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A prickly ACT

The Forest Right Act promises to "undo the historical injustice done to the forest-dwelling Scheduled Tribes" but doubts linger reports

RAHAT BANO



Scheduled tribes (STs) and others traditionally living in forests have, in the words of Tribal Affairs Minister, Paty Ripple Kyndiah, a "New Year gift" in the form of a Central legislation that provides for land and access rights to these communities. The rules for operationalising the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 came into effect on the first day of 2008. According to the Ministry, this Act is supposed to "undo the historical injustice done to the forest-dwelling Scheduled Tribes".

Passed unanimously by Parliament in 2006, the controversial Forest Rights Act promises the STs individual or common ownership rights over up to four hectares of land occupied by them. Other inhabitants in the woods are eligible for land rights if they have been living and using forest land or its resources for a living for the past three generations till December 13, 2005. The Act also recognises the claimant's right to collect, use and dispose of minor forest produce such as bamboo, brush wood, honey, wax, tendu or kendu leaves, medicinal plants and herbs, cane, tussar, cocoons, lac, roots and tubers as well as avail of fish and other water products. The Act tries to ensure gender equity: the rights should be registered in the name of both spouses, in case of married applicants. "Husband and

wife should be joint owners," says Kyndiah. The law also says that no ST or other forest resident will be ejected from his/her occupied site till the recognition and verification process is over. The Act names the Gram Sabha as the competent authority to start the process of determining the nature and extent of forest rights.

However, as past experience with laws like the Provisions of Panchayats (Extension to the Scheduled Areas) Act 1996 or PESA shows, doubts linger among a section of experts over whether the new statute will toot in glad tidings for the target groups or further erode the environment. One prickly issue is that there are laws already sitting in rulebooks that promise rights, except of land ownership, to tribal and forest dwellers. Section 28 of Indian Forest Act 1927 allows for the formation of village-forests. "Why not apply that?" asks activist Pratibha Pande.

The PESA Act also empowers - on paper - the villagers. "Every Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources, and the customary mode of dispute resolution," says Section 4 (d). And Section 4 (m) (ii) talks of giving Gram Sabhas the ownership of minor forest produce. PESA's Section 4 (j) says that Panchayats should plan and manage minor water bodies. But PESA, applicable in nine states including Bihar, Chhattisgarh, Orissa, Jhark-

hand, Karnataka and Andhra Pradesh, has remained mostly on paper.

Second, there are incompatible provisions in legislations such as the Forest Act 1927 and Excise Acts, says Rakesh Tandon, President of a Delhi-based research and advocacy group. For example, a guard will follow the Forest Act 1927's provisions on reserved greens, says Tandon. "Unless they are changed, he will not recognise the Tribal Act. This is like having the Right to Information as well as the Official Secrets Act." Third, under law, a land with minerals belongs to the respective state government, which grants mineral concessions including mining leases. "Fourth, the jurisdiction of minor forest produce — different states have different notifications and procedures for usage. These need to be aligned to the new Act. Changes in other Acts have to be made. The government has to give specific orders indicating changes in the jurisdiction and procedures of other Acts. This is a huge exercise." Tandon says that unless this happens, "different agencies will be operating with conflicting provisions, which will make (the new Act's) implementation difficult."

The Forest Rights legislation itself suggests that it will only add to existing statutes. Section 13 states, "Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, 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." However, the Minister says that being a Central law, this will prevail over state Acts. Tandon counters this saying that is always stated so and clashing Acts have to be suitably modified.

On what happens if a dweller occupies mineral-rich land, Kyndiah says, "It's up to the state government how they deal with it. If the state government takes the land, they will get compensation." And he quickly adds, "But nothing should be done by force. It should be voluntary."

The target constituency of Scheduled Tribes makes up 8.2 per cent (84,326,240) of India's population. Though there is no official figure of the number of people the Act might cover, experts raise another significant fear: rights-holders would over-exploit the already-stressed forests, putting biodiversity at risk and affecting groundwater replenishment. Says Kyndiah, "We are concerned about it. Right from the preamble, it talks about conservation. That will be done. The forest department will do it. We are working hand in hand with the forest department." Moreover, he asserts, "Tribal people are pro-diversity, pro-environment and pro-forest. They live in the forest, earn from the forest." Dr. Bachittar Singh, Joint Secretary, Ministry of Tribal Affairs, points out that the Act contains the rights as well as duties [also

mentioned in 4 (e) of the notified rules] of STs and other forest dwellers. The new legislation does say that rights-holders should make "sustainable use" of the resources, as indicated in the Biological Diversity Act, 2002. Section 2 (c) of this Act says, "'sustainable use' means the use of components of biological diversity in such a manner and at such rate that does not lead to the long term decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations."

Further, according to the Forest Rights Act, the rights are hereditary but not transferable. But what if a rights-holder sells the land through a Power of Attorney. All Singh says is that this would be "illegal". So, who will keep an eye on the ground to prevent the abuse of rights and resources and how? Kyndiah says that the Ministry will issue guidelines for the "effective implementation" of the Act. "We will be the watchdog ... If there is any wrongful implementation, we will act as the watchdog," says the Minister. Says Singh, "There will be a mechanism which will be worked out. The Ministry of Tribal Affairs, as a nodal agency, can issue instructions under (sections 11 and 12 of) this Act to cover such things."

Finally, given the scope for manipulation and abuse, there is hardly any pressure on officers to prevent the over-exploitation of resources and other illegalities, says Pande. The Forest Rights Act prescribes only a fine of up to Rs. 1,000 on an

authority, committee or officer or member breaching its rule. According to Singh, the amount will be a deterrent. But Pande insists, "The accountability of bureaucrats has to be brought in. Confidential reports should mention (for example) this encroachment, bungling or fire happened in his area." About this, the Minister says that the RTI Act is available as a recourse.

Eventually, according to Pande, only the powerful tribals and other dwellers will bag the rights while the weak ones will be side-



ernment should buy the land." A Mumbai-based environmental activist suggests a "win-win" solution—that of carbon trading that can incentivise the forest dweller to protect the environment. "Take a tribal. He's doing shifting cultivation. If you use carbon credits, the tribal earns Rs. 10,000 per hectare per year by protecting the biodiversity and the forest," elaborates Debi Goenka in a telephonic interview.

Regardless of the leanings in the debate, there is a case for updating the rule-book — just look at the penalties for trespassing in a reserved/protected forest, in the Forest Act:

"...For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow, or heifer one rupee

For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid eight annas (sic)."

"bano@hindustantimes.com

tracked. She suggests that state governments should implement the PESA Act, delineate forest boundaries correctly and use satellite imagery for mapping to ensure that the applicant is the genuine owner of the land. Further she says, "A lot of youngsters want to move on or work in a factory Give the person a good market price for the land. Only the gov-