

## LEAD STORY

## For lasting rights

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TRIBAL WOMEN MAKE ropes with the bhabbar grass they secure from forests that are part of the Rajaji National Park in Uttarakhand.-

The forest rights Bill finally gives forest-dwelling communities a legal basis for their rights to forest resources.

THE "tigers vs tribals" debate just got murkier. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006, passed by Parliament, does not do much to clear the air on whether it will aid or undermine conservation.

The Bill is very, very belated. Forest-dwelling communities have deserved a legal basis for their rights to forest resources ever since forests came under a legal regime. Farmers outside forests have rights to their lands. City-dwellers, including conservationists who have criticised the Bill, have such rights (including the right to purchase virtually any kind of wood they want and to submerge forests to produce the electricity they so voraciously use). There is absolutely no reason why forest-dwellers, long neglected, should not get the rights to where they live and to what their livelihoods depend on.

But it is also clear that such rights, in the absence of an appropriate conservation framework, are going to be short-lived. Any legislation on forest rights, therefore, needs also to have clear provisions for the protection of forests and their biodiversity. How does the Forest Rights Bill fare?

The conservation impact of a law like this needs to be judged in three arenas: areas specially designated for wildlife protection (national parks and sanctuaries), government forests (reserved and protected) outside such protected areas, and community/private or unclassed forests. I deal here with the first two, since these are the primary arenas of current and possible future conflict.

The most intense battles between wildlifers and Adivasi rights advocates have been over the Bill's provisions relating to protected areas (PAs). It is undeniable that such areas have been the single most important step towards halting the rapid decimation of India's wildlife. Without them, many of our species would be history; one only needs to recall the story of the Indian rhinoceros and the Asiatic lion, among others.

But it is also true that the majority of India's PAs are inhabited by communities, most of them since

before the PA was notified. For at least two decades now, many environmental groups have argued that we need laws enabling the participation of such people in conservation and recognising their basic rights to survival and livelihood resources that do not compromise on conservation values.

Unfortunately, a handful of powerful conservationists have remained unmoved by this logic (even when shown its acceptance across the world) and have systematically blocked attempts to change the Wildlife Act in this direction. To make matters worse, the Supreme Court's Centrally Empowered Committee and the Ministry of Environment and Forests (MoEF) have used a court order to direct State governments to stop all rights in the PAs. The result has been mass misery and the dispossession and threatened displacement of three to four million people.

The Forest Rights Bill will have a significant impact on this situation. It stipulates that "critical wildlife habitats" within the PAs be determined scientifically, followed by a process of dealing with the rights of forest-dwellers. If it is shown that their activities are causing "irreversible damage" and that "coexistence" is not possible, then they can be relocated. However, this will need their "informed consent" and the availability of rehabilitation facilities before the actual relocation. Actually, even many conservationists agree that displacement of people should only be with their consent, so no one should have objections to these provisions of the Bill.

One provision conservationists should celebrate is that a critical wildlife habitat from where people have been relocated cannot be diverted subsequently for other uses. This means no dams, mines, roads, tourist resorts, and so on can come up in such areas, a powerful provision that is not contained even in the Wildlife Act.

What makes it difficult to predict the impact of the relocation provision is the simultaneous provision of rights for developmental facilities for villages inside the PAs. These include schools, health centres, communication facilities, roads, water supply, non-conventional energy sources, and so on. Many villages inside the PAs have been denied such facilities owing to conservation-related restrictions, or simply because of inefficient government departments. This denial is one major reason for many villages wanting to opt for relocation. Now the question is, if these are provided as a matter of right, will people still want to move? It will require not only considerable persuasion to get their consent to move but also evidence that the state can deliver a good resettlement. The quality of dialogue with the local people and the nature of rehabilitation will need substantial upgradation, which is anyway long overdue.

The provision of developmental facilities in the PAs (and other forests) is, however, a potential source of ecological damage, especially if they are interpreted by State governments eyeing big bucks to mean four-lane, tarred roads and major construction works. In combination with vested interests present in many a panchayat, this could be the biggest danger to the PAs. One major relief is that the rights to quarrying or mining, listed in previous versions of the Bill, have been dropped. Additionally, my interpretation is that the Wildlife Act will continue to apply, which means that developmental facilities would need to be cleared through the wildlife authorities, thus reducing their damage potential.

The key is to ensure basic developmental inputs to communities without compromising conservation values; not all roads are bad (otherwise we should have been asking for all roads leading to tourism complexes within the PAs, such as at Corbett and Kanha, to be shut down), and construction does not have to be in the form of destructive monstrosities. But we also have the sorry example of Melghat, where huge road networks were made ostensibly to deal with malnutrition amongst Adivasis.

Most forest-dwellers who will gain rights under the Bill are in forests outside the PAs. Conventionally, in most reserve forests and many protected forests, customary and traditional rights to land and resource use have been inadequately recorded and granted. In States such as Orissa and Chhattisgarh, and in parts of the northeastern region, lakhs of hectares of lands traditionally occupied or used for farming (including shifting cultivation or jhum) have not been recorded as such. On the contrary, they have been unethically declared forest land under government management. On the other hand, there are also huge areas of actual encroachment in forest areas, both by desperately poor people and by powerful vested interests such as the land mafia.

The Bill provides for recognition of 'encroached' land, for Scheduled Tribes who can show

occupation up to December 2005, and for other forest-dwellers who have occupied the land for at least three generations (75 years). The conservation implications are, again, mixed.

Conservationists who have stated that the Forest Bill will be the death-knell of India's forests are indulging in unsubstantiated exaggeration. Estimates put together by the MoEF from State government data suggest that about 2 per cent of the country's forests are under encroachment. Even if one assumes that this is a piece of gross under-reporting, not more than 5 per cent of the total forest land could be 'encroached' (and this includes land not truly encroached, as argued above). Only a subset of this would be eligible for regularisation under the Bill. Of course, one has to guard against misuse by State governments to regularise massive encroachments by the land mafia or by recent settlers, as in the case of Assam.

On the other hand, for most traditional forest-land occupiers, getting a patta could be a strong incentive to evolve more sustainable land-use practices. Research worldwide shows that insecure tenure (rights and ownership) to land and resources is a major cause of unsustainable and destructive land use (the Bill's Statement of Objects and Reasons stresses this). It also shows that this situation is reversed when laws and policies assure a more secure tenure; this is clear also from many community conservation initiatives in India. From this perspective, the Bill could enhance the possibility of conservation.

However, the cut-off date of 2005 is in itself unacceptable. Already there are scattered reports that people are being encouraged by political interests to encroach forest land with the assurance that it will get regularised under the Bill. The use of the best available land records, along with satellite imagery and vigil by civil society groups, will be needed to ensure that this does not become a widespread trend. Traditional forest-dwellers themselves should have an interest in stopping this trend as it threatens their own continued existence.

The provision of rights to developmental facilities could also spell trouble if they are employed in deep forests. Roads, buildings and so on could further the fragmentation of such areas, resulting in an escalation of biodiversity loss. It is not clear whether there is any safeguard against this outside the PAs since the Bill overrides the Forest Conservation Act for this purpose.

Some other provisions that could enhance conservation considerably have largely been overlooked. Communities will now have the right to "protect, regenerate, or conserve or manage any community forest resource which they have been traditionally protecting or conserving for sustainable use". As NGOs like Kalpavriksh, Vasundhara and others have shown, there are thousands of community-conserved areas (CCAs) in India, 10,000 community forests in Orissa, forests protected under tribal self-rule in central India, catchment forests conserved in Rajasthan, Nagaland and Mizoram, and so on, all together covering lakhs of hectares. Most of these, other than in the northeastern region, are government forests, but with hardly any government staff present. Most of them also lack legal backing, rendering them open to damage and destruction by outsiders. The Forest Rights Bill could now provide the backing that the CCAs desperately need.

Secondly, the Bill "empowers" gram sabhas and other village-level institutions to "protect wildlife, forest and biodiversity" and ensure that the "habitat of forest-dwelling Scheduled Tribes and other traditional forest-dwellers is preserved from any form of destructive practices". An earlier version even had a provision requiring community consent before diverting forest for any non-forest use. This has unfortunately been dropped, but the above two provisions could still give communities a tool to check the incursions of unsustainable development projects. This would have been even stronger had gram sabhas been given not only the "empowerment" but also the responsibility of ensuring conservation. This crucial element was contained in the 2005 form of the Bill.

Conservationists need to move away from a "no Bill" position into a more pro-active one that accepts the necessity of recognising forest rights but forces the government to accept stronger conservation frameworks in the Bill's amendment, interpretation and implementation. It is equally crucial for social action groups, now that they have won at least a partial victory, to show that they also care about wildlife. We must move quickly to expose areas where vested interests are likely to misuse the Bill.

For this, conservationists need to work together to press for suitable amendments (for example, of the cut-off date, the need to seek "prior informed consent" from communities for any diversion of

forest land for non-forest purposes, and the reinsertion of conservation responsibilities tied to rights). They also need to collaborate on developing rules and guidelines for a number of the Bill's provisions: the identification of "critical wildlife habitats", the process of ensuring fair relocation (including what "informed consent" should mean), and the processes by which communities can use the provisions on protecting forests and wildlife (including the CCAs). Also crucial is an independent monitoring mechanism to show what impact the Bill's implementation is having and to suggest corrective action where necessary.

The first six months or so of the implementation phase should be used to do a complete mapping of 'encroached' areas, other forests where resource rights will be extended, and community-conserved forests that could be legally recognised, and to build a baseline on which monitoring can be done. Also important, though Herculean, is to help gram sabhas and tribal councils build capacity to carry out their conservation responsibilities.

In spelling out the composition of the various committees that the Bill establishes at the subdivisional, district and State levels, State governments must include environmental and social action groups. Such members can act as critical checks against the misuse of the Bill.

There is also a need to clarify how precisely the Bill relates to existing conservation laws. The Bill states that "save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force". My interpretation is that the provisions of the Wildlife and Forest Acts will continue to apply. However, this is open to interpretation, and we would do well to stress proactively that the rights aspects of this Bill be harmonised with the conservation provisions of existing laws.

Finally, let us remember that if conservationists and human rights advocates do not join forces, both interests will be defeated by powerful corporate and commercial interests that are on the upsurge owing to the mad rush to achieve a 10 per cent rate of growth. Even as the government gives forest rights to Adivasis, it is opening up Adivasi and other forest areas in Chhattisgarh, Jharkhand, Orissa and elsewhere for mining, industries and the like.

If the forest rights Bill could be used in conjunction with conservation and panchayat laws, there could still be a semblance of a chance to stall the juggernaut of destructive development that otherwise will engulf both wildlife and Adivasis.

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