

**Artifice begins.....**

## **Random Thoughts : 2**

Recognition of Forest Rights :

### **Without the Public asking for it !\***

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While the Right to Information Act ( RTI, 2005 ) is yet to celebrate its third anniversary come October, the Prime Minister found time to unveil a National Strategic Statistical Plan last Tuesday, which would post all but the most strategic information in the public domain. While the RTI, said the Prime Minister, was a tool for citizens to extract information from the government the new system would give information “ without the public asking for it ”! Under the proposed Plan the Center’s data-sharing policy is being re-examined to bring all non-strategic information in the public domain.

However, the ‘key words’ here obviously are - “ without the public asking for it ”.

Is it possible to extend this excellent concept viz., “without the citizens asking for it” to some practical areas of public domain, where issues like ‘equity’, ‘rights’ and ‘access’ etc may be at stake ? Could the various public authorities who have such relevant and important data in their control and custody be motivated to make available to those authorities who may need them “without the citizen asking for it” i.e. applying for the same ? While use of RTI provisions is a distinct possibility where such data could be directed by or through the Information Commission to be kept by such public authorities as a part of ‘voluntary disclosure’ mechanism, under section 4 of this Act. However, this could and should be considered as a measure of last resort. What we are examining here is the possibility of the stake-holder ‘public authorities’, say the departments / organizations, doing so suo-moto in a spirit of collaboration, co-ordination and good-will towards the citizens. A successful experiment on the lines suggested above holds tremendous potential of fast-forwarding many a projects and schemes which involve participation of more than one public authority/department.

### **Recognition of Forest Rights Act, 2006**

Presently this writer cannot think of a better candidate for testing the above experiment than implementation in Uttarakhand of this epoch making legislation which is yet to take off the block. The Act notified on the 29<sup>th</sup> December, 2006 is titled as The Scheduled

Tribes and Other Traditional Forest Dwellers ( Recognition of Forest Rights ) Act, 2006. The Rules took their own sweet time to be ultimately notified at the beginning of this year, on 1<sup>st</sup> January , 2008. So it is already the ninth month of its wait and it is about time that the related public authorities/departments put their individual and collective heads and hands to-gether to make up for the time already lost. This avoidable hiatus is another reason to try out the experiment of operationalization of the concept of “without the citizens asking for it”. !

### **The Beneficiaries and the Task**

As the name of the enactment suggests the intended beneficiaries are the ( i ) ‘forest dwelling Scheduled Tribes’( STs hereafter) and the ( ii ) ‘other traditional forest dwellers ( OTFDs hereafter ) who have been residing in such forests for generations’, whose rights could not be recorded. This Act is an attempt to ‘provide for a framework’ for ( a ) ‘recording the forest rights so vested’ and ( b ) ‘the nature of evidence required for such recognition and vesting in respect of forest land’. The underlying objectives in the main are ‘strengthening the conservation regime of the forests’ while ‘ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers’. It has been conceded that the juggernaut of ‘consolidation of State forests during the colonial period as well as in independent India’ has been considerably instrumental in inflicting ‘historical injustice to the forest dwelling STs and OTFDs’. The latter it has now been belatedly recognized as being ‘integral to the very survival and sustainability of the forest ecosystem’.

Forest dwelling STs have been described as ‘members or community of the STs who primarily reside in and who depend on the forests of forest lands for bona fide livelihood needs’ and these include the ST pastoral communities ( anwals and sheep-goat herders in context of Uttarakhand). The Scheduled Tribes of India, as the records of Government of India, both in the erstwhile SCBC Division in the Ministry of Home Affairs or their subsequent successor Ministries i.e. Ministry of Tribal Affairs, would show, that the classification of any Scheduled Tribe inherently includes their being both forest dwellers and forest dependent. Forest-dwelling and dependence on forests has always been a dominant criteria for classifying a tribe as a Scheduled Tribe, besides its peculiar customs, language/dialect etc. Unlike the classification of the Scheduled Castes the scheduling of tribes has been religion-neutral. Therefore, the expression ‘forest –dwelling’ as a prefix to ST is likely to be redundant and all Scheduled Tribes must be considered as ‘forest dwelling Scheduled Tribes’ and wherever they are not dwelling inside forest areas they invariably are ‘dependent on the forests and forest lands for their bona fide livelihood needs’. Inclusion of ‘ST pastoralist communities’ is extremely foresightful as there is no other community more deserving than this group as they are constantly on the move. It follows that they are deserving of special attention and specific treatment.

The debate on defining the OTFD ( see sec 2(o) of the Act ), being ‘any member or community who has for at least three generations ( generation means a period of 25 years ) prior to the 13<sup>th</sup> December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs’, is arguably going to be most engrossing.

Those who are conversant with the history of the Forest Grievances Committee, consequent creation of Van Panchayats and the issues which resulted out of the famous Gowdaburman case on December 1996, would be tempted to classify almost entire population of Uttarakhand prior to December 2005 as belonging to OTFD category. No other region of India is likely to be blessed with the documentary evidence of 'forest lands' being rolled –back from being 'reserved to protected' or 'protected to community managed ( Van Panchayats)' as this state. The last five years ( 2000 to 2005) particularly have been witness to more than 13,000 revenue villages carving out Van Panchayats ensuring their livelihoods and food security on the one hand and conserving the bio-diversity on the other. Thus all those village dwellers which now have a Van Panchayat of their own would now automatically qualify to being called as OTFD. Legally speaking there should be no further need for any evidence in so far as declaring resident of such a village a OTFD. The list of villages with a Van Panchayat constituted before December 2005 is available both with the district magistrates and the forest officials.

From the above it follows that all members of the Scheduled Tribes of Uttarakhand, including their 'pastoral communities' and all Uttarakhandis who are resident of a village with a Van Panchayat constituted before the cut off date of December 2005 are eligible as a beneficiary under the provisions of this Act. This leaves out only those villages which do not have a Van Panchayat of their own or a 'forest'( as described by the Gowdaburman ruling of 1996 Supreme Court case ) within the traditional boundary of the said village. Here we will have to look up for a 'generic evidence' of both the existence of 'forest or forest land' and dependence of FDST or OTFD on them 'for their bona fide livelihood needs'.

It is primarily in the domain of providing pro-actively and voluntarily such 'generic' and 'specific evidence' that the role and responsibilities of the public authorities concerned is being discussed in this article. Could one expect the concerned 'public authority', say Revenue, Forest and others, to do so suo-moto and voluntarily, to repeat " without the public asking for it" ?. Let us replace 'public' here by the expressions FDST and OTFD respectively, to contextualize the main formulation.

### **The Provider Public Authorities**

The major players, as the operational plan suggests, are the ( i ) Forest department, due to the forest-lands, forest rights, community forest resources, forest villages, forest dwelling Scheduled Tribes and the 'minor forest produce' and forest officials involved in question, ( ii ) Rural Development / Panchayat Raj department, due to the Zila Panchayat, Kshetra Panchayats and Gram Sabhas/Gram Panchayats, ( iii ) Social Welfare / Tribal development ( as the nodal agency, see sec 11 ) department on behalf of the state government constituting Committees at the Sub-Division, ( SDLC), District ( DLC ), State Level Monitoring Committee ( SLMC), also playing the role of 'Nodal' for the purpose of co-ordinating all arrangements and above all ensuring the bona-fide interests of the 'claimants', being individuals, group of individuals, family or community making a claim for recognition and vesting of rights listed in the Act, and (iv) Revenue

department, being a member of the State Level Monitoring Committee and over all controlling department of SDMs, DMs on one hand and land related issues on the other.

### **Claims : Filing, Determination, Verification and Evidence**

The framework provided by the Act, as has been mentioned, consists of two components viz., ( i ) recording of the forest rights so vested, and ( ii ) the nature of evidence required for any such recognition. Of the two, obviously it is the latter which is going to be a most cumbersome and nearly insurmountable tasks for the beneficiaries. It is so because the evidence which would be acceptable is almost entirely in the custody of the related public authorities like the Forest, Revenue and Rural Development / Panchayati raj departments. The framework assumes and expects the beneficiary individual and communities to come forward with their 'claims on land, occupation, and any traditional rights' and submit the same in Form –A, if a right on forest land, and Form-B, if a claim for community rights. ( see Annexure I ).

Common to both forms, From A and Form B, and of course obviously most crucial, is the 'Evidence in Support', being serial number 8 and 7 respectively. In addition, there is a serial number for 'any other information', in both the forms, and this could be official, non-official, anecdotal or private document or 'information'.

It is this 'Evidence in Support' which is being expected from the beneficiaries in the first place, in a documentary form, and it is this very same 'Evidence', which is in the custody of the concerned public authority and is going to be requisitioned by the Forest Rights Committee or the Gram Sabha, from the concerned authorities during the 'process of verifying' all such claims under rule 12 ! Interestingly under sub rule 4 of rule 12 all the concerned authorities have been mandated to provide an authenticated copy of any 'information, records or documents' if a written request is made by the Gram Sabha or the Forest Rights Committee. Now, this 'Evidence in Support' which is to be furnished by a claimant is admittedly in the custody and control of the related public authority only, so what is not comprehensible to a common citizen is the fact that then why an effort is not being made instead to direct such public authorities, who have all such 'evidence' in their own records and under their control, to make a 'provisional or tentative list of all possible beneficiaries, both individuals and communities' and play the role of initiator cum facilitators ? As it is, in any case, under the same rule ( rule 12 ) the departmental officers may be called upon to facilitate in 'providing clarifications, if required, through an authorized officer'. The 'Evidence' which is going to be called upon both for filing first claims and later verifying the same consist of 'public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, working plans, management plans, micro-plans, forest enquiry reports, records of rights, revenue settlement reports...quasi-judicial and judicial records, court orders' in short all official documents which are now amenable to the provisions of the RTI Act, especially section 4(1)(b).( see rule 13 (a) to (e) ). This certainly allows an RTI route facilitating marshalling of public documents as 'evidence in support', however, which ought to be avoided considering the salutary objective of the legislation in case.

## **Pro-active Role for the Forest & Revenue departments**

The upshot of all that has been indicated above suggests that there is nothing either in the The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2005 or in the framework provided in the Rules, 2007 notified in January, 2008 which prevents the related departments, mainly the Forest and Revenue departments and Panchayati raj, Rural Development and Social Welfare departments to play a highly pro-active role in facilitating recording of forest rights which already exists in the various official documents of the related public authorities, mainly Forest and Revenue departments. The 'generic evidence' related to the eligibility of both the FDSTs and OTFDs is easily deducible from the records related to all the Van Panchayats which have been constituted prior to December 2005 and this number of villages and Uttarakhandis gets eminently enlarged and rendered more encompassing by the last revenue settlements conducted, where under each revenue village settled the forest dependence is more than established by the entries made in the respective Wajib-ul-Uraj-s ( for example see dafa 13, Jikar Jungal, pages 299 -305, of Wajib-ul-Uraj of village Ninus, Khat Bawur, tahsil Chakrata of 1391 Fasli, or village Bagi, pages 201-205 of the same tahsil ). All that is required to establish the majority of Uttarakhand population classified as OTFDs is a copy of the Wajib-ul-Uraj-s of each settled village, taken out from its last land bandobust basta and thereafter proceed with the recording the individual or community claims, based on additional evidence available with various departments and in individual's possession. This, of course, can also be easily ordered by the Information Commission itself using the provisions of sec 4 (1)(b), as all these are documents falling under that clause. Same is the case with the various forest records e.g. Working Plans, micro-plans, PA Management Plans etcetra, both for establishing the 'generic' community and individual claims, not overlooking all the so-called forest laws violation related cases. As the department concerned know all these themselves the best, the illustrations need not be quoted further. For the 'specific' evidences the departments will have to undertake a much more intensive home-work than they are usually credited with. It has been rightly said - the reforms come from the top, the chaos from below !

## **Doing things Differently**

It has just been shown that here an opportunity presents itself where a majority of Tribal and forest dependent population of Uttarakhand, including almost all communities and regions, long suppressed and oppressed by the inexorable march of the 'sarkari forests', has an opportunity to get their rights officially recorded which will allow them opening of more sustainable livelihoods and secure them against potential food insecurity. This situation also allows ample opportunities to some public authorities like the much maligned forest department of redeeming their past reputation and establish themselves as the true benefactors of the communities who are so comprehensively dependent on forests and forest produce, for their very survival.

Providing information suo-moto, without the public asking for it, is indeed a case of doing things differently. The public authorities must seize opportunities like the one being discussed here to demonstrate how they are a-changing and making a difference,

where it really matters ! This is, what is indeed meant by, Going beyond the RTI, as the Prime Minister has recently exhorted the nation. Are we up to it and do we have it in us to push the existing frontiers a bit forward ?

**Article ends.....**