

Legislative Brief

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

The Bill was introduced in the Lok Sabha on December 13, 2005.

The Joint Parliamentary Committee report is scheduled to be submitted by the last day of Budget Session, 2006.

Recent Briefs:
The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005
April 4, 2006

The Petroleum and Natural Gas Regulatory Board Bill, 2005
March 29, 2006

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Highlights of the Bill

- ◆ The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 seeks to recognise forest rights of forest dwelling Scheduled Tribes (FDSTs) who have been occupying the land before October 25, 1980.
- ◆ An FDST nuclear family would be entitled to the land currently occupied subject to a maximum of 2.5 hectares. The land may be allocated in all forests including core areas of National Parks and Sanctuaries.
- ◆ In core areas, an FDST would be given provisional land rights for five years, within which period he would be relocated and compensated. If the relocation does not take place within five years, he gets permanent right over the land.
- ◆ The Bill outlines 12 forest rights which include the right to live in the forest, to self cultivate, and to use minor forest produce. Activities such as hunting and trapping are prohibited.
- ◆ The Gram Sabha is empowered to initiate the process of determining the extent of forest rights that may be given to each eligible individual or family.

Key Issues and Analysis

- ◆ There are no reliable estimates of the likely number of eligible families although the Bill proposes to vest forest land rights to FDSTs. Therefore, it is not known whether there could be significant risk to existing forest cover.
- ◆ If FDSTs in core areas are not relocated within five years, it could lead to loss of forests, which are crucial to the survival of certain species of wildlife. Large-scale relocation, on the other hand, could result in possible harassment of FDSTs.
- ◆ Communities who depend on the forest for survival and livelihood reasons, but are not forest dwellers or Scheduled Tribes, are excluded from the purview of the Bill.
- ◆ The Bill specifies October 25, 1980 as the cut-off date to determine eligibility. However, it does not clarify the kind of evidence that would be required by FDSTs to prove their occupancy.
- ◆ Terms such as "livelihood needs" have not been defined. This could lead to litigation and delay in implementation.

PART A: HIGHLIGHTS OF THE BILL

Context

The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 was drafted to fulfill the need for a comprehensive legislation to give due recognition to the forest rights of tribal communities¹. These rights were not recorded while consolidating state forests during the colonial period as well as in independent India.

Recognizing the symbiotic relationship between tribal people and forests, the National Forest Policy, 1988², made provisions to safeguard the customary rights and interests on forest land of tribals. In order to implement these provisions, the Ministry of Environment and Forest (MoEF) issued a set of six circulars³ on September 18, 1990 which decreed that pre-1980 occupation of forest land would be eligible for regularization provided the State Government had evolved certain eligibility criteria in accordance with the local needs and conditions. The State Governments, however, failed to implement the 1990 Guidelines.

Meanwhile, a Supreme Court order⁴ led to large scale evictions by the Forest Departments of various states. Following mass protests by tribal communities, the MoEF issued supplementary guidelines on February 5, 2004 to address the issue of recognizing the legal right of tribal communities to forest land and resources. However, the Supreme Court issued a stay order on the Guidelines.

Key Features

Rights of Forest Dwelling Scheduled Tribes

- The Bill seeks to recognize and vest forest rights in forest dwelling Scheduled Tribes (FDSTs), where they are scheduled, with respect to forest land and their habitat. The forest rights in the core areas of National Parks and Sanctuaries shall be granted on provisional basis for a period of five years from the date of commencement of this Act. If the holders of such rights are not relocated within five years with due compensation, the rights would become permanent. The rights can be inherited but they are not transferable.
- The Bill delineates 12 rights of FDSTs over a variety of subjects. The rights include: (a) living in the forest for habitation or for self cultivation for livelihood, (b) community rights such as nistar*, (c) right to own, use or dispose of minor forest produce, (d) conversion of forest village to revenue village, (e) conversion of pattas or leases issued by any local authority or any state government on forest land to titles, and (f) other traditional customary rights. Customary rights exclude hunting, trapping or extracting body parts of any wild animal. FDSTs also cannot indulge in any activity that adversely affects wild animals, forests and the biodiversity in the local area and need to ensure that adjoining catchments areas and water sources are adequately protected.
- Forest rights of FDSTs would be subject to the condition that such communities had occupied forest land before October 25, 1980 [The Forest (Conservation) Act, 1980 came into force on this date]. The Bill specifies that no FDST shall be evicted from forest land under his occupation till the recognition and verification procedure is completed.
- The Bill states that forest rights would be vested on such land which is occupied by an individual or family or community when the Act comes into force. The rights would be restricted to the area under actual occupation and shall not exceed an area of 2.5 hectares per nuclear family. The title would be registered jointly in case of married persons and in the name of the single head in case of single member households.
- Forest rights would be conferred free of conditions such as Net Present Value (NPV) and compensatory afforestation for diversion of forest land⁵. Under the Forest (Conservation) Act, 1980, the state government or any other authority cannot divert forest land for non-forest purposes without prior approval of Government of India. In case it is diverted, a certain amount of money (NPV of the land) has to be deposited with the government for purposes of compensatory afforestation, and the State government has to keep aside a proportionate area of land for afforestation.

Authorities for Vesting Forest Rights

- The Gram Sabha, a village assembly of all adult members of a village, shall have the authority to initiate the process of determining the nature and extent of individual or community forest rights that may be given to FDSTs within the local limits of its jurisdiction under this Act. The Gram Sabha is empowered to receive claims, consolidate and verify them, and prepare a map delineating the area of each recommended claim in

* The right of a resident of a village in respect of cattle grazing and collection of jungle produce.

such manner as may be prescribed for exercise of such rights. It would then pass a resolution to that effect and forward a copy to the Sub-Divisional Level Committee (SDLC).

- The SDLC, which shall be constituted by the State Government, would examine the resolution passed by the Gram Sabha and prepare the record of forest rights. It would then be forwarded to the District Level Committee (DLC) through the Sub-Divisional Officer for a final decision. The DLC would be the final authority to approve the record of forest rights prepared by the SDLC.
- A State Level Monitoring Committee would be formed to monitor the process of recognition and vesting of forest rights. The Committee would submit returns and reports to the nodal agency (the ministry dealing with Tribal Affairs). The SDLC, DLC and the State Level Monitoring Committee would consist of officers from the departments of Revenue, Forest and Tribal Affairs at the appropriate level as may be prescribed.
- If a person is not satisfied by the ruling of the Gram Sabha, he can file a petition to the SDLC who would consider and dispose of such petition. If a person is not satisfied by the decision of the SDLC, he can petition to the DLC within 60 days of date of decision of the SDLC. The DLC's decision would be final and binding.

Penalties for Offences

- In case a person is found guilty of contravening or abetting the contravention of the provisions of the Act, engaging in unsustainable use of forest or forest produce, killing any wild animal or destroying forest or any other aspect of biodiversity or felling trees for any commercial purpose, he shall be punished with a fine which may extend to Rs 1,000. In case the offence is committed more than once, the forest rights of the guilty person would be derecognized for such period as the DLC, on the recommendation of the Gram Sabha, may decide. The penalty would be in addition to any other law for the time being in force.
- If members or officers of authorities and committees commit an offence, they would be deemed guilty and can be fined up to Rs 1,000.

PART B: KEY ISSUES AND ANALYSIS

The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, aims to recognize and enforce the rights of FDSTs to forest land and resources. The main challenge of the Bill is to harmonize the potentially conflicting interest of recognizing forest rights of FDSTs while protecting forests and wildlife resources.

Lack of Data

Although the Bill proposes to recognize and vest forest land rights to FDSTs, there are no reliable estimates of the number of families who will be benefiting from the proposed legislation. Secondly, although the government estimates that there are around 2-3 million people living inside India's protected areas (national parks and sanctuaries)⁶, there is no census of the number of FDSTs residing within the core areas of national parks and sanctuaries⁷. Therefore, it is not possible to calculate how much forest land would be required in order to implement the provisions of the Bill.

Table 1: Forests in India

	In sq km	% of total
India's total geographic area	3,287,263	100%
Total forest cover	678,333	20.6%
Total forest cover under encroachment	13,430	0.4%
National Parks and Wildlife Sanctuaries	156,000	4.7%

Source: Ministry of Environment and Forest

Table 2: Scheduled Tribes

Total population of India	1,027,015,247
Number of Scheduled Tribes	84,326,240
Percentage of Scheduled Tribes to total population	8.2%
Number of Forest Dwelling Scheduled Tribes	Unknown

Source: Census of India, 2001

Tribal Rights vs Environmental Conservation

Differing Viewpoints

There are three main streams of thought regarding this issue. Some experts say that tribal communities have lived in forests for centuries, and granting them the formal right over forest land is just undoing a historical injustice. On the other extreme, some conservationists say that certain species of animals (such as the tiger) cannot co-exist

with humans, and there is a need to reserve at least some parts of forests to conserve these species. They also say that increased human habitation in forests will cause depletion of forest cover, resulting in significant ecological costs. A third view is that traditional forest dwellers help in preserving forests, and giving them land rights would actually help in ecological conservation⁸. However, there does not appear to be any clear evidence to conclusively support any of these views. Some of these issues are discussed below.

Allotment of Land

The Bill prescribes 2.5 hectares as the upper limit of forest land that an FDST nuclear family may be allotted. However, there is a possibility that it might result in elimination of legal protection for forest cover, which could lead to heavy ecological damage⁹. For instance, the possible depletion of watershed forests of Central India, which allow penetration of rain water into the sub soil, could lead to drying up of rivers such as Narmada, Tapi, Mahanadi, Godavari, Krishna, and Cauveri¹⁰. The counter-argument is that the Bill only seeks to recognize the forest rights of FDSTs who have been cultivating the forest land for generations. In any case, the total forest land under encroachment is estimated by the government at 13.43 lakh hectares¹¹, which amounts to about 2% of the recorded forest area in the country¹².

It is also possible that confiscating forest land from the tribal families, who possess more than 2.5 hectares of land, could lead to further impoverishment of tribal communities¹³.

Core Areas

The Bill grants forest rights to FDSTs in core areas¹⁴ of National Parks and Sanctuaries provided they are relocated within five years. If relocation does not take place within the prescribed time period, the holder would get permanent right over forest land. Therefore, there would either be large scale relocation of tribal communities or they would get permanent right over land in core areas.

Given India's poor track record in relocating people affected by development projects, such as the Narmada Dam¹⁵, or from sanctuaries such as Sariska and Gir¹⁶, the possibility of large scale relocation from core areas raises the spectre of loss of livelihood and hardship for FDSTs.

There could also be an argument against advocating coexistence between wild animals and tribal communities. Certain species such as tigers, rhinos, and elephants are vulnerable to pressures from human land use¹⁷. These species are typically large-bodied, slow breeding, need large areas, and vast resources for survival. Some experts argue that it might be more realistic to identify protected areas, which consist of National Parks and Sanctuaries (about 4.7% of India's geographical area¹⁸) as inviolate while areas outside such reserves could be utilised to serve the needs of tribal communities¹⁹.

Coverage

1980 'cut-off date'

The Bill takes October 25, 1980 as the cut-off date for vesting and recognizing forest land rights of the tribal community. However, the Bill does not specify the kind of evidence that FDSTs would require to prove their occupancy of forest land before 1980. Although states such as Maharashtra have adopted more effective procedures than just documentary evidences (oral testimonies, evidence of elders of the village etc.) for verifying claims²⁰, it is not mandatory for every state to adopt such practices. Therefore, there might be a case for specifying a set of admissible evidences in the Bill itself.

Also, it is unlikely that FDSTs would have the required documentary evidence to prove their occupancy over forest land before 1980²¹. Thus, in order to minimize evictions, a case could be made for settling the claims of FDSTs on the basis of current occupancy of forest land.

Exclusion of certain communities

The Bill only recognizes forest rights of FDSTs who are defined as "Scheduled Tribes who primarily reside in forests and includes the Scheduled Tribes pastoralist communities and who depend on the forests or forest lands for bona fide livelihood needs." Other communities who depend on the forest for survival and livelihood reasons, but are not forest dwellers or Scheduled Tribes, for instance in large sections of Chattisgarh and forest tracts of Uttaranchal²², are excluded from the purview of the Bill. This could lead to large-scale eviction of such people and increase social tension among the various forest communities.

The Bill also specifies that FDSTs would be granted forest rights only in places where they are scheduled. However, such a clause could lead to denial of rights to tribal communities on the ground that they do not reside in the area where they are scheduled even though many tribal people have been displaced due to development projects and creation of protected areas²³.

Role of Gram Sabha

Although the Gram Sabha has been given the power to initiate the process of determining forest rights, the final decision rests with the DLC. The DLC is also the authority that would decide the period for which an FDST's forest rights is to be derecognized in case of repeated contravention of the provisions of the Act. Although the Statement of Objects and Reasons of the Bill envisages involvement of democratic institutions at the grassroots level, the Gram Sabha does not have the power to recognize forest rights or enforce such rights.

Eviction and Relocation

The Bill does not place any explicit restriction on the methods that can be used to remove non-eligible forest dwellers. This is a concern, given the history of cases where brutal force has been used to evict tribal families²⁴.

The Bill mentions that FDSTs would be relocated from core areas of National Parks and Sanctuaries with due compensation. However, the Bill does not clarify exactly what kind of compensation would be offered to the tribal people, what recourse they would have if such compensation is not satisfactory or is altogether denied.

Definitions

Certain terms mentioned in the Bill have not been defined. It could lead to difficulty in implementing the provisions of the Bill.

Clause 3 (j) mentions "the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use." The term "community forest resource" is not defined, and hence, it is not clear whether these also include resources within government owned forests including National Parks and Sanctuaries.

The term "nuclear family" has also not been defined, though each "nuclear family" has a right up to 2.5 hectares of forest land. FDSTs are defined as those "members or community of the Scheduled Tribes... who depend on the forests or forest land for bonafide livelihood needs". The term "livelihood needs" is not defined which leaves the scope of activities allowed open to interpretation.

Penalties

The Bill imposes a fine of Rs 1,000 on FDSTs in case of contravention of provisions of the Act. If the offence is repeated, the person's forest rights might be derecognized for such period as decided by the DLC on the recommendation of the Gram Sabha. However, the Bill does not specify whether an FDST has the right to appeal such a ruling of the DLC to a higher authority (such as the State Level Monitoring Committee) other than to a court.

The member of a committee is also required to pay a fine of Rs 1,000 if found guilty of contravening the provisions of the Act. However, this amount might not be a sufficient deterrent.

Notes

1. The National Advisory Council (Chairperson: Smt. Sonia Gandhi), made certain recommendations, including the need for central legislation, to improve the condition of the tribal population (see <http://nac.nic.in/concept%20papers/evictions.pdf>)
2. National Forest Policy, 1988 (see <http://envfor.nic.in/divisions/fp/nfp.pdf>)
3. (FP1) Regularization of Encroachment (FP2) Review of Disputed Claims over Forest Land (FP3) Regularization of Pattas and Leases (FP4) Elimination of Intermediaries and Payment of Fair Wages to the Labourers on Forestry Works (FP5) Conversion of Forest Villages into Revenue Villages and Settlement of Other Old Habitations (FP6) Payment of Compensation for Loss of Life and Property Due to Predation/Depredation by Wild Animals.
4. In T.N. Godavarman vs Union of India (Writ Petition (C) No. 202 of 1995), the Supreme Court issued an order "restraining the Union of India from permitting regularization of any encroachments whatsoever without leave of this Hon'ble Court." However, a letter of Inspector General of Forests, dated May 3, 2002, instructs state governments to evict the ineligible encroachers and all post-1980 encroachers from forest land in a time bound manner. The letter refers to the SC order of Nov 23, 2001 (see <http://nac.nic.in/concept%20papers/evictions.pdf>).
5. Net Present Value (NPV) and Compensatory Afforestation are requirements associated with using forest land under the Forest (Conservation) Act, 1980. NPV of the diverted forest land is a measure of the potential value of such land. The Supreme Court, in the course of Godavarman case, mandated that any user agency, prior to diverting forest land, would have to pay the NPV of that land to a Court created Central Government agency called Compensatory Afforestation Management and Planning Agency. The value, which is subject to upward revision, was set at the rate of Rs 5.80 lakh to Rs 9.20 lakh per

hectare of forest land depending upon the quantity and density of the land in question converted for non-forest use. (see http://164.100.194.13/allied_forclr/htmls/Guidelines/Guidelines.htm and <http://www.elaw.org/resources/text.asp?id=2998>)

6. Press Information Bureau, Govt. of India (see <http://pib.nic.in/feature/feyr2001/fmay2001/f240520011.html>)
7. M.D. Madhusudan, "Of Rights and Wrongs: Wildlife Conservation and Tribal Bill", (Economic and Political Weekly), November 19, 2005 (see <http://www.epw.org.in/showArticles.php?root=2005&leaf=11&filename=9360&filetype=html>)
8. Pradip Prabhu, "The Right to Live With Dignity", (Seminar), No. 552, Aug 2005 (see <http://www.india-seminar.com/2005/552/552%20pradip%20prabhu.htm>)
9. P.V. Jayakrishnan, "Is there a need for this Bill?", (Seminar), No. 552, August 2005, (see <http://www.india-seminar.com/2005/552/552%20p.v.%20jayakrishnan.htm>)
10. Beware of Tribal Bill's Consequences: Buch, Hindustan Times, May 21, 2005 (see http://www.hindustantimes.com/2005/May/22/5922_1371612,0015002100010001.htm)
11. Press Release, Ministry of Tribal Affairs (see <http://pib.nic.in/release/release.asp?relid=16228&kwd=Recognition+of+Forest+Rights>)
12. Bela Bhatia, "Competing Concerns", (Economic and Political Weekly), Nov 19, 2005 (see <http://www.epw.org.in/showArticles.php?root=2005&leaf=11&filename=9359&filetype=html>)
13. Madhuri Krishnaswamy, "One Step Forward, Two Steps Back", (Economic and Political Weekly), Nov 19, 2005 (see <http://www.epw.org.in/showArticles.php?root=2005&leaf=11&filename=9362&filetype=html>).
14. Core Areas: National Parks and Sanctuaries are required to keep certain areas inviolate for purposes of wildlife conservation. The areas may be determined by the Ministry of the Central Government dealing with Environment and Forests.
15. Mike Levien, "Narmada: Life, Struggle and Exodus", (India Together), August 2004 (see <http://www.indiatogether.org/2004/aug/hrt-narmada.htm>)
16. Ghazala Shahabuddin, Ravi Kumar, Manish Shrivastava, "Pushed over the Edge", (Economic and Political Weekly), Aug 6, 2005 (see <http://www.epw.org.in/showArticles.php?root=2005&leaf=08&filename=8950&filetype=html>)
17. Refer M.D. Madhusudan (Note 7)
18. Wildlife Institute of India's Executive Summary, "Wild Life Protected Area Network in India: A Review" (see <http://www.wii.gov.in/envi/panetworks/panetwork.html>)
19. Valmik Thapar's Dissent Note in the Report of the Tiger Task Force (Joining the Dots) set up by the Ministry of Environment and Forest (see http://projecttiger.nic.in/TTF2005/pdf/full_report.pdf).
20. Jean Dreze, "Tribal Evictions from Forest Land", March 2005 (see <http://nac.nic.in/concept%20papers/evictions.pdf>)
21. Refer Madhuri Krishnaswamy (Note 13)
22. Refer Madhuri Krishnaswamy (Note 13)
23. Madhu Sarin, "Scheduled Tribes Bill, 2005: A Comment", (Economic and Political Weekly), May 21, 2005 (see <http://www.epw.org.in/showArticles.php?root=2005&leaf=05&filename=8669&filetype=html>)
24. Refer Jean Dreze (Note 20)

Budget Session 2006

The Budget session is usually held in two parts, with a recess to enable various departmentally related standing committees to consider the Demand for Grants. This year, the session was originally scheduled to meet between February 16 and April 28, with a two week recess between March 18 and April 2. However, considering the elections in five states during April-May, the first part of the session was extended to March 22, and the second part will be held between May 10 and May 23.

The Finance Bill was passed in the first part of the session. However, the standing committees will examine the Demand for Grants and present their reports to Parliament.

Pending Government Bills listed for Consideration during the Session

Short Title	Introduced on	Standing Committee
The Spirituous Preparations (Inter-State Trade and Commerce) Control (Repeal) Bill, 2005	December 23, 2005	Not referred
The Wildlife (Protection) Amendment Bill, 2005	December 23, 2005	Report presented on March 20, 2006
The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005	December 05, 2005	Report to be submitted by first week of monsoon session
The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2005	August 29, 2005	Report presented on December 12, 2005
The Cess Laws (Repealing and Amending) Bill, 2005	August 16, 2005	Report presented on December 08, 2005
The Banking Companies (Acquisition and Transfer of Undertakings) and Financial Institutions Laws (Amendment) Bill, 2005	August 16, 2005	Referred to Standing Committee
The Banking Regulation (Amendment) Bill, 2005	May 13, 2005	Report presented on December 13, 2005
The Reserve Bank of India (Amendment) Bill, 2005	May 13, 2005	Report presented on December 01, 2005
The Taxation Laws (Amendment) Bill, 2005	May 12, 2005	Report presented on December 13, 2005
The Drugs & Cosmetics (Amendment) Bill, 2005	May 10, 2005	Report presented on December 21, 2005
The Government Securities Bill, 2004	December 21, 2004	Report presented on August 04, 2005
The Cantonments Bill, 2003	December 22, 2003	Report presented on May 10, 2005

Sources: Ministry of Parliamentary Affairs, Bulletins of Lok Sabha and Rajya Sabha, PRS

Note: Status as of March 31, 2006. Does not include Bills passed during the first part of Budget Session (listed below).

Bills passed during the first part of Budget Session

Short Title	Passed on
The Government of Union Territories and the Government of National Capital Territory of Delhi (Amendment) Bill, 2006	March 01, 2006
The Contempt of Courts (Amendment) Bill, 2004	March 03, 2006
The Chartered Accountants (Amendment) Bill, 2005	March 03, 2006
The Cost and Works Accountants (Amendment) Bill, 2005	March 03, 2006
The Company Secretaries (Amendment) Bill, 2005	March 03, 2006
The National Commission for Minority Educational Institutions (Amendment) Bill, 2005	March 10, 2006
The Khadi and Village Industries Commission (Amendment) Bill, 2005	March 11, 2006
The Petroleum and Natural Gas Regulatory Board Bill, 2005	March 21, 2006
Delhi Special Police Establishments (Amendment) Bill, 2006	March 22, 2006

Sources: Bulletins of Lok Sabha and Rajya Sabha, PRS

Note: This list does not include the Finance Bill, 2006 and the Appropriation Bills.

Bills Introduced in Parliament during the first part of Budget Session

Short Title	Introduced on
The Government of Union Territories and the Government of National Capital Territory of Delhi (Amendment) Bill, 2006	February 20, 2006
The Representation of the People (Amendment) Bill, 2006	February 27, 2006
The Constitution 105th Amendment Bill	March 01, 2006
The Companies (Amendment) Bill, 2006	March 06, 2006
The Competition (Amendment) Bill, 2006	March 09, 2006
The Drugs Control (Repeal) Bill, 2006	March 10, 2006
The Union Duties of Excise (Electricity) Distribution Repeal Bill, 2006	March 13, 2006
The Central Institute of English and Foreign Language University Bill, 2006	March 20, 2006
The Forward Contracts (Regulation) Amendment Bill, 2006	March 21, 2006
The Code of Criminal Procedure (Amendment) Amending Bill, 2006	March 21, 2006
The Assam Rifles Bill, 2006	March 21, 2006
The Delhi Special Police Establishment (Amendment) Bill, 2006	March 22, 2006

Sources: Bulletins of Lok Sabha and Rajya Sabha, PRS

Note: This list does not include the Finance Bill, 2006 and the Appropriation Bills.

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