Surviving the Forest Rights Act: between Scylla and Charybdis.

**Summary**

This paper deals with The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The attempt is to put forth the arguments used in supporting or opposing the Act, presenting the variety of obstacles and difficulties in having the Act implemented.

Some of the various problems that arise due to the peculiar circumstances pertaining to tribal India, and the administrative machinery in place to guide the special policies of forest conservation and tribal people are also elaborated upon. The paper brings out a number of field-level issues that deal with traditional conservation in tribal India as well as the limitations and pitfalls in entrusting the execution of the Act to the Gram Sabha. A brief review of the track record of the state in dealing with situations relating to tribal rights and conservation is presented to validate the argument.

*A statement is persuasive or credible either because it is directly self-evident or because it appears to be proved from other statements that are so. In either case it is persuasive because there is somebody whom it persuades.*

Aristotle, Rhetoric, (I.2.28).

*Sarkar theen parkar: adei thindana, narpitana, jiyam noipitana*¹.

Durwa saying.

There is little doubt that tribal people are being consistently pushed off their own lands in most parts of India. A practical way to get an idea of this is to travel by road through a long stretch of tribal country, such as from Bhadradharam in the Khammam district of Andra Pradesh to Raipur in Chhattisgarh, a distance of about 550 kms and almost entirely a Schedule V region, where tribal lands may not be sold or passed on to non-tribal people. Yet, it is easily noticeable that most of the shops and lands along the roadside are owned or are occupied by non-tribal people, blatant encroachers on tribal land, but overlooked by a largely non-tribal government that accepts tribal peoples’ displacement as a condition for development. A more formal run of reasons for the Scheduled Tribes

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¹ The three qualities of the government: it begs (for its food), it frightens (us), it makes (our) heart ache.
loss of control over their lands and forests are the various laws for Forest Conservation; the cordonning off of areas as crucial for biodiversity; by 1998, 85 National Parks and 450 Wild Life Sanctuaries had been declared (though not notified), claiming about 14,9787 sq kms of land; and displacement due to industrial development.

The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Bill, 2006, when it was published, prompted a deluge of papers and articles as well as celebrations and protests. Later, when the Bill was confirmed in most points by the Act, the people (intellectually) concerned with the issue were more clearly divided. The Act apparently seeks to rectify an “historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.” It would seem that the State is finally talking the language of “participatory forest management”, in vogue among some conservationists over the last decade, interlaced with the language of the tribal rights activist. The Act, along with the Rules, 2007, is an excellent attempt at trying to appease two warring parties.

**Opinions supporting the Act**

The Act grants the “right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers”.

When the Bill was proposed the Joint Parliamentary Committee (JPC) suggested five major changes in it, some of which was included in the Act. These changes were:

a. The cut off date for claiming rights to land was changed from 1980 to 13th December 2005,

b. The provision was changed to also include non-tribal traditional forest dwellers instead of only Scheduled Tribes,

c. The ceiling of land ownership was changed from 2.5 ha to 4 ha per nuclear family, (though the JPC did not recommend any limit) and

d. The penal provisions for forest dwellers were removed.

The Act granted “right of ownership, access to collect, use, and dispose of minor forest products that have been traditionally collected within or outside village boundaries” to the Scheduled Tribes and traditional forest dwellers, even in areas deemed Protected Areas; this was a great relief, as most forest dwellers live in perpetual fear of being booked for forest offences. The JPC also saw to it that the role Gram Sabhas and the Panchayat Raj institutions were strengthened.

The people welcoming the Act have a three pronged argument:

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2 Integration Workgroup on Indigenous Affairs, Central Issues; (“Indigenous and Tribal Peoples in India” (2001) by Christian Erni & Shimreichon, ILO (Desk Review)).

3 Italics mine

4 Act, Ch 2, 3(a)
a. in India the Scheduled Tribes and forest dwellers have traditionally occupied the lands for centuries and the recognition of their rights to the lands are long overdue.

It is estimated that at present about 40 lakh tribal and forest dwellers have no legal status to their land\(^5\). Without any legal documents to the lands they occupy, cultivate, graze their cattle on, use for their nistar, they are extremely vulnerable. For any development purpose or industrial project, they may be evicted without compensation, as has happened several times before,

b. the government’s thrust on conservation, with the Forest Conservation Act (1980) and the antique and archaic Indian Forest Act (1927) has not led to the protection of forests.

In fact, it is estimated that since 1980, 40,000 ha of land has been diverted annually for non-forestry purposes\(^6\); in the period 2001-2006 alone, 5.73 lakh ha were diverted for non-forestry projects\(^7\). These figures are worth comparing to the fact that when the FCA (1980) came into force, 1.41 lakh people occupying 1.81 ha of forest land became encroachers in Madhya Pradesh. Many of them were engaged in prolonged court battles, which itself caused an extensive drain on forest resources\(^8\), and

c. the fact that secure tenurial rights for land is known to encourage sustainable management of the land.

This fact has been proved by research in several communities in many parts of the world; forests around villages practicing Community Forestry in Mayurbhanj, Orissa, are in a far better state that those managed by the state. Sacred groves in several parts of tribal India have been traditionally protected by communities; vice versa, degraded groves are usually a symptom of local communities intruded upon by outside government influences\(^9\). Even if such examples, of people caring for their land, are not so obviously visible, the opposite is striking and common. People without pattas to their land - the bulk of tribal people in large parts of Madhya Pradesh, Chhattisgarh, Orissa, Maharashtra and Jharkhand – who work on other peoples lands or clear small patches of forest to cultivate, do not show any affinity to sustainable use of resources.

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\(^5\) Sonu Jain; Green light for Tribal Bill changes; Indian Express, 3.12.06
\(^6\) Smitha Gupta; Limited Rights, Frontline; April 8-21/06
\(^7\) Brinda Karat; People’s Democracy; 29.08.06
\(^8\) Rammath, M., 2001: The role of law in tropical deforestation; NC-IUCN, Amsterdam.
\(^9\) Rammath, M., and Savyasaachi., 2001: What is sustainable development?; Encyclopedia of Sustainability; Both ENDS, Amsterdam; www@bothends.org
Opinions against the Act

Some people and organisations fear that the Act will undermine the state of India’s fast dwindling forests and wildlife or create other forms of social turmoil. They point out that:

- According to some calculations, giving away even 2.5 ha of land to the Scheduled Tribes and forest dwellers will add up to 15% of India’s forest area\(^9\), which we cannot afford to lose,
- If the Act holds true for the National Parks and Wildlife Sanctuaries, what then? As most of the NP’s and WLS are not yet notified, these cannot be constituted in areas with traditional rights where the Gram Sabha will be the governing authority. Conservation, in terms of increasing inviolate areas, will diminish all over the country, except for the areas declared as “critical wildlife habitat”,
- In forest areas where the Act will be in force the non-tribal forest dwellers will dominate the tribal population,
- Within villages social tensions may arise if certain communities are not granted the status of a Scheduled Tribe or forest dweller, despite similar histories and livelihood practices in the region and
- In the case of communities that practice *jhum* cultivation, on lands that are regarded as common property, any limit to land (whether 2.5 or 4 ha) will be impossible to monitor; similar problems will arise in the case of pastoral communities that return seasonally to the same lands.

Some of the potential drawbacks of implementing the Act are:

- The condition that only those families that can prove residence in an area for over three generations (where generation means “a period comprising of twenty-five years\(^{11}\)” before December 2005 may be difficult for some tribal families, especially so if they have moved often within their traditional forest zone for whatever reason (cultivation, bad spirits, clan feuds)\(^{12}\),
- The Act applies primarily to those who depend on forests or forest lands *for bona fide* livelihood needs; the term *bona fide* is explained, in the Rules provided, as “fulfilment of sustenance needs of self and family through consumption and/or sale of produce from forest land or forest based uses, and stones and fuel wood for house or household purposes”; this does away with the status and sustainability of a product in various regions of the country,
- The Act confers upon the forest dwellers the rights to protect, regenerate or conserve or manage any community forest resource, but does not provide them any powers to do so; however, the Rules clarify that “the Gram Sabha shall initiate a process of determination of the nature and extent of rights over community forest resources where evidence mentioned in sub-rule (3) of Rule 31

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\(^9\) Dang, H., 2005; The End of Conservation; Seminar, 552; Delhi.
\(^{11}\) Act, Ch 1, 2(0)
\(^{12}\) This provision is for the non-scheduled tribes, that is the other traditional forest dwellers claiming rights over forest lands they are utilising.
shall be taken into consideration. Moreover, community forest resources may be in “reserved forest, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access”.

**Hunting**

It is noteworthy that the Act strictly bans hunting. No writer on this subject has questioned the clause that explicitly excludes “…traditional right of hunting or trapping or extracting a part of the body of any species of wild animal” At the same time, the Act does grant “entitlements such as fish and other products of water bodies……” The water bodies apparently are in no danger of being overexploited. In reality, in many parts of tribal India, as elsewhere, traditional fishing (with plant poisons, dyke-ing and bailing shallow streams, nets and lines) have been replaced by insecticides, leading to a complete elimination not only of the fish but also of all the other forms of aquatic life. The Act could have stressed on allowing traditional modes of fishing, which are less detrimental to the wetlands ecology. Similarly, traditional hunting with bow and arrows, at least of small game and animals that locally multiply and become a nuisance – hare, wild boar, rats and monkeys, to name a few – could still continue without harm to the larger environment. If such small measures are overlooked, the people are bound to set poisoned baits and may eventually finish off other unintended animals, as has happened in most PA’s with laws forbidding all fishing and hunting. Considerations of how forest people respond to any legislation affecting their lifestyle may provide space for conservationists and tribal rights activists to work together.

Another point that goes unmentioned is that communities with a strong tradition of hunting, such as the Koitoors and Durwas of central India, mark their territories with specific hunting routes. Hunting territories signify a peoples’ ancestral domain, and are respected by all neighbouring tribes in an area: there are instances when a community has moved away from their domain but continue to hold control over it by coming annually to perform the necessary sacrifices and offerings to their gods, and leading that particular hunt. Despite banning hunting per se, which in itself is not a sound decision, it might be necessary to use the hunting framework to explore the ancestral domains and territories of some of the Scheduled Tribes and traditional forest dwellers. These are not areas the forest dwellers regularly frequent or traditionally use for nistar, but usually beyond them; such spaces are akin to the pastoralists’ seasonal journey to a particular spot, claimed but not settled upon.

13 The sub-rule (3) referred to above concerns Community Forest Resources, the evidence for which includes a wide range of elements, such as nistar areas, areas where most of the NTFPs are gathered, fishing grounds and other irrigation systems, sacred spaces, government records and places of traditional agriculture
14 Act, Ch 1, 2(b)
15 Act, Ch 2, 3(l)
16 Rammnath, M, 2001; The Role of Law in Tropical Deforestation; NC-IUCN, Amsterdam.
**Drawbacks in implementation**

Quite a few social activists and conservationists have pointed out that there may be some danger if the Act excludes certain groups of people within a region, on the grounds that they do not satisfy all the conditions necessary. The Act would then, unfortunately, become an instrument of eviction and unrest among the very people whom it seeks to help legitimize.

There are cases when the same tribal community is granted a Scheduled Tribe status in one state and an Scheduled Caste\(^{17}\) status in another. Most of the tribal people of the central India belt – Gonds, Durwas, Khonds, Konda Reddys, Dorlas, etc – are non-literate, especially in legal affairs and do not easily speak the state language imposed upon them. They would all need competent and sensitive translators who can listen and interpret their claims with sympathy and understanding; considering that we cannot even find enough primary school-teachers who perform this much needed role, it is doubtful whether the state is able to perform this challenging task\(^{18}\).

The Act needs several safeguards for effective implementation. Some of these measures have been taken into consideration, such as keeping “critical wildlife habitats” inviolate. Moreover, it later goes on to add that such critical habitats, from which the people may be relocated “shall not be subsequently diverted by the State Government or the Central Government or any other entity for other uses. However, despite the FCA (1980), forest lands may be diverted by the government for several other purposes, such as schools, community centres, minor irrigation canals, roads, electric and communication lines, non-conventional source of energy, etc.; the only conditions for such diversions being that felling of trees should be within 75 per ha (in each case) and it should be recommended by the Gram Sabha.

In most cases, the Rules (June, 2007) clarifies and often strengthens the clauses in the Act. The Gram Sabha is, on the whole given the authority to initiate processes determining “individual or community forest rights or both ……. within the local jurisdiction of this Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim …. and the Gram Sabha shall, then, pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Level Committee.” For people aggrieved by the resolution of the Gram Sabha, there is the Sub-Divisional Level Committee, to whom they may appeal within sixty days; that failing, there is the District Level Committee, whose decision “on the record of forest rights shall be final and binding”. There is also a “State Level Monitoring Committee to monitor the process of recognition and vesting of forest rights….”. The various committees “consist of officers from the departments of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayat Institutions, of whom two shall be members of the Scheduled Tribe members and at least one shall be a woman…..”

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\(^{17}\) For instance. the Bhinjhwar, Koli Mahadev, Dongar Koli, Koli Malhar and the Khairwar are given the status of STs only in Maharashtra and nowhere else.

\(^{18}\) Rammath, M., 2003; De-schooling Bastar, August 31, Down to Earth, Delhi.
The Gram Sabha, that has been given such a huge responsibility in initiating the process of claims, etc., is not as trustworthy an institution as it needs to be. Studies in Madhya Pradesh have shown that “accountability is by and large poor in the Panchayat systems in all the districts studied\textsuperscript{19}.” It has been remarked that “…the Sarpanch is all-powerful in the present system and no other person has any say in Panchayat matters”. The present system is termed not Panchayat Raj but Sarpanch Raj\textsuperscript{20}. In some districts of Chhattisgarh, where the Sarpanch seat was reserved for tribal women, many non-literate women friends of the earlier Sarpanch have been elected; the men are conveniently elected upsarpanch,\textsuperscript{21} and nothing has changed in the power structure! The study goes on to add that “on the basic question dealing with the awareness of the villagers regarding the existence, functions and the rights of the Gram Sabha, a very high majority of the people seemed completely ignorant”\textsuperscript{22}. If such a body vested is with powers of settling land claims and diverting lands for development projects, it is anybody’s guess what the possibilities of misappropriation are.

The government’s intention with this Act, to settle the land claims up to December 2005, does have some other dangers. In the earlier instance, when the MoEF set the cut off date for settlements as 1980 (Forest Conservation Act), tribal people were forced to prove occupancy of their land before that date. In Chhattisgarh, there are examples of villages springing up within the core area of a National Park well after 1980 but claiming, with political support, that they have been there from long before the cut off date. The clause demanding residency for at least three generations might be able to save some such spaces from instances of encroachment, but local political clout cannot be dismissed\textsuperscript{23}. Cut-off dates have been extended from 1980 to 1993\textsuperscript{24} to 2005 and are known not to be sacrosanct; this might tempt power hungry leaders to instigate more forest encroachments, with the promise or hope that settlement dates can be extended; this trend has already begun in parts of central India!

With these differing roles between the people and the forests they inhabit come also the variations in their willingness and ability to protect the natural resources that they collectively inherit. The argument that tenurial security may lead to resource conservation may not necessarily hold true for all groups of people: have we not been through forest areas where no bird calls are heard? For India, Singh describes 461 scheduled tribes\textsuperscript{25}, occupying the most varied of forest and mountain tracts, some sharing the same resources, and some at (implicit) war with one another. These differences translate into

\textsuperscript{19} Overseas Development Institute, London. (www.odi.org.uk/Publications/working_papers/wp170_b.pdf)
\textsuperscript{20} In Maharashtra it is called Gram Sevak Raj, as he controls the functioning of the Gram Panchayat.
\textsuperscript{21} “deputy sarpanch
\textsuperscript{22} Overseas Development Institute, London. (www.odi.org.uk/Publications/working_papers/wp170_b.pdf)
\textsuperscript{23} This is with reference to the villages (other than Kutumsar) within the Kanger Ghati National Park. Despite orders from the Supreme Court, no authority has been able to evict this village. In the local records, it is now listed as a para of another nearby revenue village and enjoys the basic amenities such as hand pumps, a school, etc.
\textsuperscript{24} MoEF circulars, 03.02.2004 and 05.02.05
\textsuperscript{25} Singh, K.S., 1994: The Scheduled Tribes of India; OUP, Delhi.
how aggressive or passive different tribal groups are, and how willingly they merge with the (dominant) non-tribal community\textsuperscript{26}.

Another issue that strikes one at the ground level, but which has been overlooked in discussions, is the fact that tribal people, like the rest of us, are different from one another. Despite the obvious danger of generalizing, I am referring to the tribal groups’ affinity and relationship to forest environments as such. For instance, the Dandami Maria’s outlook of land – as can be seen by the vast areas they occupy in the southern and western forests of Bastar, Chhattisgarh, is essentially that of an agriculturist. Both men and women take to the plough and wherever they settle they work hard in clearing the trees and creating flat, neat, fields\textsuperscript{27}. In stark contrast, there are the hill Durva and the Muria peoples, in central and west Bastar, who prefer more wooded country; even within the village there are small patches of forest left intact, as they are between their excellent multi-crop \textit{jhum} patches, which are more valuable to them than the small flat patches where they cultivate rice or sorghum. Differences are also important in a peoples’ ability to climb trees (others may fell the tree for the fruit!), identify the plants used in fish poison (others may use insecticide), the skill to hunt and trap game, and the ability to pass down the intricate details of how and when to harvest a resource with a view to long-term sustainability\textsuperscript{28}.

In the Nilgiris, there are Kurumba villages that have been re-settled by the Forest Department in neat rows of houses and given employment in tea plantations; these people have broken off their links with their ancestral forests, differing little from any wage labourer. There is little of the tribal spirit left in these settlements (or “colonies”) but much of the ailments and miseries of a big-city slum life. In the Pune district of Maharashtra the Mahadev Kolis look and behave similarly to the Hindu farmer and raise neither pigs nor eat beef; in the eastern part of the state, some of the Gonds are so heavily under the spell of puritan NGOs, that they drink their \textit{mahua} secretly! Is the status of Scheduled Tribe and forest dweller only a technical and an administrative one, rather than one that pertains to how life is lived and perceived?

**Conclusion**

It has been stated in the Act that the traditional forest dwellers are “integral to the very survival and sustainability of the forest ecosystem”. This is quite a \textit{volte face} to the previously held views of the government, which decried the destructive tribal cultivation practices, suggesting that it was necessary to “wean the tribals away from shifting

\textsuperscript{26} Most clandestine business involving prohibited forest products, including animal parts, have depended on a nexus between such associations.

\textsuperscript{27} There are many instances when I have witnessed this practice being the cause of tension when Maria people settle among other forest tribes. Similarly, people who cannot climb and need to fell a tree to harvest a cocoon or a fruit, annoy communities who climb and are hence more sustainable in their forest use methods.

\textsuperscript{28} The author has worked on the plants of Bastar, with a focus of customary modes of harvesting, for over a decade. The results are in a publication entitled “The Plants of Bastar, Chhattisgarh: A Field Guide; NC-IUCN, Amsterdam, 2007.”
cultivation” and a forest-dependent way of life. It is curious that along with India’s rise as an economic power today, the government feels the need to show that it is conscious of the plight of its marginalized people. This is apparently important for India’s image abroad, especially in its relations with other countries that must be convinced that they are dealing with a modern country that also values human rights.

Combining the tribal rights and an environmental agenda, the government has even recognized that the Scheduled Tribes and other traditional forest dwellers have a primary role in sustainability of our ecosystem. Does this refer to certain adivasi practices that enhance tree growth? Like digging the edible tubers of various species of *Dioscorea*, leaving behind shallow pits that retain water during the dry season, providing moisture for the plants in the vicinity? Or the adivasi habit of eating the larvae lodged among the roots of the date bush, *Phoenix acaulis*, that perhaps prevents these insects from becoming adults and multiplying, attacking more plants? Or the various first fruit ceremonies, such as the Mango Festival, that takes care of the regeneration of the wild mango, without consciously planting the fruit! I say perhaps, as these are questions that are difficult to answer with any degree of certainty, as we would need long periods of field-based observation before coming to a precise conclusion, if at all. And the forest dwelling adivasi’s life is full of such action, when he or she is fortunate enough to be able to gather, dig, trap and hunt in their surroundings, which all have long-term impacts on the forest ecosystem.

Our government also wants “to address the long standing insecurity of tenurial and access rights of forest dwelling Schedule Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.” According to the 1991 census, the Schedule Tribe population of 67.8 million is 8.1% of the total population. Of the total number of displaced people in India the Schedule Tribes constitute more than half, a fact that shows that development projects habitually displace tribal people in our country. Between 1961 and 1991, the census also shows that the amount of tribal people owning land declined from a half to a third. Where do these displaced people finally go?

It is remarkable that in none of these myriad cases of displacement of tribal people has the government been able to adequately redress the situation, by giving them an alternative patch of land that has some semblance to their original home. But this is understandable as such lands are not easily available. Instead, what they have usually been given is “cash compensation” and an opportunity to work as lowly priests in these temples of modern India. That displacement induced by development is on the rise is now

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29 This was the intention of the National Forest Policy, 1952.
30 Act, page 2, 1st paragraph.
31 Suhas Chakma; Forest Rights Bill vs Environmental Extremism; Asian Centre for Human Rights, 4 May 2005, Delhi.
32 Studies show that AP, Jharkhand, Orissa and Bengal alone have deprived more than 100 lakh people of their livelihoods between 1951-1995, without including Chhattisgarh, where displacements are higher than in most other states. (Walter Fernandes, 2002; Displacement and the Land Acquisition Act 1894; Vol 1, Issue 1, Combat Law, Mumbai).
corroborated by sufficient research the Indian government is planning more of such projects all over the country, for mining, dams and as Special Economic Zones.

In recent times, we have witnessed the violence of land procurement in Nandigram, Bengal; the ongoing violence surrounding the bauxite mines of Niyamgiri, Orissa; land grabs for a steel plant in Lohandiguda, Chhattisgarh; and the possible displacement of more than 250 villages due to the Indira Sagar Dam at Polavaram, Andra Pradesh, to name but a few. All these areas are predominantly inhabited by Scheduled Tribes and traditional forest dwellers and have, for the most part, lived in these regions for more than the stipulated three generations required by the Act. Much of these regions will also come under the category of “critical wildlife habitats”, some including Wildlife Sanctuaries and other Protected Areas. However, despite the Act and the Constitution, it is a foregone conclusion that none of these development projects are going to reconsidered, even if they affect the livelihoods of tribal people or may destroy forever fragile cultures that may be our only link to our distant past; instead, there will be new ways to negotiate such obstacles, with the now familiar combination of a few carrots and lots of stick.

In retrospect, it is difficult to imagine that a new legislation granting so many advantages to tribal peoples will actually be implemented. We have had land surveys since before 1927 when forest dwellers were displaced by the Forest Department – as it required land for conservation as well as non-forestry activities – to deal with the claims of settlement, that are yet to be completed. In stark contrast, the incredible pace at which development projects are being approved in the past few years, and forest lands de-notified and allotted for creating industrial zones makes one wonder: often within 6 months to a year of a proposal, even Reserved Forests are de-notified and allotted for creating industrial zones makes one wonder: often within 6 months to a year of a proposal, even Reserved Forests are de-notified and handed over to private companies and industries that shoulder the burden of India’s economic growth. The Ministry of Environment and Forests (MoEF) was not in favour of the Bill as it claimed that it would be detrimental to the state of India’s forests, and estimates that up to 16% of the country’s forests would be lost. This is a commendable stance but one suspects – seeing the diluted form of the Environment Impact Assessment 2006 – that the MoEF is worried about something more tangible: if it wasn’t for the Act, they could have sold the land for development projects for a far better price! India’s wildlife is already a vanishing asset as has been proved by the absence of tigers even in the protected areas! The MoEF suggests that the government is going ahead with such an Act mainly to cover up it’s failure on the development front; handing over the power to settle claims to the Panchayat Raj Institutions and the various Committees may only lead to the local vested interests getting hold of the land resources.

It would almost seem that by handing over so much of the land to Scheduled Tribes and traditional forest dwellers, the government is moving in the right direction. The Act has appeased the social activists who, despite being well-intentioned and concerned about our

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33 Subash Mohapatra; Development-induced Displacement on rise; 08-09-2007; Asian Tribune
34 The state government continues the construction despite a stay order by the Central Empowered Committee.
35 Struggle India; Tribal land rights bill 2005; 18.05.05
36 Wildlife areas for the protection of the tiger have now been excluded from the purview of the Act
marginalized communities, have no clue about the intricacies of ecology; as a result, they reflect tribal opinions rather inaccurately, and lack a long-term vision of forest management which is a necessity for the survival of our forest peoples. Likewise, the Act has taken much of the power away from hardcore conservationists – leaving them only the “critical wildlife habitats”, a miniscule part of the total forest area – and placed the Gram Sabha as a guiding authority, with a little help from our bureaucratic friends. Most importantly, the purview of the central government over its natural resources has been sidelined, leaving the State government and the more local Gram Sabha to make decisions. This would make it easier for lands and resources to be “negotiated” out of their control by any non-tribal (or non-tribal controlled) vested interests.

As mentioned above, even in the best of times – an honest bureaucracy, a good and evenly distributed forest cover, a peaceful and vibrant civil society, political leaders concerned about the welfare of others – the implementation of the Act, at least in spirit, is a formidable task. But these are not the best of times and, in fact, the situation in most parts of tribal India is dismal. The red corridor and the Maoist threat prevails over all of central India, the security forces fighting a war that is scarcely reported in the media; the people, despite their will, are caught in the midst of this nightmare, even as the government and private companies speculate on their lands. The Act allows the government to explicitly and legally pursue its agenda, which of necessity is dependent on extracting and selling its natural resources at competitive rates, measured in terms of economic growth and not peoples, especially marginalized peoples’, well-being. It is quite an ingenious way of shaking off all environmental constraints and simultaneously appeasing the tribal rights activists, while keeping the India Shining image in place.

Postscript: Since this paper was sent in for publication the Rules have been notified. Also, a decision has been made to exclude the tiger sanctuaries from the purview of the Act.

With the Rules notified, one has to take cognizance of the powers vested in the Gram Sabha and village level functionaries. The diversion of lands by the government for several (developmental) purposes needs the approval of the Gram Sabha; in addition, the responsibility of initiating the claims of the scheduled tribes and forest dwellers rests upon this institution. Due to the pitfalls of working with a sub-functional Gram Sabha in most of the adivasi dominated districts, it is imperative that both the government and the NGO sector develop methods to make this institution a vibrant one, one that reflects the will of the people. Simultaneously, the various tribal people and forest dwellers need to be explained about Act and what it entails; their rights as well as their duties in forest lands over which they may now get legal status; and to enhance and rejuvenate some of their traditions of forest management that have been lost due to their status as “encroachers” for many years. The process of working with the concerned people to explain the long-term implications of the Act is a formidable, considering the myriad

37 Act, Ch IV, (8)
38 The threat of fraudulent claims is a very real one; in an interview, the Union Minister for Tribal Affairs P R Kyndiah mentions that “encroachers are clever and can manipulate evidence to stake claim to grab the land. This could even deprive the tribals of their rightful share of land. This is my serious worry”. (Business Standard, 22 January, 2008)
languages required, apart from a thorough grasp of the technicalities: if this is planned well and executed satisfactorily there is a possibility that the forest dependent peoples will have a meaningful future. There should scope for stock-taking and bringing in corrective measures during this process of implementing the Act, especially so as we have no precedence of such legislation.

A recent newspaper report concludes that India has lost half its tiger population over the past five years\(^{39}\). One of the factors that was raised against the Act was that most of our Wildlife Sanctuaries and National Parks have not been notified; except for some of the critical wildlife habitats, which could be separately notified, much of the protected areas will remain under the governing authority of the Gram Sabha. The exclusion of tiger sanctuaries from the purview of the Act will be welcomed by conservationists but is an ambiguous decision, considering the continuously dwindling tiger population in most of protected areas the country (except Tamil Nadu); it remains to be seen whether new models for tiger protection will be developed in conjunction with the local communities.

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\(^{39}\)“Over half of tigers lost in 5 years: census”, The Hindu, 13 February 13, 2008.