

## INDIA

## Rights and promises

ASHISH KOTHARI

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K.R. DEEPAK

The revised Scheduled Tribes and Other Traditional Forest Dwellers Bill, 2006, has many positive points.

ON May 23, 2006, a Joint Parliamentary Committee (JPC) presented to the Lok Sabha and the Rajya Sabha one of independent India's most important pieces of draft legislation: the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006. The JPC might have hoped that by doing so it would lay to rest the controversy that had plagued an earlier version of the Bill. However, the revised Bill has set off a fresh set of alarm bells, this time perhaps more justified than the uproar over the previous version.

In 2005, after a considerably acrimonious public debate, the Ministry of Tribal Affairs had tabled the Scheduled Tribes (Recognition of Forest Rights) Bill for parliamentary approval. The objective of the Bill was to provide the tribal people rights to forest land already occupied by them, as also secure access to forest produce essential for their survival and livelihoods. There was no doubt in most people's minds that legislation to undo the historical injustices meted out to Adivasis was necessary.

But the public debate showed a sharp division: a number of hard-core conservationists foretold a disastrous ecological future were that Bill to become an Act, while their human rights counterparts argued that the Bill needed even stronger provisions for land rights and the extension of such rights to non-tribal forest-dwellers. In the cacophony, the voices of several moderate conservation and human rights groups were drowned. But their message was nevertheless critical: that we need to protect forests to protect livelihoods, and also establish clear livelihood rights for a long-term stake in conservation.

In December 2005, the Bill was referred to the JPC, which consisted of 30 MPs cutting across party lines. The JPC engaged in extensive consultation (unfortunately restricted to written submissions, and oral submissions in Delhi, owing to lack of time). Several hundred people and organisations are believed to have responded. The JPC's revised Bill is reportedly a result of careful consideration of these inputs.

The revised Bill expands its coverage considerably, from only Scheduled Tribes to other "traditional

forest dwellers". This extension of the Bill's ambit had been demanded by a number of groups working amongst non-tribal forest-dependent populations such as pastoral communities or cultivators in the Himalayan tracts. They justifiably argued that such communities had never been given their due rights as forest-dwellers.

However, the JPC has provided a much more open definition of "traditional forest dwellers"; it includes communities resident in or adjacent to forests for at least three generations, people forced to occupy forest lands after being displaced from development projects and not being provided rehabilitation, or people forced into 'encroachment' owing to other failures of the government.

The gram sabha has been given a decisive role in hearing and deciding about claims to land and forest resource rights, whereas the earlier Bill provided an unnecessarily complicated process of decision-making by subdivisional, district, and State-level committees. This is certainly in consonance with India's stress on decentralisation. However, the final decision on recording rights still vests with the District Level Committee, at least 50 per cent of which is to be filled with tribal representatives and which will also have officials of the Forest, Revenue and other government departments. Given the disorganised state of many gram sabhas today, the Bill has also mandated that district and subdivisional committees build their capacity to assess effectively land claims and provide help in cartography, survey and other critical tasks.

Other positive elements of the revised Bill include explicit provisions to empower women in various respects, and a mechanism to resolve disputes that arise among gram sabhas that share forest lands and resources. Also provided for is the right of communities to protect their knowledge against biopiracy, though presumably, details on how to do this would go into subsidiary rules or orders.

The JPC has also made some critical additional recommendations, which are not in the text of the revised Bill. Targeting 'development' projects in particular, it has emphasised the need to minimise displacement, assess independently the impact and necessity of such projects, and provide adequate rehabilitation where displacement is absolutely necessary. Without a legal basis, however, it is doubtful if a government bent on achieving 10 per cent economic growth, literally at any cost, will listen to such recommendations.

At one level, the JPC's version will considerably strengthen conservation. For instance, it provides communities the authority to protect and manage forests they have traditionally conserved.

As repeatedly shown by Kalpavriksh and other activist groups, there are thousands of sites where communities have demonstrated the ability and willingness to protect forests and wildlife but do not have the legal authority to withstand threats to such areas. The Bill now provides such a backing. Additionally, the consent of the gram sabha has to be sought for any diversion of forest land. This provides a community-based check against the widespread use of forest lands for destructive 'development' projects, in addition to existing government-based regulations in environment, forest and wildlife laws. Both these provisions will help in instances such as the 180 villages in Ranpur, Orissa, that have conserved forests for a generation or more but are currently facing threats from the State government's proposals to restart commercial felling, and other areas where there are plans to grant mining leases.

The JPC's draft Bill also has provision to safeguard important wildlife habitats through a site-specific approach. It requires science and local knowledge to be used in identifying "critical wildlife habitats", in assessing the impact of human uses in such areas, and thereafter in deciding the need for relocation of villages and/or changes in existing resource use practices. This is certainly preferable to the unscientifically uniform approach of the original Bill, in which communities were either to be displaced within five years or allowed permanent rights thereafter.

Moreover, the Bill requires that governments also not divert such inviolate areas for any other purpose, which would make it the only law in the country that prohibits outright such diversion (existing wildlife and forest laws allow this to happen with Central government permission). However, one problematic clause in the Committee's version is that people once relocated have a right to return to their lands if they are "unsatisfied" with the rehabilitation. This is rather vague, as dissatisfaction with any form of displacement is a natural reaction and does not necessarily indicate failed rehabilitation. A more systematic process is needed to ensure that only where rehabilitation has really failed do people have the right of return.

Of greatest concern to conservationists, however, is a combination of revisions that could upset the delicate balance between rights and responsibilities. Each of these revisions may not be problematic in itself. For instance, contrary to the argument of some conservationists and journalists that the Bill would destroy "what remains of India's forests", the provisions regarding land regularisation will apply only to about 2 per cent of the country's forest land, as per Ministry of Environment and Forest figures.

But when the JPC's proposals are read together, they amount to a potentially explosive situation. Firstly, the JPC has removed the earlier cut-off date of 1980, allowing claims by all those who occupied forest land until 2005. Secondly, it has removed the upper limit of 2.5 hectares, now allowing any amount of land occupied until 2005 (presumably still subject to land ceiling laws) to be claimed. Thirdly, it has removed the original Bill's sections listing the responsibilities and duties of rights-holders to conserve nature and natural resources, and the penalties for failing to do so.

In their place, it has put the onus on the gram sabha to ensure conservation, but without providing any recourse if it fails to do so.

Also, the Bill no longer requires that the rights to the use of forest resources be sustainable. These omissions leave open the possibility of grave ecological damage in situations where the gram sabha may not be capable of stopping powerful inside or outside forces, or may not wish to regulate its own members from destructive forest use.

The extension of the cut-off date and the removal of the size limit to land claims have been justified by the JPC from the perspective of those who have been displaced or dispossessed by 'development' projects, natural disasters, or the failure of the state to provide for them. This is hard to fault, from a human rights perspective.

However, these revisions combined with the expanded definition of "traditional forest dwellers" mentioned above, provide scope for State governments, land mafia and local elites to exploit the situation. The much more open definition could also create or exacerbate local conflicts. There are many situations, for instance in the northeastern States, in which individuals and communities from outside a region have occupied forest land recently, at the expense of the local tribal or other traditional forest-dwelling communities.

The inclusion of some form of in situ rehabilitation for the wider category of forest-dependent people is justified, but an option for resettlement on revenue lands outside should have been provided, as also more explicit safeguards against the fragmentation of forests.

Another concern relates to the JPC's proposal to provide community rights to divert forest land for development facilities such as schools, clinics, roads and electricity lines. There is no justification for denying anyone basic health, education and developmental inputs.

However, some of the terminology is undefined, and hence subject to varying interpretations. "Roads" could be variously interpreted as anything between simple paths to villages to broad tarred highways. There are many instances, as in the case of the Melghat Tiger Reserve, where in the name of providing "road" access to Adivasi villages, the government built wide, tarred roads which have hardly helped Adivasis but opened up the forests to illegal exploitation. Secondly, even basic facilities deep inside important wildlife habitats can be a serious source of disturbance; in such situations, the Bill should have required a holistic impact assessment of the provision of all rights (including land, forest resources, and developmental facilities), and evolving viable alternative options, before deciding on the course of action.

The JPC's Bill specifies that it will prevail in a situation where any other Act contravenes its provisions. This is understandable because forest and wildlife Acts have often been used to dispossess forest dwellers forcibly, and many activists have been asking for amendments to make these Acts more sensitive to local community livelihoods.

But the JPC's revisions make the relationship with such Acts unclear and potentially dangerous if explicit requirements for conservation and sustainability are not tagged to the provision of rights. If someone hunts a wild animal or cuts a tree inside a forest or protected area where the Bill has provided rights to the local community, what precisely are the respective roles of the gram sabha and the Forest Department?

Since the Bill does not provide the sole authority to the gram sabha, the presumption is that the jurisdiction of government institutions will continue. However, the continued application of wildlife/forest laws in situations of destructive forest use needs to be inserted, and institutional relations on the ground need to be clarified before hunters and wood thieves misuse the confusion that the Bill could create.

Finally, the subdivisional, district, and State-level committees to be set up under the Bill could have included independent non-governmental organisations (NGOs) and citizens. Their involvement often helps such institutions take informed decisions as also to mediate between community representatives and government officials.

Overall, the JPC's Bill considerably enhances the empowerment of forest-dependent communities and their gram sabhas, increases the potential of such communities to achieve conservation, but also creates potential situations of forest destruction.

The JPC has not fully used the opportunity to move India's policies towards an integrated vision of conservation and livelihood security. It could have done this by explicitly mandating collaborative arrangements between communities and government agencies with help from NGOs and individual experts, and by putting into place an integrated system of checks and balances, rights and responsibilities, and powers and duties that would guard against misuse by either the community or the government. In the final analysis, if conservation objectives are not met, the livelihood security of forest-dwellers will also suffer.

It is rumoured that the United Progressive Alliance government is keen to introduce the Bill in the monsoon session of Parliament. However, given the sensitive nature of many of the JPC's changes, it will undoubtedly have to go through at least one more round within the Ministries and then the Cabinet, before being tabled in Parliament again. The government must rectify the defects in the JPC's version of the Bill during these rounds, while endorsing its many positive points.

It should also mandate a national-level statutory body to examine State- and site-specific processes of settling land claims, provide guidelines for integrating conservation and livelihood security, put together a publicly accessible database and mapping of encroachments and regularisation across the country, and ensure that any new encroachments are immediately detected and acted upon.

Ashish Kothari is a member of Kalpavriksh - Environment Action Group.