

THE TRADITIONAL COASTAL AND MARINE FISHERFOLK (PROTECTION OF RIGHTS) ACT 2009

PREAMBLE

An Act to recognize and vest the traditional rights and the occupation of fishing through traditional means in fisherfolk who have been residing in coastal areas for generations and carry on regular fishing activity in coastal and marine areas and to provide a framework for protecting the rights so vested.

WHEREAS there is a need to recognize and acknowledge the rights of the fisherfolk carrying out fishing activity through traditional means over the surrounding coastal areas;

AND WHEREAS there is a growing need to regulate the same to bring about responsible use of the resources keeping in mind sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the oceans while ensuring livelihood and security of the traditional fisherfolk;

AND WHEREAS the rights of these fisherfolk over their habitat and fishing areas were not adequately recognized in any manner whatsoever resulting in the exploitation of the rights of the fisherfolk who have a vital role to play in the very survival and in maintaining the sustainability of the ecosystem;

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:--

**CHAPTER I
PRELIMINARY**

Section 1 - Short title and commencement

- (1) This Act may be called the Traditional Coastal and Marine Fisherfolk (Protection of Rights) Act, 2009.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Section 2 - Definitions

- (1) In this Act, unless the context otherwise requires,--
 - (a) "community resource" means [to which the community had traditional access];
 - (b) "critical coastal zone" means such areas where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be monitored and protected for the purposes of marine life

conservation as may be determined and notified by the Central Government through the Ministry of Environment and Forests after open process of consultation by an Expert Committee, which includes experts from the locality appointed by that Government wherein a representative of the Ministry of Agriculture shall also be included, in determining such areas according to the procedural requirements that may be prescribed from time to time;

- (c) “coastal water” means waters extending 5 kilometres from the coast and includes fishing in water areas of estuaries, creeks, bays etc.
- (d) “Fish” means and includes all fish and shellfish and sea vegetation;
- (e) “Fisherfolk” means the traditional members or community of fisherfolk who primarily reside in and who depend on sea fishing for their bona fide livelihood needs;
- (f) “Fisheries Department” means department set up under the respective State/UT Governments to implement the fishing activities in the respective states/UTs;
- (g) “Fishing villages” means the settlements which have been established on those coastal areas by the State Governments from time to time;
- (h) “habitat” includes the area comprising the customary habitat and such other habitats where the traditional fisherfolk live and carry out activities for their livelihood;
- (i) “mechanized fishing” means and includes the use of such mechanized forms of fishing as through trawlers, purse-seiners etc.;
- (j) “nodal agency” means the nodal agency specified in section 7;
- (k) “notification” means a notification published in the Official Gazette;
- (l) “prescribed” means prescribed by rules made under this Act;
- (m) “sustainable use” shall have the same meaning as assigned to it in clause (o) of section 2 of the Biological Diversity Act, 2002 (18 of 2003);
- (n) “other traditional fisherfolk” means any member or community who has for at least three generations prior to the 13th day of December, 2009 primarily resided in and who depend on the ocean for bona fide livelihood needs and employ traditional fishing practices.

Explanation.-- For the purpose of this clause, “generation” means a period comprising of twenty-five years;

- (o) “village” means--
 - i. a village referred to in clause (b) of section 4 of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996; or
 - ii. any area referred to as a village in any State law relating to Panchayats other than the Scheduled Areas; or
 - iii. coastal villages, old habitation or settlements and unsurveyed villages, whether notified as village or not; or

- (p) Traditional” refers to the use of traditional mechanism for catching fish by traditional boats and gears which are not mechanized. It will also include the fisherfolk who are involved in traditional fish processing like curing, salting, drying, marketing and other related processes.

CHAPTER II RIGHTS OF FISHERFOLK

Section 3 - Rights of Fisherfolk

- (1) For the purposes of this Act, the following rights, which secure to the individual or community or both, shall be the rights of those fisherfolk who dwell on the coastlands, namely:--
- (a) Right to hold and live in the coastal areas under the individual or common occupation for habitation or for fishing for livelihood by a member or members of such family;
 - (b) Right of ownership and access to areas,;
 - (c) Other community rights of uses or entitlements such as fish and other products of water bodies, and traditional seasonal resource access of nomadic or pastoralist communities;
 - (d) Rights of settlement and conversion of all villages, old habitation, unsurveyed villages and other villages in coastal areas, whether recorded, notified or not into revenue villages;
 - (e) Right to protect, regenerate or conserve or manage any community resource which they have been traditionally protecting and conserving for sustainable use;
 - (f) 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 these fisherfolk under any traditional or customary law of the concerned fisherfolk of any State/UT;
 - (g) Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity;
 - (h) Any other traditional right customarily enjoyed by the traditional fisherfolk;
 - (i) Right to in situ rehabilitation including alternative land in cases where the traditional fisherfolk have been illegally evicted or displaced from coastal land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2010.
- (2) Notwithstanding anything contained above the respective State Governments or Union Territories may provide for establishment of the following facilities managed by the Government, namely:--
- (a) schools;
 - (b) dispensary or hospital;
 - (c) anganwadis;

- (d) electric and telecommunication lines;
- (e) tanks and other minor water bodies;
- (f) drinking water supply and water pipelines;
- (g) fish auction halls;
- (h) fish curing halls;
- (i) net mending yards;
- (j) disaster warning centres;
- (k) boat repair and boat building facilities;
- (l) crematoria and burial grounds for fisherfolk;
- (m) non-conventional source of energy;
- (n) skill upgradation or vocational training centres;
- (o) roads; and
- (p) community centres:

CHAPTER III PROVISION OF POST HARVEST TECHNOLOGIES

Section 4- Strengthening of Functions of State/UT Fisheries Department

The State Government shall actively move to strengthen the various Fisheries Departments/Agencies functioning in various states/UTs. The functions of these Fisheries shall be expanded to, *inter alia*, include:

- (1) Establishment of markets for the purchase at fair prices of the catch obtained by fisherfolk using traditional means as defined under this Act;
- (2) Encourage the development of fisheries cooperatives for the purchase of the catch procured through traditional means;
- (3) Specify rates for the purchase of the catch from the fisherfolk from time to time;
- (4) Establishment of Ice-plants/Cold-Storage facilities for preservation of catch to the fisherfolk;
- (5) Provisions for cold chain for transport purposes to markets outside the vicinity of the place of catch to the fisherfolk;
- (6) Establishment of other relevant technological inputs such as fish processing units and cleaning facilities etc.
- (7) Provision of technical and financial assistance in the form of loans to buy traditional boats and gears and other facilities necessary for fish processing and marketing;
- (8) Provision to provide training and knowledge transfer for enhancing fishing capabilities, processing and marketing;
- (9) Any other functions that may be prescribed by the State Governments from time to time

CHAPTER IV AUTHORITIES AND PROCEDURE FOR VESTING OF RIGHTS

Section 5 - Authorities to vest rights in traditional fisherfolk and others and procedure thereof

- (1) The Panchayat shall be the authority to initiate the process for determining the nature and extent of individual or community rights or both that may be given to the traditional fisherfolk within the local limits of its jurisdiction under this Act and for preparing a map delineating the area along with a list of attendant rights accruing to the fisherfolk of that area under its jurisdiction in such manner as may be prescribed by the State Government and the Panchayat shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.
- (2) Any person aggrieved by the resolution of the Panchayat may prefer a petition to the Executive Committee constituted under sub-section (3) and the Executive Committee shall consider and dispose of such petition:
Provided that every such petition shall be preferred within sixty days from the date of passing of the resolution by the Panchayat:
Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case
- (3) The State Government shall constitute a Executive Committee to examine the resolution passed by the Panchayat and prepare the record of rights accorded to traditional fisherfolk for a final decision
- (4) Any person aggrieved by the decision of the Executive Committee may prefer a petition to the State/UT Fisheries department within sixty days from the date of decision of the Executive Committee and shall consider and dispose of such petition:
Provided that no petition shall be preferred directly before the State/UT Fisheries department against the resolution of the Panchayat unless the same has been preferred before and considered by the Executive Committee:
Provided further that no such petition shall be disposed of against the aggrieved person, unless he has been given a reasonable opportunity to present his case
- (5) The decision of the State/UT Fisheries department on the record of rights of fisherfolk shall be final and binding
- (6) The State Government shall constitute a State Level Monitoring Committee to monitor the process of recognition and vesting of rights and to submit to the nodal agency such returns and reports as may be called for by that agency
- (7) The Executive Committee and the State Level Monitoring Committee shall consist of officers of the departments of Fisheries and Agriculture of the State Government and as many members as the State/UT Government may prescribe from time to time

Section 6- Functions of Panchayats

The Principal functions of these Panchayats shall, *inter alia*, include

- (1) Registration and Regulation of the number of traditional fishing boats in a particular area delineated by them;
- (2) Establishment of Dwelling Units for all registered traditional fisherfolk;
- (3) Ensure the preservation and protection of surrounding ecosystems including but not limited to mangroves, coral reefs, sea grass beds, sea weeds etc.
- (4) Prevention of Pollution and Land degradation in surrounding areas
- (5) Ensure prevention of overfishing in coastal areas by
 - (a) designating certain periods as fishing holidays and;
 - (b) drafting and implementing mesh size regulations for use by fisherfolk both traditional and those using mechanised means.
- (6) Obtain periodic information from local meteorological department/Disaster Management Authority of variations in weather patterns or such activity that may qualify as natural disasters and alert the fisherfolk of the same in a reasonable amount of time;
- (7) Provide all manner of assistance for rescue, relief and rehabilitation of victims of natural disasters in the area of jurisdiction;
- (8) Any other function that the State Government in consultation with the Central Government may prescribe from time to time

Section 7 - Nodal agency

The Ministry of the Central Government dealing with Agriculture, particularly fisheries or any officer or authority authorised by the Central Government in this behalf shall be the nodal agency for the implementation of the provisions of this Act.

CHAPTER V PENALTIES

Section 8- Penalties:

- (1) The State/UT Fisheries Department will take stringent action to prevent and punish, *inter alia*, the following actions:
 - (a) Destruction of Ecosystem by practices that are harmful to the surrounding ecosystem;
 - (b) Indiscriminate pollution and dumping of solid waste into the coastal waters defined under the Act;
 - (c) Destruction of fishing habitats by overfishing or by dredging or by reclamation or by construction of such structures which affect the fishing and spawning areas;
 - (d) Destruction of the dwelling units or any part of the coastal village area for those developmental activities which are not sanctioned or permitted by the concerned agencies
- (2) The State Government in consultation with local communities and the Panchayat, shall prescribe and levy penalties for all the above acts from time to time which shall be in addition to punishment for the same as prescribed under different statutes and legislations

**CHAPTER VI
POWER TO MAKE RULES**

Section 9 - Power to make rules

- (1) The State Government may, by notification, and subject to the condition of previous publication, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:--
 - (a) Procedural details for implementation of the functions as specified under section 6;
 - (b) The procedure for listing and compiling rights and verifying them and preparing a map delineating the area of jurisdiction under each Panchayat for exercise of rights and the manner of preferring a petition to the Executive Committee;
 - (c) The level of officers and the various relevant departments of the State Government to be appointed as members of the Executive Committee and the State Level Monitoring Committee under section 5;
 - (d) The composition and functions of the Executive Committee and the State Level Monitoring Committee and the procedure to be followed by them in the discharge of their functions under section 5;
 - (e) Any other matter which is required to be, or may be, prescribed.