# CIVIL RIGHTS ACT, 1955

In pursuance of Article 17 of the Constitution of India, the *Untouchability (Offences) Act*, 1955 was enacted and notified in 1955. Subsequently, it was amended and renamed in 1976 as the "*Protection of Civil Rights Act*, 1955". Rules under this Act, viz., "The Protection of Civil Rights Rules, 1977" were notified in 1977. The Act extends to the whole of India and provides punishment for the practice of untouchability. It is implemented by the respective State Governments and Union Territory Administrations.

## Provisions of the Act

The provisions of the *Protection of Civil Rights Act*, 1955, are as under:

**1. Offences under the Act** The Act defines the following as offences if committed on the ground of "untouchability", and lays down punishment for them:

(i) Prevention from entering public worship places, using sacred water resources.
(ii) Denial of access to any shop, public restaurant, hotel, public entertainment, cremation ground, etc.
(iii) Refusal of admission to any hospital, dispensary, educational institutions, etc.
(iv) Refusal to sell goods and render services.
(v) Molestation, causing injury, insult, etc.
(vi) Compelling a person on the ground of untouchability to do any scavenging or sweeping or to remove any carcass, etc.

**2. Punishments under the Act** The Act contain and certain preventive/deterrent provisions, which are as follows:

(i) Cancellation or suspension of licenses on conviction.
(ii) Resumption or suspension of grants made by government.
(iii) Punishment for willful neglect of investigation by a public servant.
(iv) Power of state government to impose collective fine.
(v) Enhanced penalty on subsequent conviction.

**3. Other Provisions** Besides the above, the Act contains the following other provisions:

(i) Presumption by courts in certain cases.
(ii) Offences to be cognisable and to be tried summarily.
(iii) State governments to take measures for effective implementation of the Act.

# Implementation of the Act

The structure and mechanisms for implementation of the PCR Act in various States/UTs is as under:-

The Act provides for (i) Legal Aid, (ii) Special Courts, (iii) Committees to assist state governments for implementation of the Act, and (iv) special police stations. The details are given below:

**(i) Legal Aid** The Act provides for adequate facilities, including legal aid to the persons subjected to any disability arising out of 'untouchability' to enable them to avail themselves of such rights.

**(ii) Special Courts** The Act provides for setting up of special courts for trial of offences under the Act.

**(iii) Committees to Assist State Governments for Implementation of the Act** The Act provides for setting up of Committees at such appropriate levels as the state governments may think fit to assist them in formulating or implementing measures as may be necessary for ensuring that the rights arising from the abolition of "untouchability" are made available to, and are availed of by, the persons subjected to any disability arising out of "untouchability".

The State and District Level Vigilance and Monitoring Committees, which review the implementation of the *Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act*, 1989, wherever required also review the *Protection of Civil Rights Act*, 1955.

**(iv) Special Police Stations** Special Police Stations for registration of complaints of offences against SCs and STs have been set up. The Central assistance is provided to the states to the extent of 50% of the expenditure incurred by them on the police stations over and above their committed liability.

The States/UTs-wise details indicating the measures taken for implementation of the Act are mentioned below in Table 19.1:

**Table 19.1** State/UT-wise Details of Measures Taken for Implementation of the Protection of Civil Rights Act, 1955

| *S. No.* | *States/UTs* | *Special Courts* | *Vigilance and Monitoring Committees* | *Special Police Stations* |
|---|---|---|---|---|
| | **States** | | | |
| 1. | Andhra Pradesh | a | a | x |
| 2. | Bihar | a | a | a |
| 3. | Chhattisgarh | a | a | a |
| 4. | Goa | a | a | x |
| 5. | Gujarat | a | a | x |

| | | | | |
|---|---|---|---|---|
| 6. | Haryana | a | a | x |
| 7. | Himachal Pradesh | a | a | x |
| 8. | Jammu & Kashmir | x | x | x |
| 9. | Jharkhand | a | a | x |
| 10. | Karnataka | a | a | x |
| 11. | Kerala | a | a | x |
| 12. | Madhya Pradesh | a | a | a |
| 13. | Maharashtra | a | a | x |
| 14. | Odisha | a | a | x |
| 15. | Punjab | a | a | x |
| 16. | Rajasthan | a | a | x |
| 17. | Tamil Nadu | a | a | x |
| 18. | Uttar Pradesh | a | a | x |
| 19. | Uttarakhand | a | a | x |
| 20. | West Bengal | a | a | x |
| | **NE Region** | | | |
| 21. | Assam | a | a | x |
| 22. | Arunachal Pradesh | x | x | x |
| 23. | Manipur | x | x | x |
| 24. | Meghalaya | x | x | x |
| 25. | Mizoram | x | x | x |
| 26. | Nagaland | x | x | x |
| 27. | Sikkim | x | a | x |
| 28. | Tripura | a | a | x |
| | **Union Territories** | | | |
| 29. | Delhi | a | a | x |
| 30. | Puducherry | a | a | x |
| 31. | Andaman & Nicobar Islands | a | a | a |
| 32. | Chandigarh | a | x | x |
| 33. | Dadra & Nagar Haveli | a | a | x |
| 34. | Daman & Diu | a | a | x |
| 35. | Lakshadweep | x | x | x |

***Note: a = Yes, x = No***

## SCS AND STS ATROCITIES ACT, 1989

The *Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act*, 1989 (the PoA Act) came into force in the year 1990. This legislation aims at preventing commission of offences by persons other than Scheduled Castes and Scheduled Tribes against Scheduled Castes and Scheduled Tribes.

The Act extends to whole of India except Jammu and Kashmir. The Act is implemented by the respective state governments and Union Territory Administrations, which are provided due central assistance under the Centrally Sponsored Scheme for effective implementation of the provisions of the Act.

# Provisions of the Act

The provisions of the Act are mentioned below:

(i) Defines offences of atrocities and prescribes punishment therefore.
(ii) Punishment for willful neglect of duties by non-SC/ST public servants.
(iii) Enhanced punishment for subsequent conviction.
(iv) Forfeiture of property of certain persons.
(v) Designating for each District a Court of Session as a Special Court for speedy trial of offences under the Act.
(vi) Powers of Special Court to inter-alia, extern persons likely to commit an offence.
(vii) Penalty for non-compliance with the order of a Special Court.
(viii) Appointment of Public Prosecutors/Special Public Prosecutors for conducting cases in special courts.
(ix) Power of state government to impose collective fine.
(x) Preventive action to be taken by the law and order machinery.
(xi) Measures to be taken by state governments for effective implementation of the Act, including: -
    (a) Economic and social rehabilitation of victims of the atrocities;
    (b) Setting up of committees at appropriate levels;
    (c) Identification of atrocity prone areas;
    (d) Legal aid to the persons subjected to atrocities to enable them to avail themselves of justice;
    (e) Appointment of officers for initiating or exercising supervision over prosecution for contravention of the provisions of the Act; and
    (f) Periodic survey of the working of the provisions of the Act.

# Provisions of the Rules

The Comprehensive Rules under PoA Act, titled "Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995" were notified in 1995 which, inter-alia, provide norms for relief and rehabilitation. Certain amendments in the PoA Rules related to the minimum scale of relief for atrocity victims have been made. Accordingly the previous rates (between ₹ 20,000 and ₹ 2,00,000) of relief to the victims of atrocity, their family members and dependents have been generally increased by 150% (between ₹ 50,000 to ₹ 5,00,000). The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Rules, 2011, have been notified in 2011.

The provisions of the PoA Rules are as under:

(i) Precautionary and Preventive Measures to be taken by the State Governments regarding offences of atrocities.

(ii) Investigation of offences under the Act to be done by not below the rank of a DSP level officer.

(iii) Investigation to be completed within 30 days and report forwarded to Director General of Police of the State.

(iv) Setting up of the Scheduled Castes and the Scheduled Tribes Protection Cell at State headquarters under the charge of Director General of Police/IG Police.

(v) Nomination of (a) a Nodal Officer at the state level (not below the rank of a Secretary to the state government), and (b) a Special Officer at the district level (not below the rank of an Additional District Magistrate) for districts with identified atrocity prone areas to co-ordinate the functioning of DMs, SPs and other concerned officers, at the State and District levels, respectively.

(vi) Provision of immediate relief in cash or kind to victims of atrocities as per prescribed norms.

(vii) State-level Vigilance and Monitoring Committee under the Chief Minister to meet at least twice a year.

(viii) District-Level Vigilance and Monitoring Committees under the District Magistrate to meet at least once every quarter.

# Implementation of the Act

The structure and mechanisms for implementation of the PoA Act in various States/UTs is as under: -

**(i) Special Courts** In accordance with the Act, the state government, for the purpose of providing for speedy trial, specifies for each district, a Court of Session to be Special Court to try the offences under the Act. State governments and Union Territory Administrations of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Odisha, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttarakhand, West Bengal, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Lakshadweep and Puducherry have designated District Session Courts as Special Courts. For ensuring speedy trial of cases under the Act, 178 exclusive Special Courts, have also been set up by ten of the states. The details are given below in Table 19.2:

**Table 19.2** PoA Act 1989—Establishment of Exclusive Special Courts

| *S.No.* | *State* | *Total Number of Districts* | *Number of Exclusive Special Courts in Districts* |
|---|---|---|---|
| 1. | Andhra Pradesh | 23 | 23 |
| 2. | Bihar | 38 | 11 |
| 3. | Chhattisgarh | 20 | 06 |
| 4. | Gujarat | 26 | 25 |
| 5. | Karnataka | 28 | 07 |

| | | | |
|---|---|---|---|
| 6. | Madhya Pradesh | 50 | 43 |
| 7. | Rajasthan | 33 | 17 |
| 8. | Tamil Nadu | 32 | 04 |
| 9. | Uttar Pradesh | 71 | 40 |
| 10. | Uttarakhand | 13 | 02 |
| | **Total** | **334** | **178** |

**(ii) Special Public Prosecutor** The Act provides for appointment of advocates as Public Prosecutors and Special Public Prosecutors for the purpose of conducting cases in special courts. Accordingly the States/Union Territories, which have set up special courts, have appointed Public Prosecutors/Special Public Prosecutors.

**(iii) Setting up of SC/ST Protection Cells at State Headquarters** The PoA Rules requires the state government to set up an SC/ST Protection Cell, at the state headquarters, under the charge of a DGP, ADGP/IGP and assign to it the following responsibilities:

(a) conducting survey of, maintaining public order and tranquility in, and recommending deployment of special police force in identified areas;

(b) investigating causes of offences under the Act, restoring feeling of security among SC/ST;

(c) liaising with nodal and special officers about law and order situation in identified areas;

(d) monitoring investigation of offences and enquiring into willful negligence of public servants;

(e) reviewing the position of cases registered under the Act; and

(f) submitting a monthly report to the State Government/Nodal Officer about action taken/proposed to be taken in respect of the above.

SC/ST Protection Cells have been set up in Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu, Tripura, Uttar Pradesh, West Bengal, Andaman & Nicobar Islands, Daman & Diu and NCT of Delhi.

**(iv) Special Police Stations** Special Police Stations for registration of complaints of offences against SCs and STs have also been set up by the Governments of Bihar, Chhattisgarh, Jharkhand, Kerala and Madhya Pradesh. The details are given below in Table 19.3:

**Table 19.3** PoA Act 1989 – Establishment of Special Police Stations

| *S.No.* | *State* | *Total Number of Districts* | *No. of Spl. Police Stations* |
|---|---|---|---|
| 1. | Bihar | 38 | 38 |
| 2. | Chhattisgarh | 18 | 13 |
| 3. | Jharkhand | 24 | 22 |
| 4. | Kerala | 14 | 3 |
| 5. | Madhya Pradesh | 50 | 50 |
| | **Total** | **144** | **126** |

**(v) Nodal Officers:** The PoA Rules provides for appointment of the nodal officers for coordinating functioning of the District Magistrates and Superintendents of Police or other authorised officers.

**(vi) State and District-Level Vigilance and Monitoring Committees** The PoA Rules provide for setting up State Level Vigilance and Monitoring Committees under the Chairpersonship of the Chief Minister and District-level Vigilance and Monitoring Committees under the Chairpersonship of the District Magistrate to review the implementation of the provisions of the Act.

**(vii) Identification of Atrocity Prone Areas and Undertaking of Consequential Steps**

(a) As per the PoA Rules, the state governments have identified the atrocity prone/sensitive areas in their respective states.

(b) The PoA Rules provide for appointment of a Special Officer not below the rank of an Additional District Magistrate in the identified area, to co-ordinate with the District Magistrate, Superintendent of Police or other officers responsible for implementing the provisions of the Act.

The State/UT-wise details of the above mentioned measures under the Act are given below in Table 19.4:

**Table 19.4** State/UT-wise Measures for Implementation and Monitoring of PoA Act, 1989

| | *States/UTs* | *Special Courts* | *Exclusive Spl. Courts* | *Spl. Public Prosecutors* | *State/District-level Vigilance and Monitoring Committee* | *Nodal Officer* | *Identification of Atrocity Prone Areas* | *Spl. Officer* | *Spl. Police Statio* |
|---|---|---|---|---|---|---|---|---|---|
| | **States** | | | | | | | | |
| 1. | Andhra Pradesh | a | a | a | a | a | a | a | x |
| 2. | Bihar | a | a | a | a | a | a | a | a |
| 3. | Chhattisgarh | a | a | a | A | a | x | a | a |
| 4. | Goa | a | x | a | a | a | x | x | x |
| 5. | Gujarat | a | a | a | a | a | a | a | x |
| 6. | Haryana | a | x | a | a | a | x | x | x |
| 7. | Himachal Pradesh | a | x | a | a | a | x | x | x |
| 8. | Jammu & Kashmir | PoA Act does not extend to the State | | | | | | | |
| 9. | Jharkhand | a | x | a | a | a | a | a | x |
| 10. | Karnataka | a | a | a | a | a | a | a | x |
| 11. | Kerala | a | a | a | a | a | a | x | x |
| 12. | Madhya Pradesh | a | a | a | a | a | a | a | a |
| 13. | Maharashtra | a | x | a | a | a | a | x | x |
| 14. | Odisha | a | x | a | a | a | a | a | x |
| 15. | Punjab | a | x | a | a | a | x | x | x |
| 16. | Rajasthan | a | a | a | a | a | a | a | x |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 17. | Tamil Nadu | a | a | a | a | a | a | x | x |
| 18. | Uttar Pradesh | a | a | a | a | a | a | a | x |
| 19. | Uttarakhand | a | x | a | a | a | x | x | x |
| 20. | West Bengal | a | x | a | a | a | x | x | x |
| | **NE Region** | | | | | | | | |
| 21. | Assam | a | x | a | a | a | x | a | x |
| 22. | Arunachal Pradesh | a | x | a | x | x | x | x | x |
| 23. | Manipur | a | x | a | x | a | x | x | x |
| 24. | Meghalaya | a | x | a | x | x | x | x | x |
| 25. | Mizoram | a | x | a | x | x | x | x | x |
| 26. | Nagaland | a | x | a | a | a | x | x | x |
| 27. | Sikkim | a | x | a | a | x | x | x | x |
| 28. | Tripura | a | x | a | a | a | x | x | x |
| | **Union Territories** | | | | | | | | |
| 29. | Delhi | a | x | a | a | a | x | x | x |
| 30. | Puducherry | a | x | a | a | a | x | x | x |
| 31. | Andaman & Nicobar Islands | a | x | a | a | x | x | x | x |
| 32. | Chandigarh | a | x | a | a | a | x | x | x |
| 33. | Dadra & Nagar Haveli | a | x | a | a | a | x | x | x |
| 34. | Daman & Diu | a | x | a | a | a | x | x | x |
| 35. | Lakshadweep | a | x | a | x | x | x | x | x |

**Note :** *a* = Yes, *x* = No

# Review Committee

The Parliamentary Committee on the Welfare of the Scheduled Castes and the Scheduled Tribes in its fourth Report (2006-2007) had inter-alia recommended that Ministry of Social Justice & Empowerment, Ministry of Home Affairs, National Commission for Scheduled Castes and National Commission for Scheduled Tribes should meet regularly to devise ways and means to curb atrocities and ensure effective administration of the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

In pursuance of this recommendation, a Committee for effective coordination to devise ways and means to curb offences of untouchability and atrocities against Scheduled Castes and Scheduled Tribes and effective implementation of the two Acts was set up under the Chairpersonship of Minister for Social Justice & Empowerment in March, 2006. Apart from other official members, the Committee has three non-official representatives from amongst Scheduled Castes and Scheduled Tribes, as Members. The Committee has so far held twenty meetings wherein 24 States and 4 Union

Territories have been reviewed.

# FOREST RIGHTS ACT, 2006

## Rationale of the Act

The forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers inhabiting forests for generations were in occupation of the forest land for centuries. However, their rights on their ancestral lands and their habitats had not been adequately recognised despite them being integral to the very survival and sustainability of the forest eco-system. The traditional rights and interests of forest dwelling scheduled tribes and other traditional forest dwellers on forest lands were left unrecognised and unrecorded through faulty reservation process during consolidation of State forests, in the past.

The forest dwelling tribal people and the forests are inseparable, a factor that also ensures conservation of ecological resources stemming from the very ethos of tribal life. The conservation processes for creating wilderness and forest areas for production forestry somehow ignored the bonafide interests of the tribal community from legislative framework in the regions where tribal communities primarily inhabited. The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting their genuine claims to resources in areas where they belonged and depended upon. The modern conservation approaches also advocated exclusion rather than integration. It was much later that forest management regimes initiated action to recognise the occupation and other rights of the forest dwellers and integrated them in designs of management. Insecurity of tenure and fear of eviction from the lands where they had lived and thrived for generations were perhaps the biggest reasons why tribal communities felt emotionally as well as physically alienated from forests and forest lands. This historical injustice needed correction and, therefore, the government enacted the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act*, 2006, which is commonly known as *Forest Rights Act* (FRA).

The Act also goes beyond the "recognition" of forest rights and also empowers the forest rights holders, Gram Sabhas and local level institutions with the right to protect, regenerate, conserve and manage any community forest resource. This marks a decisive step forward in resource governance itself. Hailed rightly as a milestone in the history of tribal peoples' and forest dwellers' movements, the Act endeavors to facilitate their political empowerment to govern the forests for sustainable use and conservation.

## Provisions of the Act

The various provisions/features of the *Forest Rights Act* are as follows:

1. The Act lists the rights which shall be the forest rights of the forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers. These forest rights are :
   (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dweller;
   (b) community rights such as nistar, by whatever name called, including those used in erstwhile

Princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grasing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of *Pattas* or leases or grants issued by any local authority or any state government on forest lands to titles;

(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

(i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(j) rights which are recognised under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, which are not mentioned in (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to *in situ* rehabilitation including alternative land in cases where the Scheduled Tribes and other Traditional forest dwellers have been illegally evicted or displaced form forest land of any description without receiving their legal entitlement to rehabilitation prior to 13 December, 2005.

2. The Act provides for diversion of forest land for certain facilities managed by the Government notwithstanding anything contained in the *Forest Conservation Act*, 1980 and which involve felling of trees not exceeding seventy five trees per hectare and the forest land to be diverted for the purpose is less than one hectare and the clearance of such development project is recommended by the Gram Sabha.

3. The Act recognises and vests forest rights in forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers notwithstanding anything contained in any other law for the time being in force.

4. The Act provides for modification or resettlement of forest rights in critical wildlife habitats of National Parks and Sanctuaries for the purpose of creating inviolate areas for wildlife conservation subject to fulfilment of the following conditions :

(a) process of recognition of rights is complete in all the areas under consideration,

(b) no other reasonable option exists,

(c) it has been established that the activities or the impact of the present right holders will cause irreversible damage and threaten the existence of wildlife and their habitat,

(d) free and informed consent of the concerned Gram Sabhas has been obtained,

(e) resettlement or alternative package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected families and communities given in the relevant laws and policy of the Central Government, and

(f) the resettlement should take place only after the facilities and land allocation at the resettlement location are complete.

It is also provided that critical wildlife habitats from which right holders are relocated shall not be subsequently diverted for other users.

5. The Act subjects the recognition and vesting of the forest rights to the condition that the forest dwelling Scheduled Tribes or Other Traditional Forest Dwellers had occupied the forest land before 13 December, 2005. It also stipulates that the rights conferred shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons.

6. A very important and crucial safeguard has been provided to the forest right holders. It mandates that no forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers shall be evicted or removed from the forest land under his occupation till the recognition and verification procedure is complete.

7. The right to hold and live in the forest land under the individual or common occupation for habitation and for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribes or Other Traditional Forest Dwellers shall be restricted to area under actual occupation and shall in no case exceed an area of four hectares. Further, the Act provides that forest rights shall be conferred free from all encumbrances and procedural requirements.

8. The forest rights recognised and vested under this Act includes the right of land to forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers who can establish that they were displaced from their dwelling and cultivation without land compensation due to state development interventions and where the land has not been used for the purpose for which it was acquired within five years of the said acquisition.

9. The Act empowers the holders of forest rights, the Gram Sabha and the village-level institutions to:

(a) protect the wildlife, forest and bio-diversity;

(b) ensure that adjoining catchment area, water sources and other ecological sensitive areas are adequately protected;

(c) ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage; and

(d) ensure that the decisions taken in the Gram Sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals and the bio-diversity are complied with.

10. The Act deals with the authorities and procedures to vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers. There is a three-tier structure of authorities to vest forest rights. The Gram Sabha is the initiating authority for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers. The Sub-Divisional Level Committee examines the resolution passed by the Gram Sabha and forwards it to the District Level Committee for the final decision. Any person aggrieved by the resolution of the Gram Sabha may prefer a petition to the Sub-Divisional Level Committee and any person aggrieved by the decision of the Sub-Divisional Level Committee may prefer a petition to the District Level Committee. The decision of the District Level Committee on the record of forest rights is final and binding.

    There is a State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights and to submit to the nodal agency such returns and reports as may be called by that agency. The Ministry of Tribal Affairs, Government of India, is the nodal agency for the implementation of this Act.

# Implementation of the Act

As on 31-12-2012, the total number of claims filed under FRA is 32,37,656 out of which 27,91,330 claims have been disposed of and 12,79,076 titles have been issued. Odisha has the distinction of issuing highest number of titles which is 3,01,200 (3,00,321 individual titles and 879 community titles). Maharashtra has the distinction of having highest forest area over which titles have been issued under this Act. The total forest area over which title has been issued in Maharashtra is 6,35,915.57 acres. The detailed status of implementation of the Act is given below in Table 19.5:

**Table 19.5** State/UT-wise Status of Implementation of the Forest Rights Act, 2006

| *Sl.No.* | *States/UTs* | *No. of claims received* | *No. of titles distributed* | *No. of claims rejected* | *Total No. of Claims disposed of / % with reference to claims received* |
|---|---|---|---|---|---|
| 1. | Andhra Pradesh | 3,30,479 (3,23,765 individual and 6,714 community) | 1,67,797 (1,65,691 individual and 2,106 community) | 1,53,438 | 3,21,235 (97.20%) |
| 2. | Arunachal Pradesh | — | — | — | — |
| 3. | Assam | 1,31,911 (1,26,718 individual and 5,193 community) | 36,267 (35,407 individual and 860 community) | 37,669 | 73,936 (56.04%) |
| 4. | Bihar | 2,930 | 28 | 1,644 | 1,672 (57.06%) |
| 5. | Chhattisgarh | 4,92,068 (4,87,332 | 2,15,443 (2,14,668 | 2,72,664 | 4,88,107 (99.19%) |

| | | | | | |
|---|---|---|---|---|---|
| | | individual and 4,736 community) | individual and 775 community) | | |
| 6. | Goa | — | — | — | — |
| 7. | Gujarat | 1,91,592 (1,82,869 individual and 8,723 community) | 42,752 (40,994 individual and 1,758 community) | 18,399 (13,252 individual and 5,142 community) | 61,151 (31.91%) |
| 8. | Himachal Pradesh | 5,688 | 7 | 2,144 | 2,151 (37.81%) |
| 9. | Jharkhand | 42,003 | 15,296 | 16,958 | 32,254 (76.78%) |
| 10. | Karnataka | 1,63,320 (1,60,403 individual and 2,917 community) | 6,288 (6,235 individual and 53 community) | 1,55,417 (1,53,265 individual and 2,152 community) | 1,61,705 (99.01%) |
| 11. | Kerala | 37,535 (36,140 individual and 1,395 community) | 23,167 (23,163 individual and 4 community) | 4,252 | 27,419 (73.04%) |
| 12. | Madhya Pradesh | 4,64,623 (4,51,498 individual and 13,125 community) | 1,71,673 distributed and 7,528 title deeds are ready for distribution | 2,79,503 | 4,51,176 (97.10%) |
| 13. | Maharashtra | 3,44,330 (3,39,289 individual and 5,041 community) | 99,368 (98,335 individual and 1,033 community) | 2,34,242 (2,32,111 individual and 2,131 community) | 3,33,610 (96.88%) |
| 14. | Manipur | — | — | — | — |
| 15. | Meghalaya | — | — | — | — |
| 16. | Mizoram | — | — | — | — |
| 17. | Odisha | 5,32,464 (5,29,160 individual and 3,304 community) | 3,01,200 distributed (3,00,321 individual and 879 community) | 1,31,970 (1,31,361 individual and 609 community) | 4,33,170 (81.35%) |
| 18. | Rajasthan | 64,422 (64,076 individual and 346 community) | 32,080 (32,027 individual and 53 community) | 30,914 | 62,994 (97.78%) |
| 19. | Sikkim | — | — | — | — |
| 20. | Tamil Nadu | 21,781 (18,420 individual and 3,361 community) | 3,723 titles are ready # | — | — |

| | | | | | |
|---|---|---|---|---|---|
| 21. | Tripura | 1,82,617 (1,82,340 individual and 277 community) | 1,20,473 (1,20,418 individual and 55 community) | 21,384 (21,164 individual and 220 community) | 1,41,857 (77.68%) |
| 22. | Uttar Pradesh | 92,433 (91,298 individual and 1,135 community) | 17,705 (16,891 individual and 814 community) | 73,028 | 90,733 (98.16%) |
| 23. | Uttarakhand | 182 | — | 1 | 1 (0.54%) |
| 24. | West Bengal | 1,37,278 (1,29,454 individual and 7,824 community) | 29,532 (29,424 individual and 108 community) and 3,288 titles are ready | 78,627 | 1,08,159 (78.78%) |
| 25. | A & N Islands | — | — | — | — |
| 26. | Daman & Diu | — | — | — | — |
| 27. | Dadra & Nagar Haveli | — | — | — | — |
| | Total | 32,37,656 (31,73,565 Individual and 64,091 community) | 12,79,076 distributed and 14,539 ready | 15,12,254 | 27,91,330 (86.21%) |

# In Tamil Nadu, the titles could not be distributed due to High Court's restrictive order.

## DOMESTIC VIOLENCE ACT, 2005

# Rationale of the Act

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (1989) has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family.

The phenomenon of domestic violence in India is widely prevalent but has remained largely invisible in the public domain. Where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirely.

Therefore, the *Protection of Women from Domestic Violence Act* , 2005 was enacted keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution of India. The Act is intended to provide a remedy under the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

The Act is a comprehensive legislation to protect women from all forms of domestic violence. The Act also covers women who have been/are in a relationship with the abuser and are subject to violence of any kind—physical, sexual, mental, verbal or emotional.

The Ministry of Women and Child Development has notified the Protection of Women from Domestic Violence Rules, 2006 laying down the rules for implementation of the Act. The copies of the Act and the Rules have been circulated to all State Chief Secretaries with the request to appoint Protection Officers, register Service Providers and to give wide publicity to the Act for creating awareness of its provisions among the public.

## Provisions of the Act

The various provisions/features of the Act are as follows:

1. It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage, a relationship in the nature of marriage, or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to the protection under the proposed legislation. However, whereas the Act enables the wife or the female living in a relationship in the nature of marriage to file a complaint against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.
2. It defines "domestic violence" to include actual abuse or the threat of abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.
3. It confers on the aggrieved woman the right to reside in a shared household, whether or not she has any title or rights for the same. In fact, a respondent, not being a female, can be directed under the Act to remove himself from the shared household or to secure for the aggrieved woman the same level of alternate accommodation as enjoyed by her in the shared household or to pay rent for the same.
4. The orders for reliefs the aggrieved woman is entitled to under the Act include protection orders, residence orders, monetary relief, custody orders and compensation orders.
5. It empowers the Magistrate to pass protection order in favour of the abused to prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives or others who provide her assistance against the domestic violence.
6. It provides for appointment of Protection Officers and recognises and involves non-governmental organisations as service providers for providing assistance to the abused with respect to her medical examination, obtaining legal aid, safe shelter, etc.

## SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013

The *Sexual Harassment of Women at Workplace* (*Prevention, Prohibition and Redressal*) *Act*, 2013 was enacted to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment.

# Rationale of the Act

The sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment.

The protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India. It is expedient to make provisions for giving effect to the said convention for protection of women against sexual harassment at workplace.

The sexual harassment at workplace is a violation of women's right to gender equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their economic empowerment and the goal of inclusive growth. However, there is no domestic law to address this issue except a few provisions of the Indian Penal Code and the Supreme Court Guidelines in the case of Vishaka vs. State of Rajasthan. The increasing work participation rate of women has made it imperative that a comprehensive legislation focusing on prevention of sexual harassment as well as providing a redressal mechanism be enacted.

# Provisions of the Act

The various provisions/features of the Act are as follows:

1. It defines "sexual harassment at the workplace" in a comprehensive manner, in keeping with the definition laid down in the Vishaka judgment, and broadening it further to cover circumstances of implied or explicit promise or threat to a woman's employment prospects or creation of hostile work environment or humiliating treatment, which can affect her health or safety.
2. The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, (public or private) and covers clients, customers and domestic workers as well.
3. While the "workplace" in the Vishaka guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, departments, offices, branch units, etc., in the public and private sectors (organised and unorganised), hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation.
4. Definition of employee covers regular/temporary/ad hoc/daily wage employees, whether for remuneration or not and can also include volunteers. The definition of employer includes the

head of the Government department/organisation/institution/office/branch/unit, the person responsible for management/supervisions/control of the workplace, the person discharging contractual obligations with respect to his/her employees and in relation to a domestic worker the person who benefits from that employment.

5. The redressal mechanism provided in the Act is in the form of Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). All workplaces employing 10 or more than 10 workers are mandated under the Act to constitute an ICC. The ICC will be a four-member committee under the Chairpersonship of a senior woman employee and will include two members from amongst the employees preferably committed to the cause of women or has experience in social work/legal knowledge and includes a third party member (NGO, etc) as well.
6. Complaints from workplaces employing less than 10 workers or when the complaint is against the employer will be looked into by the LCC. A District Officer notified under the Act will constitute the LCC at the district level. LCC will also look into complaints from domestic workers.
7. LCC will be a five-member committee comprising of a chairperson to be nominated from amongst eminent women in the field of social work or committed to the cause of women, one member from amongst women working in block/taluka/tehsil/manicipality in the district, two members of whom at least one shall be a woman to be nominated from NGOs committed to the cause of women or a person familiar with the issues related to sexual harassment provided that at least one of the nominees should preferably have a background in law or legal knowledge. The concerned officer dealing with the social welfare or women and child development shall be an ex officio member.
8. A complaint of sexual harassment can be filed within a time limit of three months. This may be extended to another three months if the woman can prove that grave circumstances prevented her from doing the same.
9. The Act has a provision for conciliation. The ICC/LCC can take steps to settle the matter between the aggrieved woman and the respondent, however this option will be used only at the request of the woman. The Act also provides that monetary settlement shall not be made a basis of conciliation. Further, if any of the conditions of the settlement is not complied with by the respondent, the complainant can go back to the Committee who will proceed to make an inquiry.
10. The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.
11. In case the complaint has been found proved, then the Committee can recommend action in accordance with the provision of service rules applicable to the respondent or as per the rules which will be prescribed, where such service rules do not exist. The Committee can also recommend deduction of an appropriate sum from the salary of the respondent or ask respondent to pay the sum. In case the respondent fails to pay such sum, district officer may be asked to recover such sum as an arrear of land revenue.
12. In case the allegation against the respondent has not been proved then the Committee can write to the employer/district officer that no action needs to be taken in the matter.
13. In case of malicious or false complaint then the Act provides for a penalty according to the Service Rules. However, this clause has a safeguard in the form of an enquiry prior to

establishing the malicious intent. Also, mere inability to prove the case will not attract penalty under this provision.

14. The Act has provisions for providing reliefs to the aggrieved woman in the interim period including leave and transfer during the pendency of the inquiry.
15. The Act prohibits disclosure of the identity and addresses of the aggrieved woman, respondent and witnesses. However, information regarding the justice secured to any victim of sexual harassment under this Act without disclosing the identity can be disseminated.
16. The Act casts a responsibility on every employer to create an environment which is free from sexual harassment. Employers are required to organise workshops and awareness programmes at regular intervals for sensitising the employees about the provision of this legislation and display notices regarding the constitution of Internal Committee, penal consequences of sexual harassment, etc.
17. An employer will be liable to a fine of ₹ 50,000 in case of violation of his duties under the Act and in case of subsequent violations the amount of fine will be double together with penalty in the form of cancellation of his licence, withdrawal or non-withdrawal of the registration required for carrying out his activity.
18. In case of domestic worker the procedure is different considering the nature of employment. A domestic worker can approach the LCC in case of any complaint. If the complainant wishes then conciliation may be carried out. However, in other cases if the complaint is proved prima facie then the LCC can forward the complaint to the police for registering the case and taking appropriate action under the relevant provision of IPC.

# CHILDREN SEXUAL OFFENCES ACT, 2012

## Rationale of the Act

Article 15 of the Constitution, inter-alia, confers upon the State powers to make special provision for children. Further, Article 39, inter alia, provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, has prescribed a set of standards to be followed by all State parties in securing the best interests of the child. It requires the State parties to undertake all appropriate national, bilateral and multilateral measures to prevent :

(a) the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices; and

(c) the exploitative use of children in pornographic performances and materials.

The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the 'Study on Child Abuse: India 2007' conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the existing laws. A large number of such offences are neither specifically provided for nor are they adequately penalised. The interests of the child,

both as a victim as well as a witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.

Therefore, a special law, namely, the *Protection of Children from Sexual Offences* (*POCSO*) *Act*, 2012 was passed to deal with child sexual abuse cases. The Act has come into force with effect from 14th November, 2012 along with the Rules framed thereunder.

The POCSO Act, 2012 is a comprehensive legislation to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences. It would contribute to enforcement of the right of all children to safety, security and protection from sexual abuse and exploitation.

# Provisions of the Act

The various provisions/features of the POCSO Act of 2012 are as follows:

1. The Act defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law.
2. The Act provides for stringent punishments, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the Court.
3. An offence is treated as "aggravated" when committed by a person in a position of trust or authority of child such as a member of security forces, police officer, public servant, etc.
4. Punishments for Offences covered in the Act are:
   (i) Penetrative Sexual Assault –Not less than seven years which may extend to imprisonment for life.
   (ii) Aggravated Penetrative Sexual Assault – Not less than ten years which may extend to imprisonment for life, and fine.
   (iii) Sexual Assault – Not less than three years which may extend to five years, and fine.
   (iv) Aggravated Sexual Assault – Not less than five years which may extend to seven years, and fine.
   (v) Sexual Harassment of the Child – Three years and fine.
   (vi) Use of Child for Pornographic Purposes – Five years and fine and in the event of subsequent conviction, seven years and fine.
5. The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. The Act incorporates child-friendly procedures for reporting, recording of evidence, investigation and trial of offences. These include:
   (i) Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector.
   (ii) No child to be detained in the police station in the night for any reason.

(iii) Police officer not to be in uniform while recording the statement of the child.

(iv) The statement of the child to be recorded as spoken by the child.

(v) Assistance of an interpreter or translator or an expert as per the need of the child.

(vi) Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled.

(vii) Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.

(viii) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(ix) Frequent breaks for the child during trial.

(x) Child not to be called repeatedly to testify.

(xi) No aggressive questioning or character assassination of the child.

(xii) In-camera trial of cases.

6. The Act recognises that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalised. The attempt to commit an offence under the Act has been made liable for punishment for upto half the punishment prescribed for the commission of the offence.
7. The Act also provides for punishment for abetment of the offence, which is the same as for the commission of the offence. This would cover trafficking of children for sexual purposes.
8. For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the burden of proof is shifted on the accused. This provision has been made keeping in view the greater vulnerability and innocence of children. At the same time, to prevent misuse of the law, punishment has been provided for making false complaint or proving false information with malicious intent. Such punishment has been kept relatively light (six months) to encourage reporting. If false complaint is made against a child, punishment is higher (one year).
9. The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year.
10. For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within a period of one year, as far as possible.
11. To provide for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, they will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report. The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long-term rehabilitation of the child.
12. The Act casts a duty on the Central and state governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act.
13. The National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated

authority to monitor the implementation of the Act.