

Tribals and Tigers: Will the Forest Rights Bill Save Both?

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It's a classic clash of two visions. The draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005, aims to provide India's *adivasis* secure rights to forest resources that are so intimately linked to their lives. Tribal rights activists are ecstatic. Wildlife conservationists, on the other hand, have strongly protested. 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 could it help to achieve better conservation, by providing communities a stake in protecting forests?

The Bill

The draft Bill aims to compensate the "historical injustice" done to forest-dwelling tribes who were denied their traditional rights to forest lands and resources in the last couple of hundred years. In this period, lands they were dwelling on were declared 'forest land' as also wildlife protected areas, neglecting the traditional conservation ethos and dependence of tribal societies. 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 granting of *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 (for those classified as Primitive Tribal Groups), conversion of forest villages into revenue villages, and others. No tribal person is to be evicted from currently occupied land, till the process of determining rights is completed.

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 provisions of the Act. But gram sabha decisions are subject to higher authorities. Sub Divisional Committees are to hear appeals against gram sabha decisions, and resolve inter-village conflicts. District Committees are to act as appellate authorities, and give 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.

Tribal Rights and Conservation

There can be no argument about the need to reconstitute the rights of *adivasis*, especially 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 points, the Bill actually reads like a conservation manifesto. For instance:

1. All rights are accompanied by responsibilities for forest protection;
2. 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;
3. Hunting is explicitly excluded from the list of forest rights;
4. All rights are meant only for bona fide livelihood needs, not for exclusive commercial purposes;
5. 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);
6. The gram sabha has to stop any activity that adversely affects wildlife, forests, and biodiversity;
7. 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.
8. At all levels of decision-making above the gram sabha, forest officials are involved, providing a possible check against misuse.

Evidence regarding how valid the claim to rights is, 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 other such *adivasi* communities in other states who are protecting forests *despite* not having 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.

Elements of Concern

Despite the above-mentioned provisions, the fears of wildlife conservationists are partially justified. The Bill states that responsibilities and duties regarding conservation are applicable to all activities except those that are permitted as rights. Does this then exclude rights that could be ecologically destructive? The gram sabha is given the duty to stop any activity adversely affecting wildlife, forest, and biodiversity, but can it over-ride granted rights? Ambiguity on this count needs to be removed. Additionally, it is not clear if the Sub Divisional Committee and the District Committee are to consider 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 back. What may have been perfectly harmless activities then, may not be so now. Even non-commercial activities in some cases could cause wildlife loss (e.g. of a medicinal plant that was once common but has become threatened now, or excessive pressure due to local population increase). Clear provisions are needed for gram sabhas, Sub Divisional Committees, and District Committees to deal with such situations, including through incorporating wildlife experts and NGOs into their processes.

The Bill provides penalties for unsustainable use of forest resources. However, the term 'sustainable' is not defined, nor is it clear who is to determine levels of sustainability? Some years back this term had been used in a proposed new Forest Act (which was shelved due to widespread NGO and people's opposition), and had been 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 Wild Life (Protection) Amendment Act 2002 (WLPA), the Indian Forest Act 1927 (IFA), and the Forest Conservation Act 1980 (FCA). It states that rights vested under the Bill are 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, IFA, and FCA in contradiction with the Bill? Many tribal areas are subject to these earlier laws, e.g. in the case of reserved 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 offence, is the gram sabha's decision on punishment final, or do the wildlife officials of the area also have authority? This becomes crucial especially 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 and open system of functioning is a guarantee to reducing abuse of power by any sector.

Another critical gap is regarding development projects. The Bill needs to include a 'prior informed consent' clause, requiring that any major development project (dams, mines, industries, expressways, power stations, etc) 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 on large development projects, so there remains 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 as

also its theft by unscrupulous pharmaceutical, seed, and other companies. However, the Bill needs to elaborate how such protection will take place, and how it relates to the Biological Diversity Act which also proposes such protection.

The Way Forward

The Bill, if enacted, would mark a huge step forward in securing the rights of forest-dwelling *adivasis*. One in fact wished that it also extended to other forest-dwelling communities (especially small-scale dalit farmers), and to fishers and pastoralists occupying grasslands, wetlands, coastal and marine areas, of course with appropriate and strong conservation requirements. These sections of Indian society have been as disprivileged as *adivasis*. There also needs to be a 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.