

SOCIAL ISSUES

Forests and tribal rights

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A new Bill proposes to make amends for the injustice done to India's tribal people by restoring their rights to traditional means of livelihood.

It is a classic clash of two visions. The draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005 aims to provide Adivasis rights to forest resources that are so intimately linked with their lives. Tribal rights activists are ecstatic. Wildlife conservationists, on the other hand, have protested strongly. Still reeling from the shock of the tiger crisis in Rajasthan, they fear that the Bill would be another nail in the coffin of India's wildlife.

Are these fears justified? Will the Bill lead to further deforestation, thereby undermining its own objective of safeguarding the interests of tribal communities? Or will it help to realise better the aim of conservation by providing communities a stake in protecting forests?

The draft Bill aims to compensate the "historical injustice" done to forest-dwelling tribes that were denied their traditional rights to forest lands and resources in the last couple of hundred years. In this period, the lands they had been dwelling on were declared "forest land" or "protected areas" for wildlife. The traditional conservation ethos and dependence of tribal societies on forest land were overlooked. The Bill aims to reverse the alienation of tribes from their own habitat caused by past policies and laws.

The rights proposed to be accorded to Adivasis include pattas to forest lands occupied before 1980. This is not new; it has been a stated policy of the government for years now. A number of other rights are also to be granted: nistar (usufruct) or ownership rights to forest resources, grazing rights including seasonal ones of nomadic communities, habitation rights (for those classified as Primitive Tribal Groups), conversion of forest villages into revenue villages, and so on. No tribal person is to be evicted from currently occupied land until the process of determining rights is completed, according to the Bill.

The Bill places considerable authority in the hands of gram sabhas. This includes the primary function of recognising forest rights, regulating access to forest resources, and punishing those who violate the provisions of the Act. But gram sabha decisions are subject to approval by higher authorities. Sub Divisional Committees are to hear appeals against them and also resolve inter-village conflicts. District Committees are to act as appellate authorities and give the final approval of the record of forest rights. A State Committee is to monitor the implementation of the Act. These committees include forest and revenue officials and civil society representatives.

There can be no argument about the need to restore the rights of Adivasis, especially the rights to their basic livelihood sources. But without forests, forest rights would be meaningless. So, how does the Bill fare in its provisions to conserve forests and their non-human dwellers?

At certain points, the Bill actually reads like a conservation manifesto. For instance:

- * All rights are accompanied by responsibilities for forest protection;
- * All right holders have the duty to conserve forests and wildlife, protect catchment areas, water sources, and ecologically sensitive areas, and inform the gram sabha of ecologically destructive activities;
- * Hunting is explicitly excluded from the list of forest rights;
- * All rights are meant only for bona fide livelihood needs, not for exclusive commercial purposes;

- * In no case would forest land beyond 2.5 hectares be allotted (only land under occupation prior to 1980 can be considered, no new forest lands would be allotted);
- * The gram sabha has to stop any activity that adversely affects wildlife, forests and biodiversity;
- * Penalties are to be imposed for destruction of wildlife, forests, or biodiversity (including felling trees for commercial purpose), and in the case of repeated offences, the forest rights of the offender can be derecognised.
- * At all levels of decision-making above the gram sabha, forest officials are involved, providing a possible check against misuse.

Evidence for the validity of a claim to rights is to be obtained from oral testimony, government records, survey maps, satellite imagery, traditional physical structures, gram sabha resolutions and other sources. This process, for the first time elaborated in an Act, provides another buffer against misuse.

The Bill also provides tribal communities the right to protect and manage any "community forest resource" that they have been traditionally conserving and to impose penalties on anyone violating traditional rules of conservation. This could be a powerful aid to the villagers of Gadchiroli district in Maharashtra; to the women of Dangejheri and several other villages in Ranapur block of Orissa; and hundreds of such Adivasi communities in other States who are protecting forests though they do not have the legal authority to do so. It is, however, not clear whether this right would extend to government-owned forests, since the term "community forest resources" is not defined anywhere.

DESPITE the above-mentioned provisions, the fears of wildlife conservationists are partially justified. The Bill states that the responsibilities and duties regarding conservation are applicable to all activities except those that are permitted as 'rights'. Does this then exempt rights that could be ecologically destructive? The gram sabha is given the duty to stop any activity adversely affecting wildlife, forests and biodiversity, but can it override the legislation in the case of the rights granted? Ambiguity on this count needs to be removed. Moreover, it is not clear whether the Sub Divisional Committee and the District Committee are to consider the ecological implications while approving or rejecting the rights proposed by gram sabhas.

Such ecological considerations are crucial, given the fact that the conditions in which Adivasi communities operate today are vastly different from those even a few decades ago. What may have been perfectly harmless activity then may not be so anymore. Even non-commercial activities in some cases could cause wildlife loss (for instance, of a medicinal plant that was once quite common but has now become threatened). There could also be excessive pressure on forests because of increases in local populations. Clear provisions on the roles of gram sabhas, Sub Divisional Committees and District Committees are needed to deal with such situations, for instance by incorporating wildlife experts and non-governmental organisations (NGOs) into their processes.

The Bill provides for penalties for unsustainable use of forest resources. However, the term 'sustainable' is not defined; nor is it clear who is to determine the levels of sustainability. Some years ago, this term was used in a proposed Forest Bill (it was shelved after widespread opposition from NGOs and the public) and was criticised for providing potentially arbitrary powers to forest officers. The Bill needs provisions against similar arbitrary use by forest right holders, gram sabhas or government functionaries.

There is also a lack of clarity on how the Bill relates to other relevant laws, especially the Wildlife (Protection) Amendment Act 2002 (WLPA), the Indian Forest Act 1927 (IFA), and the Forest Conservation Act 1980 (FCA). It states that the rights vested under the proposed legislation will remain notwithstanding anything contained in any other law, but it also states that the operation of other laws would continue if they do not contradict the provisions of this Bill.

Are provisions of the WLPA, the IFA and the FCA in contradiction with the Bill? Many tribal areas are subject to these earlier laws - for instance, reserve forests, protected forests, national parks and wildlife sanctuaries. What precisely is the jurisdiction of authorities vested under these laws? In the case of a wildlife-related offence, is the gram sabha's decision on punishment final, or do the wildlife officials of the area also have some authority? This becomes especially crucial in the case of threatened species or wildlife species with a high trade value, where pressure on gram sabhas to

look the other way would be intense.

A clearer system of checks and balances is needed. Indeed, it is needed even for the current system in which the Forest Department is vested with exclusive authority over forests and wildlife. Only a fully transparent system of functioning is a guarantee to reducing abuse of power by any sector.

Another critical gap concerns development projects. The Bill needs to include a 'prior informed consent' clause, requiring that any major development project (dams, mines, industries, expressways, power stations, and so on) on relevant forest lands can be cleared in the area only if the affected communities are fully informed of the implications of the project and provide their full formal consent. This could be a powerful tool to stop destructive projects on forest land, which are today the biggest cause of deforestation in India.

But what if communities misuse such a provision? The Bill does state that regularised lands cannot be alienated. But in addition it could explicitly mention that the Forest Conservation Act will continue to apply in the case of large development projects so that there is a further check on clearance.

Finally, there is an interesting section providing the right to protect traditional knowledge. This has for long been a crying need, given the loss of such knowledge and its theft by unscrupulous pharmaceutical, seed and other companies. However, the Bill needs to elaborate on how such protection would take place and how it would relate to the Biological Diversity Act, which also proposes such protection.

The Bill, if enacted, would mark a huge step forward in securing the rights of forest-dwelling Adivasis. In fact, one wishes that it might also extend to other forest-dwelling communities (especially small-scale Dalit farmers) and to fishing communities and shepherds occupying grasslands, wetlands and coastal and marine areas, of course, with appropriate and strong conservation requirements. These sections of Indian society have been as underprivileged as Adivasis. There is also a need for more open public discussion and participation in the finalisation of the Bill than has been the case so far. With more dialogue, especially with wildlife conservationists and communities, a stronger united front could be achieved to secure both tribal rights and conservation.