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Tribal ministry panels draft fresh guidelines for community forest, habitat rights

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Gram Sabhas will have more power in the management of community forest rights (CFR) and habitat rights, according to new guidelines drafted by the Union Ministry of Tribal Affairs (MoTA) in December 2020. An increased representation of various user groups such as the graziers, minor forest produce collectors, women and other groups dependent on forest including hamlets also find mention in the two drafts.

The drafts were prepared by the two committees formed by MoTA in February 2020. Down to Earth has accessed the drafts.

The committee to manage CFR was headed by former civil servant and member of the Planning Commission NC Saxena; the one to look into habitat rights was headed by former secretary of MoTA Hrusikesh Panda.

They have submitted the drafts to the Union tribal ministry for review.

The guidelines for CFR are aimed at creating community forests resource management committee (CFRMC) as an executive arm of the Gram Sabha in managing CFR areas.

According to the draft, the Gram Sabhas will:

Integrate the committees that it has had traditional rights with for protection of wildlife, forest and biodiversity, catchment areas, water sources and other ecological sensitive areas

Be empowered to carry out the powers and authority as laid down under section 5 of FRA

File complaint before the state level monitoring committee (SLMC) under section 7 and 8 of the Act in case of any violation

Make rules and issue appropriate directions for governance and conservation of CFR, including functions of CFRMC; conflict / dispute resolution; benefit sharing; issuance of transit permit; fund management and etc., regulating powers, functions and activities of the CFRMC

Make rules or issue directions for management of fund generated from various sources

Approve CFR conservation and management plan / strategies / actions prepared / suggested by the CFRMC. If required, the Gram Sabha can modify suggested plans / actions / strategies including CFR conservation and management plans

Appoint any person or hire any institution for extending support to the Gram Sabha for preparation of CFR conservation and management plan, financial management system or activities coming under the purview of the Gram Sabha

Resolve any conflict or dispute related to the CFR governance and management

The guidelines also propose financial independence of the Gram Sabha through a fund, which would get the money from the sale of forest produce, development grant from the government and non-profits as well as compensatory afforestation funds.

The committee headed by Saxena was formed to guide the Gram Sabhas in managing and conserving their CFR areas in a sustainable fashion. Under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act [FRA] 2006, Gram Sabhas can claim collective ownership over a patch of forest traditionally owned and used by the village in the form of CFR.

The provision grants them the right to manage and conserve their CFR area.

The Union Ministry of Environment, Forest and Climate Change (MoEF&CC) had drafted CFR management guidelines in 2015. They were, however, withdrawn.

“The MoEF&CC guideline was very technical and unclear about the role and responsibilities of the Gram Sabha. Bodies such as the district level committees, SLMCs weren’t involved in the process. These guidelines address all the issues,” said Giri Rao of Vasundhara, an Odisha-based non-profit working on tribal issues. He is also a member of these committees.

Habitat Rights

The committee headed by Panda was assigned drafting of guidelines to manage habitat rights. Habitat rights under the FRA are granted to the particularly vulnerable tribal groups (PVTG).

Since the PVTGs are pre-agriculture communities, these rights are given over a fairly large area. However, the FRA isn’t clear on the nature of the right.

Section 3(1)(e) of the act says that these rights are “include community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities.”

In the first habitat right granted to Madhya Pradesh’s Baiga community in 2015, a tiger was used as an example to explain the community’s habitat. Tigers roam a large area in a forest when they hunt, and national parks as a whole become the habitat of the tiger, not just its dwelling, which could be a cave.

There are 75 PVTG communities across India and yet, only a few habit rights titles have been given so far. MoTA, therefore, constituted an expert committee on 21 February, 2020 to improve recognition and vesting process of community rights under FRA with special focus on habitat rights of PVTG.

The draft created by the committee observes that FRA doesn't define habitat, but merely hints at its importance.

It also defines habitat as places where tribal and other traditional forest dwellers have ancient connections in spiritual, cultural, social (burial grounds, birth places, temples, deities, lands perceived as abodes of deities including ancestors, sacred lands and plants, and areas used for festivals and processions) and livelihood matters (areas used for forest produce collection, fishing sources, seasonal cultivation areas, and collection of medicinal plants).

The draft said:

"Habitat rights can be defined as a bundle of rights comprising of these connections with the landscape: livelihood, social, and cultural practices embedded in the territory that forms their habitat. Many of these rights are not necessarily exclusive to one community and are often shared with other communities living in the habitat area based on traditions of mutuality and reciprocity."

It also draws a distinction between habitat rights and CFR saying that the latter are more important for fulfilling the material needs of the communities, such as livelihood generation, and may not include the entirety of the spiritual connection or belonging that a community feels with the landscape.

"Thus, land claimed under community forest rights will be smaller than that claimed under habitat rights and the possessory rights will be different," the draft said.

The following are included in habitat rights:

Right to perform all customary religious or cultural ceremonies in the landscape related to their clans

Right to protect and conserve the natural entities and sacred sites recognised under habitat rights

Right to protect and conserve places important for religious and spiritual purposes such as sacred groves; the right of passage to abodes of deities in forests, hill tops, origin of rivers and other remote parts of forests

Right to practice traditional cultivation systems and other livelihood generating activities including seasonal resource use

Habitat rights exclude any traditional right of hunting or trapping or extracting a part of the body of any species of wild animal

The draft also recommended training of state government officials for a better understanding the importance of FRA and habitat rights.

"The idea of these guidelines is to bring the forest governance outside the colonial approach and really decentralise and democratise it," the Giri Rao said.

Source: <https://www.downtoearth.org.in/news/forests/tribal-ministry-panels-draft-fresh-guidelines-for-community-forest-habitat-rights-74793>