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PARLIAMENT OF INDIA RAJYA SABHA

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DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON SCIENCE & TECHNOLOGY, ENVIRONMENT & FORESTS

TWO HUNDRED AND THIRTY FIRST REPORT

ON

THE INDIAN FOREST (AMENDMENT) BILL, 2012

(PRESENTED TO THE RAJYA SABHA ON 26TH NOVEMBER, 2012)
(LAID ON THE TABLE OF THE LOK SABHA ON 26TH NOVEMBER, 2012)

RAJYA SABHA SECRETARIAT
NEW DELHI
NOVEMBER, 2012/ KARTIKA, 1934 (SAKA)

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* To be appended at printing stage

**MEMBERS OF THE DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON SCIENCE & TECHNOLOGY,
ENVIRONMENT & FORESTS (2012-13)**

1. Dr.T. Subbarami Reddy — *Chairman*

RAJYA SABHA

2. Shri Anil H. Lad
3. Smt. Maya Singh
4. Shri M. Rama Jois
5. Shri Alok Tiwari
6. Shri T.M. Selvaganapathi
7. Shri Rabinarayan Mohapatra
8. Shri Paul Manoj Pandian
9. Shri Ram Kripal Yadav
10. Vacant

LOK SABHA

11. Shri K.C. Singh "Baba"
12. Smt. Bijoya Chakravarty
13. Shri Bansa Gopal Chowdhury
- #14. Vacant
15. Shri K. Jayaprakash Hegde
16. Shri Marotrao Sainuji Kowase
17. Dr. Ajay Kumar
18. Shri O.S. Manian
19. Shri Dayanidhi Maran
20. Shri Basori Singh Masram
21. Shri Natubhai Gomanbhai Patel
22. Smt. Kamla Devi Patle
23. Shri Ramashanker Rajbhar
24. Shri Tathagata Satpathy
25. Shri Yashvir Singh
- #26. Vacant
27. Shri Pradeep Tamta
28. Shri Joseph Toppo
29. Shri Mansukhbhai D. Vasava
30. Shri Ramakant Yadav
31. Prof. (Dr.) Ranjan Prasad Yadav

SECRETARIAT

Dr. D.B. Singh, Additional Secretary
Shri Alok Chatterjee, Director
Shri V.S.P. Singh, Joint Director
Shri Girija Shankar Prasad, Deputy Director
Shri Deepak Kalra, Committee Officer
Shri Ranajit Chakraborty, Committee Officer

Shri Ninong Ering and Shri Kodikkunnil Suresh ceased to be a member of the Committee consequent upon their induction in the Union Council of Ministers w.e.f. 28th October, 2012.

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Science & Technology, Environment & Forests, having been authorized by the Committee to present the Report on its behalf, present this Two Hundred and Thirty First Report on 'The Indian Forest (Amendment) Bill, 2012'.

2. In its meeting held on 6th November, 2012; the Committee heard the views of the Secretary, Ministry of Environment and Forests and Additional Secretary, Ministry of Law & Justice (Legislative Department) and two experts on 'The Indian Forest (Amendment) Bill, 2012'.

3. The Committee expresses its thanks to the Officers of the Ministries of Environment & Forests, Law & Justice (Legislative Department) and experts for rendering their valuable views/clarifications sought by the Committee.

4. In the meeting held on 15th November, 2012 the Committee considered the draft report and adopted the same.

NEW DELHI;

November 15, 2012

Dr. T. Subbarami Reddy

Chairman,

Department-related Parliamentary Standing Committee
on Science & Technology, Environment & Forests.

ACRONYMS

FRA Act, 2006	The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
IFA, 1927	Indian Forest Act, 1927
PESA Act, 1996	Panchayats (Extension to Scheduled Areas) Act, 1996

REPORT

INTRODUCTION

Forests occupied such an exalted position in ancient India that it was revered and deified by the people as God-Van Devta, (God of forests). The relationship between the people and the forest was characterized by co-existence, harmony, mutual care and concern. Forests, apart from providing perfect ambience for spiritual and religious pursuits for the ascetics and saints sustained their corporeal needs. Most of the centres of teaching and learning popularly known as gurukuls were located in dense forests. People used to enjoy unhindered customary rights over forest produce:- fruits, firewood, herbs, leaves, etc. Forest was for anybody and everybody and not the monopoly of the state or Government for the purpose of revenue generation or collection. People lived on the forest only to meet their day to day basic needs and not to satiate their greeds.

2. But as time progressed, people's perception towards forests started changing and their needs gradually gave way to their greeds. This paradigm shift culminated in enactment of Indian Forest Act of 1865 through which British monopoly over Indian Forests was established for the first time. Then, the Indian Forest Act of 1878 acquiring the sovereignty over all wastelands which included all forests was brought into force. All local and traditional rights over forests were abolished in the reserved forests and some rights were converted as a privilege in the protected forests which could be taken away, if so felt necessary by the State. Thus, these colonial laws brought forests under the centralised control of the State on the assumption that forest was a natural resource to be utilized for the sake of Government and also that a particular section of the people

inhabited the forest and the adjoining area was merely an accident of history and can not be claimed as a potent rationale to permit them to use forest resources for subsistence or livelihood. Forest, thus, became a source of revenue generation for Government. These developments also gave rise to the concept of Forest policy and forest management in India.

3. With the passage of time, it was realized that the provisions of the Indian Forest Act, 1878 together with its amendments were not adequate to deal with forests in a holistic manner. Indian Forest Act, 1927 consolidated the laws relating to forests, transit of forest produce and the duty leviable on timber and other forest produce within the ambit of one enactment.

4. Post independence, Indian Government treaded the path paved by the British Colonial administrators and nationalized the forests along with most of the forest non-wood and wood industry. The Forest (Conservation) Act, 1980 made permission from the Central Government mandatory for sustainable agro-forestry in the forest area and any violation of that was made a criminal offence. Environment and Forest protection and recognition of rights of tribal communities over forest and forest produce continued to be treated as mutually irreconcilable. The resulting insecurity of tribal and their eviction from their ancestral forest lands led to the alienation of tribal communities. However, their sustained agitation and unrest against the historical injustice perpetuated even –post independence ultimately catapulted the Government to move in a positive direction and concede some of their traditional rights over forest land and forest produce.

5. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was a landmark step taken by Government in this direction. The present Bill *i.e.* the Indian Forest (Amendment) Bill, 2012 is also a small initiative, but of far reaching consequences, taken towards granting/conceding much needed relief to the tribal communities and other people living in close proximity of forests from harassment of persecution for petty offences committed sometimes even unknowingly.

6. This Bill proposes to achieve the desired objective, by amending section 68 of the Indian Forest Act, 1927 which deals with power of a Forest officer to compound offences instead of taking the matter to courts for prosecution.

7. Making of the Bill

7.1 A draft Cabinet Note to this effect duly approved by the Minister of Environment and Forests was circulated to Ministries of Agriculture, Commerce, External Affairs, Finance, Panchayati Raj and Tribal Affairs to elicit their comments/views on 19th November, 2010. After incorporating the views/comments so received from the Ministry on the Cabinet Note, together with the response of the Ministry of the Environment and Forests, the same was sent to the Ministry of Law and Justice (Legislative Department) for vetting on 3rd January, 2011. Concurrence of Ministry of Law and Justice on the draft note was received on 1st February, 2011. The Cabinet Note was sent to Cabinet Secretariat on 22nd February, 2011. The Cabinet Secretariat on 23rd March, 2011 conveyed the approval of the Cabinet with the suggestion to insert a new sub-section 68(4) as under:-

(4) In Scheduled V Areas the Forest-officer shall, before exercising the powers vested under this section, obtain and record the views of the Gram Sabha concerned.

7.2 After inserting the suggestion made by the Cabinet, the Indian Forest (Amendment) Bill, 2012 was once again sent to the Ministry of Law & Justice for vetting on 14th June, 2011 and after vetting it was received in the Ministry of Environment and Forest on 22nd June, 2011. After completing all the formalities the Bill was finally introduced in Rajya Sabha on 26th March, 2012.

7.3 “The Indian Forest (Amendment) Bill, 2012” as introduced and pending in Rajya Sabha, was referred¹ to the Department-related Parliamentary Standing Committee on Science & Technology, Environment & Forests, on the 28th March, 2012 by the Hon’ble Chairman, Rajya Sabha for examination and report.

7.4 The Committee issued a Press Release in various national and local dailies on the 26th April, 2012 inviting memoranda containing suggestions/views/comments of experts/institutions/ organisations interested in the subject matter of the Bill. In response to the Press release, the Committee received five memoranda. The first two memoranda were forwarded to the Ministry of Environment & Forests for their comments on 20th June, 2012 and the remaining three on 26th October, 2012. When no comments were received from the Ministry even after considerable time had elapsed, two reminders were issued to the Ministry on 20th September, and 26th October, 2012. The replies to the Memoranda were finally received from the Ministry on 30th September and 2nd November, 2012.

7.5 The Committee at its meeting held on the 6th November, 2012 heard views of the Secretary Ministry of Environment & Forests and Additional Secretary, Ministry Law & Justice (Legislative Department) on the Bill in the forenoon and in the afternoon also heard the views of the two experts namely Dr. Rajesh Gopal, IFS, Inspector-General Forests & Member Secretary, National Tiger Conservation Authority, Ministry of Environment & Forests and Shri Shankar Gopalakrishnan, Secretary, Campaign for Survival and Dignity, New Delhi.

8. Features of the Bill

8.1 As mentioned earlier, the Bill seeks to amend some of the provisions of section 68 of the Indian Forest Act, 1927.

Section 68 of Indian Forest Act, 1927 is reproduced below:-

Power to compound offences

- (1) The State Government may, by notification in the Official Gazette, empower a Forest-officer-
 - (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62 or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed; and
 - (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.
- (2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any seized shall be released, and no further proceedings shall be taken against such person or property.
- (3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a

¹Rajya Sabha Parliamentary Bulletin Part -II, dated the 28th March, 2012

monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.²

8.2 The said section deals with the Power of a Forest Officer to compound offences, and contains provisions prescribing the minimum rank and salary of such an officer and the maximum sum of money that can be accepted as compensation in the process of compounding forests offences. The word “compound” in the legal terminology means “A criminal act in which a person agrees not to report the occurrence of a crime or not to prosecute a criminal offender in exchange for money or other consideration”³.

8.3 The Bill proposes to introduce two changes in sub section (3) of section 68 of the Indian Forest Act, 1927 and insert another sub section *i.e.* sub section 4 after 3. The first change is omission of monthly salary limit of Rs. 100 of the forest officer concerned, who is empowered to compound offences and retain only his or her minimum rank. The second one is about raising the amount of compensation that can be charged for compounding offences from existing Rs. 50 to Rs. 10,000. The insertion of a new sub section requires the forest officer to obtain and record the views of the Gram Sabha concerned before exercising the power of compounding offences.

9. Objective of the Bill

9.1 The Chief objective of the Bill is to modify and suitably amend Indian Forest Act, 1927 to make it relevant in the changed socio economic scenario. The other one but related to the above is to protect and save the tribals and forest dwellers from harassment of prosecution/litigation in courts for petty forest offences which is generally a long drawn process.

10. Observations/ Recommendations

10.1 General observations

10.1.1 The first and the foremost observation that the Committee would like to make in the context of and not on the specific provisions of the proposed amendment Bill, is that Indian Forest Act, 1927 is a Colonial legacy inherited from the British which has now become too old, archaic and outlived its utility not only with reference to section 68 but also with regard to many, if not, most of its sections and hence needs a comprehensive and thorough review/revision whereas the amendment attempted in the Bill is only a token and piecemeal amendment. The implicit ethos and underlying tenet behind Indian Forest Act, 1927 was monopolizing forest resources to harness maximum revenue to the detriment of forest dwellers by denying them their traditional rights over forest produce. But, now that the colonial and imperial era has long ago gone by, it is high time that after so many years of independence, the Indian Forest Act is imbued with the traditional Indian spirit of collective and participatory management and conservation of forest in tune with the letter and spirit of the National Forest Policy, 1988. It also needs to be suitably modified so as to make it Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA Act) compliant as rightly demanded by Ministry of Panchayati Raj while offering its comments/suggestions on the Bill.

Furthermore, the Indian Forest Act, 1927 needs to be suitably harmonized with various provisions contained in The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. While the latter confers certain forests rights such as right to hold and live in forest land for habitation or for self-cultivation, for

² The Indian Forest Act, 1927, Universal Law Publishing Co. Pvt. Ltd., New Delhi 2009, page no. 87

³ <http://legal-dictionary.thefreedictionary.com>

livelihood; and the right of ownership, access to collect, use and dispose of minor forest produce *i.e.* non-timber forest produce of plant origin including bamboo, brushwood, honey, wax, lacs, tendu or kendu leaves, etc.; rights of uses and entitlement, such as, fish and other products of water bodies, grazing, etc. to the forest dwelling scheduled tribes and other traditional forest dwellers, clause 26 (1) of the Indian Forest Act, 1927 proclaims the above activities as criminal offence.

10.1.2 The Committee has been informed through memorandum that thousands of Adivasis and forest dwellers are in jails across the country as a result of being charged in such cases and there are lakhs of cases pending. It was further informed that displaced people and other forest dwellers are harassed using such cases by forest officers.

10.1.3 The Committee is surprised to know from the reply of the Ministry that even though it admits that amendment is required in certain provisions due to changing socio-economic conditions, change in forest policy, focus on participatory forest management like Joint Forest Management, subsequent legislations like PESA Act, 1996 and Forest Rights Act, 2006, etc. but refuses to go ahead with amendments on the pretext that the issues involved in comprehensive amendments are quite complex and consultation between various Ministries and the State Government are required. The Ministry has categorically stated that at present, there was no immediate plan of the Ministry for amendment of Indian Forest Act as a whole.

10.1.4 The Committee is not at all convinced with the argument advanced by the Ministry and is of the considered opinion that it must at least amend the relevant sections of the Indian Forest Act, 1927 so as to accommodate the changes required in it due to changing socio economic conditions, changes in Forest Policy and directions of the Supreme Court issued from time to time in forestry matters. It is also of the view that the act must also be made compliant with subsequent legislation like Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA Act) and The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 in a time bound manner.

10.2 Specific observations/recommendations

The specific observations/recommendations of the Committee on the three amendments proposed to be made through this Bill are as follows:-

10.2.1 Apropos the first amendment, the Committee feels that the mention of the rank of the forest officer empowered to compound forest offences *i.e.* not inferior to that of a Ranger serves the purpose of specifying the minimum level of officer authorised to compound the offences. Further, qualifying the rank of the officer with monthly salary does not seem necessary particularly as the monthly salary of the forest officer of the rank of Ranger has risen since 1927 substantially and even otherwise the said limit of Rs. 100 has become superfluous and meaningless.

10.2.2 Moreover, the salary of officials at Forest Ranger level are varying in different States and there is regular revision of the salary every ten years due to recommendations of various Pay Commissions, any salary limit set today apart from leading to inter-state disparities between forests officers authorised to compound the offences, may, with increase in it, become infructuous with the passage of time. **The Committee is, therefore, of the view that the proposed omission of the words “and is in receipt of a monthly salary amounting to at least 100 Rupees” is quite justified and reasonable and hence, the Committee endorses the proposed amendment.**

10.2.3 Through, the Second amendment in the Bill, for the words “fifty Rupees” the words “ten thousand rupees” are proposed to be substituted. As per the existing provision, sub-section 3 of section 68 of the Indian Forest Act, 1927 provides that the sum of money to be accepted as compensation from any person against whom a reasonable suspicion exists that he has committed forest offence, shall in no case exceed the sum of fifty rupees. The sum of fifty rupees in today’s context is undoubtedly a very small or petty amount and has virtually made the provision to compound offences meaningless. Some of the State Governments have already amended this section and prescribed higher amount of compensation. For instance, Government of Goa, vide Goa Act 15 of 1989 has revised it to ten thousand rupees while in Gujarat, it has been revised to two thousand rupees vide Gujarat Act 19 of 1983. In Uttarakhand, it has been prescribed *vide* Uttaranchal Act 2002 “five thousand rupees” for the first offence and for second and subsequent offences of the same nature it shall not be less than five thousand or more than “ten thousand rupees”.

10.2.4 The moot point is what could be the ideal or the condign amount to substitute the amount of compensation which is Rs. 50? When the Committee enquired from the Ministry the basis on which the present proposal of Rs.10, 000 has been reached, it avoided a straightforward reply. However, in reply to another question the Ministry stated “It may be with the relation of pay of the official getting minimum monthly salary of Rs. 100/- so that he can compound forest offences upto not exceeding Rs. 50/-. Though the pay of Forest Ranger varies from States to States but it can be safely assumed that they are getting a minimum of month salary of Rs. 20,000/- per month. By that corollary the compounding limit of Rs. 10,000/- may be appropriate”.

10.2.5 However, while deposing before the Committee, Secretary, Ministry of Environment & Forest submitted that it would be appropriate not to fix any amount in the Act and leave it for inclusion in the Rules to be framed by the individual states as this amount under inflationary pressure may soon become redundant. Alternatively, he also went ahead to suggest, subject to the consent of the Committee, a higher amount of compensation as deemed appropriate by it.

10.2.6 While the Committee takes note of the fact that amount of Rs. 50 fixed in 1927 was quite significant but does not feel inclined to draw a parallel between the two and fix an amount higher than Rs. 10,000/- for the basic reason that the purpose of fixing a significant amount of compensation during colonial rule might also be to serve as a deterrent apart from realising the value of forest produce acquired illegally but the Committee feels that for petty offences it would suffice if the compensation is decided only based on the value of forest produce illegally acquired.

10.2.7 Secondly, the Committee feels that any further enhancement to the benchmark amount of Rs. 10,000/- may give wide discretion to forest officer which at time may be misused to exploit and harass the poor tribals and other forest dwellers. The Committee further notes that maximum pecuniary penalty for petty offences enumerated in sections 26 (1) and 33 (1) of the Indian Forest Act, 1927 is only Rs. 500/-. As such, in view of the huge gap between the fine prescribed in the Act and the proposed amount of compensation for the purpose of Compounding, it is quite likely that majority of the petty offenders may opt for prosecution rather than Rajinama or compounding. This will totally negate the purpose for which the proposed amendment is sought to be made unless the pecuniary penalty is also suitably enhanced.

10.2.8 Thirdly and lastly, the maximum amount of compensation fixed by the State Governments of Goa and Uttaranchal extends only to Rs. 10,000/-. In other States, this amount is far less. The Committee does not agree with the Ministry's contention to leave this amount open in the Act and to be prescribed it by the Rules as it would make this provision vulnerable to discretion and misuse.

10.2.9 In view of the above, the Committee is of the view that the amount of Rs. 10,000/- as provided in the Clause 2 (b) of the Bill is reasonable and justified and hence, recommends that the words "ten thousand" be retained in the Bill.

10.2.10 The last amendment—"In Scheduled Areas, the Forest-officer shall, before exercising the powers vested under this section, obtain and record the views of the Gram Sabha Concerned" was not originally envisaged to be included in the Bill by the Ministry and has been done at the behest of the Cabinet. **The Committee feels that it is a very welcome addition which would not only ensure transparency in the process of compounding of offences but also lead to participation of the people through Gram Sabha. This would open an avenue for local villagers to have a much needed say in the management and protection of forests and utilization of forest resources.**

10.2.11 However, the Committee has certain reservations/apprehensions on the applicability and implementation aspects of this provision. The first, reservation of the Committee is with regard to this provision which says - the Forest Officer shall before exercising powers vested under this section obtain and record the views of the Gram Sabha concerned, is that mere obtaining and recording the view of the Gram Sabha would not serve any practical purpose unless and until the officer concerned gives due consideration to and takes into account the views obtained from the Gram Sabha while deciding on compounding of offences. **The Committee, therefore, feels that it would be appropriate to rephrase this Clause by categorically providing that the Forest Officers shall obtain the views of Gram Sabha before exercising the powers vested under section 68 and give due consideration to such views while passing an order in exercise of powers under this section.**

10.2.12 The second apprehension arises out of the practical difficulties faced in obtaining views of the Gram Sabha which is mostly time consuming. The Committee, therefore, apprehends that obtaining the views of the Gram Sabha may unduly delay the process of compounding of offences and the fate of the offender would remain undecided for considerably a longer period causing mental agony to him or her. It may, thus, negate the very idea of compounding offences *i.e.* expeditious settlement of an offence. **The Committee, therefore, is of the opinion that the Ministry must give a serious thought to this problem and try to address this issue suitably.**

10.2.13 Thirdly, the Committee expresses its concerns over the procedural matter that are involved in obtaining the views of the Gram Sabha. Questions like how the Gram Sabha would be called, who will call it, whether the Forest Officer is competent to convene the Gram Sabha, how and in what manner the views of Gram Sabha would be recorded, whether there will be a separate register in which the views of the Gram Sabha would be recorded, whether the views Gram Sabha would be recorded on separate papers on case to case basis, whether such record would be authenticated with the signature of the persons attending the Gram Sabha so as to ensure that the authentic version of the views of the Gram Sabha has been recorded, what will happen if the Gram Sabha is not able to arrive at a conclusive decision, etc. need to be clearly addressed as to remove all or any ambiguity that may arise while implementing the Act. **The Committee is of the view**

that the Ministry must pay due attention to these apprehensions and try to appropriately address them before framing rules.

11. The Committee hopes that government would give due consideration to the observations and recommendations of the Committee.
