</p>	<p>(6) The Bill as introduced had provided for a ceiling of 2.5 hectares of forest land per nuclear family of a forest dwelling Scheduled Tribe to restrict grabbing by elites even within the tribal communities and also because most State forest village rules had recognised this basic unit of land for subsistence on forest land. This ceiling needs to be restricted to 2.5 hectares. Otherwise, it may lead to disastrous consequences as the Bill is reported recommends actual occupation of land for all with effect from 13.12.2005. This will lead to fresh encroachments and a kind of race to grab maximum especially when evidence required would be as recent as 13.12.2005 and decision would</p>

<p>S. No.</p>	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
<p>of both the spouses in case of married persons and in the name of the single head in case of single member household;</p>	<p>(6) The forest rights recognized and vested by sub-section (1) in the forest dwelling Scheduled Tribe shall -</p> <p>(i) be exercised only to the extent vested;</p> <p>(ii) include the responsibility and authority of protection, conservation with sustainable use and regeneration of adjoining forests in which community rights have been vested.</p>	<p>(7) The amendments introduced by the JPC in the Bill as reported to include "other traditional forest dwellers" should not be accepted. However, the deletion of the clause 6(ii) in the Bill as introduced, as suggested by the JPC may be accepted.</p>	<p>be taken by Gram Sabhas where mutual support to each others claims certainly.</p>
<p>(7) In case any forest right recognised and vested by sub-section (1) is disputed by any State Government or local authority, the competent authority shall consider the records prepared at the time of</p>	<p>(8) Where rights are being claimed under clause (e) of section 3 by communities that partially or fully practise shifting cultivation, such community shall have full decision-making powers over land use on any land that falls within the traditional boundaries or range of that community.</p>	<p>The amendments introduced by the JPC in the Bill as reported, therefore, should not be accepted.</p>	<p>(8) Shifting cultivation was not specifically recognised as a forest right and it is still not so proposed by the Joint Parliamentary Committee to include this as a forest right in Section 3. In this case, this addition here is unnecessary as deciding authority will take care of traditional rights as in section 3 of the Bill.</p>

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
<p>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:</p> <p>Provided that no order 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.</p> <p>(8) The forest rights shall be conferred free of all encumbrances, including requirements of net present value and compensatory afforestation for diversion of forest land.</p>	<p>(9) The forest rights shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified in this Act.</p> <p>(10) The forest rights recognized and vested under this Act shall include the right of land to forest dwelling Scheduled Tribes and other traditional forest dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to State development interventions, and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.</p>	<p>(9) Should be accepted.</p> <p>(10) This should be considered only for STs. Therefore, the amendments introduced by the JPC in the Bill as reported may be accepted by deleting the words "and other traditional forest dwellers" occurring in this clause.</p>
<p>4.</p> <p>Duties of holders of forest rights</p> <p>5. The holder of any forest right under this Act shall -</p>	<p>Duties of holders of forest rights and responsibilities of Government</p> <p>5. (1) The Gram Sabha and village level institutions in areas where there are holders of any forest right under this Act are empowered to-</p>	<p>The Bill as introduced had cast certain duties on the holders of forest rights for protection of wildlife, forests, bio-diversity, adjoining catchment areas, water sources other ecologically</p>

S. No.	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p> <p>(a) save for those activities that are permitted under such rights, not indulge in any activity that adversely affects the wild animal, forest and the biodiversity in the local area including clearing of forest land or trees which have grown naturally on that land for any non-forestry purposes including reafforestation;</p> <p>(b) ensure that adjoining catchments areas, water sources and other ecologically sensitive areas are adequately protected;</p> <p>(c) ensure that the habitat of forest dwelling Scheduled Tribes is preserved from any form of destructive practices affecting their cultural and natural heritage;</p> <p>(d) inform the Gram Sabha and to the forest authorities any activity in violation of any of the provisions of -</p> <p>(i) the Wildlife Protection Act, 1972; or</p> <p>(ii) the Forest (Conservation) Act, 1980; or</p> <p>(iii) the Biological Diversity Act, 2002;</p> <p>(e) ensure that the decisions taken in the Gram Sabha to regulate access to</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p> <p>(a) protect the wild life, forest and biodiversity</p> <p>(b) ensure that adjoining catchments area, water sources and other ecological sensitive areas adequately protected;</p> <p>(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage;</p> <p>(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with;</p> <p>(e) ensure that when forest dwelling Scheduled Tribes or other traditional forest dwellers seek to sell the harvested minor forest produce they may be allowed to sell to any person of their choice but the Government shall offer them adequate and fair minimum support price and take steps to protect them from middlemen and traders;</p>	<p>Key differences between the "Bill as introduced" and "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
			<p>sensitive areas, etc. whereas the Bill as reported provides for the empowerment of the Gram Sabha and village level institutions in areas where there are holders of any forest rights to undertake such activities. The Bill as reported also casts certain responsibilities on the Government for protecting the forest rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers.</p> <p>The amendments introduced by the JPC in the Bill as reported (should, therefore, be accepted by deleting the words "and other traditional forest dwellers" occurring in this clause.</p> <p>(c) This clause is not necessary as this is an Act and not a Policy. Ownership over minor forest produce as given in section 3 of the Bill includes the power to sell. Whatever procedural details are required for this purpose, the same can be provided in the Rules to be framed after enactment of the Bill. The issue of providing minimum support price cannot be decided through substantive enabling provision in this legislation.</p> <p>Therefore, the amendments introduced by the JPC in the Bill as reported should not be accepted.</p>

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005</p> <p><i>(hereinafter called the "Bill as introduced")</i></p> <p>community forest resource and stop any activity which adversely affects the wild animals, forest and biodiversity are complied with.</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament</p> <p><i>(hereinafter called the "Bill as reported")</i></p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
	<p>(2) The Government shall ensure that the forest dwelling Scheduled Tribes and other traditional forest dwellers shall not be denied any benefit arising out of any explorations, exploitations and use of natural resources and shall also adequately compensate the forest dwelling Scheduled Tribes and other traditional forest dwellers for any damages caused by such activities.</p>	<p>(2) This clause is vague. It is an Act and not a Policy. This section of the Bill is about the duties of holders of forest rights and not about the responsibilities of the Government.</p> <p>Therefore, the amendment introduced by the JPC in the Bill as reported should not be accepted.</p>
	<p>(3) The Government shall protect the forest rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers under this Act and shall prohibit any one who does not belong to a forest dwelling Scheduled Tribe or who is not an other traditional forest dweller, such as an individual agency, corporation or institution from violating the provisions of this Act and take punitive action against them for such violation.</p>	<p>(3) This clause is not necessary as this section is about duties.</p> <p>Therefore, the amendment introduced by the JPC in the Bill as reported should not be accepted.</p>
	<p>(4) The Government shall protect the right to access biodiversity and the community right to intellectual and traditional knowledge related to forest biodiversity and cultural diversity.</p>	<p>(4) This clause is not necessary as this section is about duties. In any case, this is already covered as a right.</p> <p>Therefore, the amendment introduced by the JPC in the Bill as reported should not be accepted.</p>
	<p>(5) No forest land shall be acquired or diverted that may adversely affect the rights recognized under this Act without prior intimation to and prior consent of the</p>	<p>(5) All this is part of NPPR and Rehabilitation Policy or PESA in Schedule V Areas. This Act cannot become an</p>

<p>S. No.</p>	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
		<p>Gram Sabha and the affected persons without paying adequate and equal compensation on the principle of "cultivable land for land" and proper rehabilitation: Provided that in cases where the Sixth Schedule to the Constitution is applicable, its provisions regarding land acquisition shall prevail over the provisions of this Act.</p>	<p>...ment to impinge on every aspect concerning Scheduled Tribes like food, education, livelihood, rehabilitation. The purpose of the Act is to recognise and vest the forest rights of persons occupying in forest land in forest dwelling Scheduled Tribes who have been residing in such forests for generations and whose rights could not be recorded, thereby resulting in historical injustice to them. Once rights are created, the holder would be entitled to the remedy as provided in the relevant Acts/regulation/policy whenever or for that matter anyone else wishes to infringe on such vested rights.</p> <p>Therefore, the amendment introduced by the JPC in the Bill as reported should not be accepted.</p>
<p>5.</p>	<p>Authorities and Procedure for Vesting of Forest Rights</p> <p>6. (1) The Gram Sabha shall be the authority for determining the process for individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes within the local limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.</p>	<p>Authorities and Procedure for Vesting of Forest Rights</p> <p>6. (1) The Gram Sabha shall be the authority for determining the nature and extent of individual or community forest rights, or both, that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers within the local and customary limits of its jurisdiction under this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of such rights and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.</p>	<p>The Bill as introduced designates the Gram Sabha as the competent authority for initiating the process for determining the nature and extent of individual or community forest rights or both by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of such rights, passing a resolution to that effect and forwarding the same to the Sub-Divisional Level Committee. The Gram Sabha has thus been</p>

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (<i>hereinafter called the "Bill as introduced"</i>)</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (<i>hereinafter called the "Bill as reported"</i>)</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p> <p>made the authority to make the first recommendation in this regard to the Sub Divisional Level Committee. The Bill as reported on the other hand makes the Gram Sabha as the final authority for preparing the record of forest rights.</p> <p>It may be mentioned that the involvement of Gram Sabha, a democratic institution at the grass root level, for initiating the process of recognition of forest rights of individuals/community was in tune with the provisions of the PESA Act, 1996 and aims at empowering the local communities in management of their natural resources. The Sub Divisional Level Committee and the District Level Committee were assigned the work relating to the examination of the resolution passed by the Gram Sabha and preparation and finalisation of the record of forest rights thereafter on the basis of the relevant records and the evidences produced. This was because the preparation of the record of forest rights and final approval of the record of the forest rights, based on the recommendation of Gram Sabha, are quasi judicial functions involving de-notification of forest land, changes in Revenue records, etc. which only be performed by officials to ensure accountability. Making the Gram Sabha as the final authority for preparing of record of forest rights would not be advisable as the Gram Sabha may have several non-tribal members</p>
<p>Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.</p> <p>(2) Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider and dispose of such petition:</p> <p>Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha:</p> <p>Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.</p>	<p>(2) Any potential rights holder aggrieved by the resolution of the Gram Sabha may submit an application to the Sub-Divisional Level Committee constituted under sub-section (3) and the Sub-Divisional Level Committee shall consider * such application and communicate recommendations of an advisory nature to the Gram Sabha within a period of sixty days after which the Gram Sabha shall make a decision and pass a final resolution as per the decision within ninety days:</p> <p>Provided that every such * application to the Sub-Divisional Level Committee shall be preferred within sixty days from the date of passing of the resolution by the Gram Sabha.</p> <p>***</p>	
<p>(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for a final decision.</p>	<p>(3) The State Government shall constitute a Sub-Divisional Level Committee to examine the resolutions passed by the Gram Sabha and to make recommendations, if any, to the Gram Sabha which shall then make its final decision and prepare the records of forest rights and forward it** to the District Level Committee for a final decision.</p>	
<p>(4) Any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the</p>	<p>(4) Any person aggrieved by the decision of the Gram Sabha may make an application to the Sub-Divisional Level Committee which shall send its</p>	

S. No.	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p> <p>District Level Committee within sixty days from the date of decision of the Sub-Divisional Level Committee and the District Level Committee shall consider and dispose of such petition:</p> <p>Provided that no petition shall be preferred directly before the District Level Committee against the resolution of the Gram Sabha unless the same has been preferred before and considered by the Sub-Divisional Level Committee:</p> <p>Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Committee of Parliament (hereinafter called the "Bill as reported")</p> <p>recommendations to the Gram Sabha for a final decision.</p> <p>(5) Any person aggrieved by the final decision of the Gram Sabha may prefer a petition to the District Level Committee within sixty days from the date of the decision of the Gram Sabha under sub-section (4) and the District Level Committee shall consider and dispose of such petition.</p> <p>Provided that no such petition shall be preferred directly before the District Level Committee unless the same has been preferred before and commented upon by the Sub-Divisional Level Committee by way of recommendations made to the Gram Sabha and the Gram Sabha has made its final decision through a resolution.</p> <p>Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case.</p> <p>(6) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by ** the Gram Sabha.</p> <p>(7) The decision of the District Level Committee on the record of forest rights, shall be final and binding.</p> <p>(8) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such records and reports as may be called for by that agency.</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>	<p>whose interests would conflict with those of the tribals.</p> <p>The Bill as reported indicates the composition of the Sub-Divisional Level Committee and the State Level Monitoring Committee, the functions of these Committees and the procedure to be followed in discharge of such functions, the nature of evidence to be accepted for recognition and vesting of the forest rights, etc., whereas the Bill introduced by the Ministry did not contain such elaborate provisions. The Bill as introduced had envisaged framing of separate Rules for these purposes as these are the matters of details to be prepared keeping different codal/statute position of different States in mind.</p> <p>The following comments are made on the changes made by the Joint Committee:</p> <p>(i) The Joint Committee has deleted the term "as may be prescribed" mentioned in clause 6(1) of the Bill as introduced. It is necessary to include this term to enable the procedure to be prescribed in the Rules to be framed after enactment of the Bill.</p> <p>(ii) As regards clause 6(2) of the Bill as reported, it</p>
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S. No.			Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p> <p style="text-align: center;">*** *** ***</p> <p>(2) The composition of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall be as follows:-</p> <p>(1) The Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee shall have at least one-half of its total members from the forest dwelling Scheduled Tribes with provisions for adequate inclusion of elected representatives and disadvantaged communities on the committees:</p> <p>(i) At least one-third of the non-official members of the Committees constituted under this section shall be women.</p> <p>(iii) The Committee shall also have officers of the departments of Revenue, Tribal Affairs and Forest of the concerned State Government of the appropriate level as may be decided by the State Government:</p> <p>(iv) All the Committees constituted under this section shall be headed by the official representing the revenue department.</p> <p>(v) The number of members of the Sub-Divisional Level Committee, District Level Committee and the State Level Monitoring Committee and the rules of procedure to be followed by them shall be such as may be prescribed.</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p> <p>-may be mentioned that the Sub Divisional Level Committee shall consist of Sub Divisional Magistrate and cannot be expected to send recommendations of an advisory nature to the Gram Sabha that too where Gram Sabha may overrule such recommendations. Administratively it does not seem appropriate that Sub Divisional Level Committees would be sending advisories to the Gram Sabhas.</p> <p>(iii) The Joint Committee has deleted the second proviso below clause 6(2) of the Bill as introduced. It would not be proper to delete this clause in view of the principle of natural justice. As regards sub clauses 6(3) and 6(4) of the Bill as reported, it may be mentioned that the Gram Sabha is serviced by officials much below the Sub Divisional Level Officers and it is not administratively feasible for Sub Divisional Level Committee to get overruled by a body serviced by Village level functioning of the Government.</p> <p>(v) As regards sub-clause 6(5) of the Bill as reported, it may be mentioned that there are hundreds of villages in a district and district</p>
	<p>(5) The State Government shall constitute a District Level Committee to consider and finally approve the record of forest rights prepared by the Sub-Divisional Level Committee.</p>		
	<p>(6) The decision of the District Level Committee on the record of forest right, shall be final and binding.</p>		
	<p>(7) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called for by that agency.</p>		
	<p>(8) The Sub-Divisional Level Committee, the District Level Committee, and the State Level Monitoring Committee shall consist of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government at the appropriate level as may be prescribed.</p>		
	<p>(9) The composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be such as may be prescribed.</p>		

S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
	<p><u>(10) The functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions shall be as follows:-</u></p> <p><u>(a) the Sub-Divisional Level Committee shall-</u></p> <p><u>(i) receive applications against the decisions of the Gram Sabha and send its recommendations on them to the Gram Sabha as per the procedure as may be prescribed;</u></p> <p><u>(ii) facilitate the organising of multi-Gram Sabha meetings for deciding on boundaries of shared community forest resources and resolving disputes between them over such boundaries;</u></p> <p><u>(iii) initiate Gram Sabha meetings in cases where the Gram Sabhas fail to discharge their responsibilities; and</u></p> <p><u>(iv) receive communications from the Gram Sabha and make related recommendations, if any;</u></p> <p><u>Provided that during the process of investigation of claims by Gram Sabhas, the Sub-Divisional Level Committee may ensure information dissemination and capacity building and training support in its area of jurisdiction on behalf of the District Level Committee.</u></p> <p><u>(b) The District Level Committee shall-</u></p> <p><u>(i) ensure that the recognised rights are</u></p>	<p>level committees) proposed to be headed by District Collector cannot be expected to hear appeals directly. In any case all Forest and Revenue records are at the tehsil/taluk level and Sub Divisional Level Committee is the appropriate tier for appeal and recommending on the resolution of the Gram Sabha to District Level Committee along with simultaneous corresponding correction/entries in revenue and forest records, which in many cases as per the provisions of the State laws requires orders of SDM or Tehsildar at different levels.</p> <p>Gram Sabhas cannot take final decision in land matters, which have to be governed by State laws for necessary corrections if Sub Divisional Level Committee and District Level Committees decides to settle forest rights in favour of an individual or a community.</p> <p>(vi) As regards clause 6(6) of the Bill as reported, it is felt that the words "by the Sub Divisional Level Committee" as mentioned in the Bill as introduced should remain.</p> <p>(vii) The Joint Committee has deleted clause 6(8) of the Bill as introduced. This clause should be</p>	

S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
	<p>entered in the revenue records and forest records within three months of their finalisation;</p> <p>(ii) during the process of recognition of rights, ensure that the Sub-Divisional Level Committees and the Gram Sabhas in their districts receive all necessary support for widespread information dissemination in local languages and through traditional communication channels about the provisions of this Act and the procedure to be followed for filing of claims;</p> <p>(iii) organise training and capacity building support for members of Sub-Divisional Level Committees, Gram Sabhas, civil society organizations and representatives and other local stakeholders;</p> <p>(iv) ensure that existing revenue and forest records, maps, other required documents are made available to the Sub-Divisional Level Committees and the Gram Sabhas, as required; and</p> <p>(v) ensure that the Gram Sabhas receive technical support when requested for surveyors and cartographers for preparing maps of the areas over which rights are claimed.</p> <p>(c) State-Level Monitoring Committee shall-</p> <p>(1) ensure that the constitution and functioning of the Sub-Divisional Level Committees and the District Level Committees</p>	<p>retained. The Sub Divisional Level Committees, the District Level Committee and the State Level Monitoring Committees may at best have one male and one female reputed ST members from the civil society.</p> <p>(viii) The composition of the Sub Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee as mentioned in sub clause 6(9) of the Bill as reported should be decided in the Rules as provided in the Bill introduced by the Ministry. Likewise, the functions of these Committees as mentioned in sub clause 6(10) of the Bill as reported should also be in the Rules to be published after enactment of the Bill.</p> <p>(ix) As regards sub clause 6(11) of the Bill as reported, it is felt that the disputes between two or more Gram Sabhas over questions of shared forest boundaries or of community rights should be resolved at the level of Sub Divisional Level Committee as it might lead to serious conflicts within Gram Sabhas. All these procedures should go to Rules with flexibility in view of different situations in different States.</p>	

S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
	referred to in this section is completed within six months of the enactment of this Act; and (ii) monitor the performance of the Sub-Divisional Level Committees and the District Level Committees periodically.		(x) As regards sub clause 6(12) of the Bill as reported, it may be mentioned that the evidences acceptable in support of a claim to a right under the Act were proposed to be provided in the Rules to be framed after enactment of the Bill, which is a better option as it provides flexibility to make changes on the basis of experience. However, this Ministry would have no objection to the inclusion of the contents of this clause in the Rules, subject to the suitable additions/modifications.
	(11) For the purpose of defining the boundaries of a shared customary forest area or to resolve any dispute between two or more Gram Sabhas over questions of such shared forest boundaries or of community rights determined in a shared customary forest area under this Act, the two or more Gram Sabhas shall meet jointly within a period of sixty days of claims being made for such a shared forest area or a dispute over its boundaries becoming apparent, for the purpose of determining the boundaries and for resolving the disputes: Provided that if such a meeting fails to take place, the Sub-Divisional Level Committee shall convene such a meeting within a period of thirty days after the expiry of the said period of sixty days.		
	(12) The evidence acceptable in support of a claim to a right under this Act shall include, but not be limited to, the following, namely:—	(a) oral evidence of the community and members of the community; (b) spot verification of cultivated area, age of trees, and the like by the authority (the Gram-Sabha or Committee) concerned;	
	(c) improvements made to the land such as		

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p> <p>bunds, check dams and the like;</p> <p>(d) documentary evidence such as primary evidence, offence reports, prior paltas or leases, house tax receipts and the like;</p> <p>(e) official or independent records such as gazetteers, forest enquiry reports, anthropological studies or literature, surveys and maps;</p> <p>(f) affidavits from the claimant or his or her neighbours and other community members;</p> <p>(g) official records of rights and permitted uses under Princely States, zamindars and the like; and</p> <p>(h) documentary evidence from any prior research or documentation of reputed institutions or individuals, including reports, publications of renowned anthropologists and reports of the Anthropological Survey of India.</p> <p>7. The Gram Sabhas may at any time constitute one or more Committees or other institutions consisting solely of members of that Gram Sabha with representation of women, to consider matters that fall within the purview of the Gram Sabha under this Act and recommend a course of action to the Gram Sabha:</p> <p>Provided that the powers of such Committees or institutions shall be purely advisory in nature.</p> <p>8. Any inalienable and primarily forest-dependent encroacher shall be offered, in situ rehabilitation through employment in afforestation or in other forest-</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p> <p>7. As regards clause 7 of the Bill reported by the Joint Committee, it may be mentioned that the functions of the Gram Sabhas are governed by the Panchayats Acts of various States.</p> <p>Therefore, the amendments introduced by the JPC in the Bill as reported should not be accepted.</p> <p>8. As regards clause 8 of the Bill as reported, this clause is not acceptable to the Ministry. In case, in-situ rehabilitation</p>
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S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")	The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
		based activity.	through employment in afforestation or in other forest based activity is provided to ineligible and forest dependent encroachers also, then everybody would be covered, which would not be as per the objective of the proposed Bill. The Bill does not intend to assign fresh land or settle people through this Act.
			The amendment introduced by the JPC in the Bill as reported, therefore, should not be accepted and the original provisions as in the Bill as introduced need to be retained. However, one male and one female reputed ST member from the civil society could be included in the Sub Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee. Further, the evidences suggested in clause 6(12) of the Bill as reported could be included in the Rules to be framed after the enactment of the Bill.
6.	Offences and Penalties	Offences and Penalties	The Bill introduced by the Ministry had envisaged imposition of certain penalties on the holders of forest rights in certain circumstances, whereas the Bill reported by the Joint Committee does not contain any such provisions. The Bill reported by the Joint Committee provides for penalties only against the members or officers of authorities and committees
	7. If any holder of any forest right conferred by or under this Act or any other person -		
	(i) contravenes or abets the contravention of any of the provisions of this Act; or		
	(ii) commits a breach of any of the		

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
<p>conditions of the forest right vested or recognised under this Act; or</p> <p>(iii) engages in unsustainable use of forest or forest produce; or</p> <p>(iv) kills any wild animal or destroys forests or any other aspect of biodiversity; or</p> <p>(v) fells trees for any commercial purpose,</p> <p>he shall be guilty of an offence against this Act and be punished with fine which may extend to one thousand rupees and in case the offence is committed more than once, the forest rights of the person who has committed the offence for the second or subsequent time shall be derecognised for such period as the District Level Committee, on the recommendation of the Gram Sabha, may decide:</p> <p>Provided that the penalties under this section shall be in addition to and not in derogation of imposition of any penalty under any other law for the time being in force.</p> <p>8. Where any authority or Committee or Officer or member of such authority or Committee contravenes any provision of this Act or any rule made thereunder concerning recognition of forest rights, it,</p>	<p>2. Where any authority or Committee or officer or member of such authority or Committee contravenes any provisions of this Act or any rule made thereunder concerning recognition of forest rights, it, or they, shall be deemed to be guilty of an offence under this Act and</p>	<p>under the Act.</p> <p>May be accepted.</p>

S. No.	<p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p> <p>or they, shall be deemed to be guilty of an offence under this Act and shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:</p> <p>Provided that nothing contained in this sub-section shall render any member of the authority or Committee 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.</p> <p>9. No court shall take cognizance of any offence under section 8, 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 Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p> <p>shall be liable to be proceeded against and punished with fine which may extend to one thousand rupees:</p> <p>Provided that nothing contained in this sub-section shall render any member of the authority or Committee 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.</p> <p>10. No court shall take cognizance of any offence under section 9, 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 Level Monitoring Committee and the State Level Monitoring Committee has not proceeded against such authority.</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
7.	<p>Miscellaneous</p> <p>10. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.</p>	<p>Miscellaneous</p> <p>11. Every member of the authorities referred to in Chapter IV and every other officer exercising any of the powers conferred by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.</p>	

S. No.	The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 <i>(hereinafter called the "Bill as introduced")</i>	The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament <i>(hereinafter called the "Bill as reported")</i>	Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs
	<p>11. (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.</p> <p>(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.</p>	<p>12. (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 by or under this Act.</p> <p>(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.</p>	
	<p>(3) No suit or other legal proceeding shall lie against any authority 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.</p> <p>12. 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.</p>	<p>(3) No suit or other legal proceeding shall lie against any 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.</p> <p>13. 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.</p>	
	<p>13. In the performance of its 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.</p>	<p>14. In the performance of its duties and exercise of its 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.</p>	<p>14. The proviso below this clause is redundant since directions of the Central Government cannot go beyond the enabling Act.</p>

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14.	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.	Provided that such directions shall be consistent with the provisions of this Act and shall not result in the curtailing or abrogation of any of the rights recognised under this Act. 15. If the provisions of any other law for the time being in force or any decree, judgment, award or order of any court are in contravention to the provisions of this Act, the provisions of this Act shall prevail.	Therefore, the amendments introduced by the JPC in the Bill as reported should not be accepted.
15.	(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:- (a) the manner in which forest rights may be exercised under sub-section (1) of section 4; (b) the procedure for and the	16. (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act. (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:- (a) procedural details for implementation of the	15. The Bill introduced by the Ministry had provided that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, whereas the Bill reported by the Joint Committee provides that if the provisions of any other law for the time being in force or any decree, judgment, award or order of any court are in contravention to the provisions of this Act, the provisions of this Act shall prevail. The Ministry has no objection to this clause. May be accepted.

<p>S. No.</p> <p>The provisions of the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as introduced in the Lok Sabha on 13.12.2005 (hereinafter called the "Bill as introduced")</p>	<p>The provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, as reported by the Joint Committee of Parliament (hereinafter called the "Bill as reported")</p>	<p>Key differences between the "Bill as introduced" and the "Bill as reported" and the comments of the Ministry of Tribal Affairs</p>
<p>manner of recognition and verification of forest rights under sub-section (4) of section 4;</p> <p>(c) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommend claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;</p> <p>(d) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring under sub-section (8) of section 6;</p> <p>(e) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;</p> <p>(f) any other matter which is required to be, or may be, prescribed.</p>	<p>procedure specified in section 6,</p> <p>(b) the procedure for receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim for exercise of forest rights under sub-section (1) of section 6 and the manner of preferring a petition to the Sub-Divisional Committee under sub-section (2) of that section;</p> <p>(c) the level of officers of the departments of Revenue, Forest and Tribal Affairs of the State Government to be appointed as members of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee under sub-section (8) of section 6.</p> <p>(d) the composition and functions of the Sub-Divisional Level Committee, the District Level Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under sub-section (9) of section 6;</p> <p>(e) the number of members of the Sub-Divisional Level Committee, District Level Committee and the State Level Monitoring Committee and the procedure to be followed by the said Committees under clause (v) of sub-section (9) of section 6;</p>	<p>(e) May be accepted.</p>

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	<p>(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 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 annulment shall be without prejudice to the validity of anything previously done under that rule.</p>	<p>(g) the procedure to receive applications against the decisions of Gram Sabha and sending of the said recommendations to the Gram Sabha under sub-clause (i) of clause (a) of sub-section (1) section 6;</p> <p>(g) any other matter which is required to be, or may be, prescribed.</p> <p>(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.</p>	<p>(f) As indicated above, the Gram Sabha cannot be designated as the authority for taking final decision in land matters.</p> <p>Therefore, this amendment introduced by the JPC in the Bill as reported should not be accepted.</p>