



Indigenous Issues

[The occasional briefing papers of the Asian Indigenous and Tribal Peoples Network (AITPN)]
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INDIA'S FOREST RIGHTS ACT OF 2006: Illusion or solution?

After acrimonious public debate for more than a year since tabling in the parliament on 13 December 2005, the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 which was re-christened as "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006" was passed in the parliament, lower house of Indian parliament, on 13 December 2006. President of India assented to the Bill on 29 December 2006 and the Act came into force. However, the debate since the tabling of the initial bill in December 2005 to the passage of the Act in the Lok Sabha have brought the age-old prejudices against the tribal peoples to the fore and further eroded their rights.

The Draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 faced stiff opposition from two quarters. First, a few environmentalists advocated management of forest, wildlife and other bio-diversity with complete exclusion of tribal people, local communities or forest dwellers contrary to the Rio Declaration, decisions of the Conference of Parties of the Convention on Biological Diversity and recommendations of the United Nations Forum on Forest. The poaching of the tigers in the Sariska sanctuary provided much needed excuse. Second, the Ministry of Environment and Forest had opposed the Bill on the ground that implementation of the bill will result in the depletion of the country's forest cover by 16 per cent. This is despite the fact that over 60% of the country's forest cover is found in 187 tribal districts where less than 8% of national population lives. This reflects the culture of the tribal peoples to conserve forest. On the other hand, the Ministry of Environment and Forest has diverted 73% (9.81 lakh hectares of forestland) of the total encroached areas for non-forest activities such as industrial and development projects.[\[1\]](#)

Following objections to the 2005 Draft Bill, it was referred to the Joint Parliamentary Committee (JPC) headed by V Kishore Chandra S Deo of the Congress party. On 23 May 2006, the JPC submitted its recommendations on the issue of cut-off date, inclusion of all forest dwellers under its purview,

increase in the ceiling on land occupation and the empowering of Gram Sabhas.

Many of the recommendations were against the intended beneficiaries i.e. tribals. The Ministry of Tribal Affairs objected to some of these recommendations of the JPC. A Group of Ministers (GoM), headed by External Affairs Minister Pranab Mukherjee was established to evolve a consensus. On 15 November 2005, the GoM managed to reach consensus.

The Act would not have seen the light of the day had the 'Other Traditional Forest Dwellers' not included in the revised draft.

A critical examination of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 reveals that the rights of the tribals were further compromised.

I. Dilution of aims, objectives and spirit of the initial bill

The nomenclature of the original bill "Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 as tabled in the parliament on 13 December 2005 recognised the symbiotic relationships of the tribals with forest. The same was stressed in the National Forest Policy of 1988. In its preambular paragraph, the original bill provided that it is "A Bill to recognize and vest the forest rights and occupation in the forest land of forest dwelling Scheduled Tribes who have been residing in such forest for generations but whose rights could not be recorded" .

However, the recently passed Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 states, "An Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded...."

The present law has only diluted the interests of the forest dwelling Scheduled Tribes with that of the "Other Traditional Forest Dwellers". The forest dwelling Scheduled Tribes no longer remain the focus of the law contrary to what it originally envisaged. With such dilution, the law has lost its aims, objectives, essence and spirit that the Ministry of Tribal Affairs

initiated with so much fan fare to undo what it calls "historic injustice" that the forest dwelling Scheduled Tribes have been facing.

II. Mixing oranges with apples

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 sought to mix oranges with apples. While tribals and forest are synonymous and one cannot be separated from the other, same is not the case with the "other traditional forest dwellers" i.e. non tribals.

Tribals have emotional, psychological and cultural attachments with the forest and they always lived in the forest. On the other hand, for non tribal forest dwellers, forest and forest related livelihood activities are the last resort when no other options of livelihood were left. Non-tribals usually do not take livelihood activities in forest by choice. However, by legitimising their occupation of the forest lands under the guise of "Other Traditional Forest Dwellers", the Act negated the spirit of the various safeguards available to the members of the Scheduled Tribes under the Constitution and other relevant laws of the country.

Rather than improving the lot of the tribals, the Act will lead to conflict of interest between the forest dwelling Scheduled Tribes and other traditional forest dwellers.

III. Extension of cut-off date

Another conspicuous feature of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is the extension of the cut-off date to qualify for holding of rights from 25 October 1980 to 13 December 2005. At the ground level, the cut off date is quite immaterial to the majority of the forest dwelling Scheduled Tribes as they have been living in the forest for generations and as such they would have been covered even under the 25 October 1980 cut off date. This extension of the cut off date is basically to benefit the other traditional forest dwellers who are required to prove that they have been occupying the forest land for three generations under clause (o) of Section 2 of the Act. By extending the date from 25 October 1980 to 13 December 2005, one generation has already been covered!

IV. Increase in the ceiling on land occupation

Sub-section (6) of Section 4 states, "Where the forest rights recognized and vested by sub-section (1) are in respect of land mentioned in clause (a) of sub-section (1) of section 3 such land shall be under the occupation of an individual or family or community on the date of commencement of this Act and shall be restricted to the area under actual occupation and shall in no case exceed an area of four hectares."

This provision hardly benefits the Scheduled Tribes. Rather than empowering, this law seeks to dispossess the forest dwelling Scheduled Tribes of their ancestral lands that they have in possession in excess of 4 hectares as provided in Sub-section (6) of Section 4. Nor the Bill provides for compensation to those who will be forced to share their lands in excess of 4 hectares.

A large number of forest dwelling Scheduled Tribes would have to mandatorily part with large chunks of ancestral lands that they have been actually occupying before the enactment of this Act. The provision is also inapplicable in the northeast India.

V. Criminals under the Forest Conservation Act of 1980

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has not taken into account the fact that hundreds of forest dwelling scheduled tribes face charges under different provisions of the draconian Forest Conservation Act of 1980 for accessing minor produce. Although the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ensures tenurial security and legitimizes the scheduled tribes' ownership over the minor forest produce and their role in the conservation of forest, it failed to address charges/prosecution pending against the tribals under the Forest Conservation Act of 1980 and Indian Forest Act of 1927 with retrospective effect.

There is no provision in the Forest Dwelling Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006 providing that cases under the Forest Conservation Act of 1980 against the forest dwelling scheduled tribes for accessing minor forest produce would be dropped or closed.

There were 2,57,226 forest cases pending against 1,62,692 tribals between 1953 to 30 June 2004 under Sections 26, 33 and 41 of the Indian Forest Act 1927 pertaining primarily to illegal felling of trees for domestic use and ferrying of wood by bullock carts in Chhattisgarh as on 8 November 2005,[\[2\]](#) and 2,531 such cases in Orissa as on 10 March 2005.[\[3\]](#)

The bias of the police and the forest department against the tribals is well-known. In Jharkhand, a criminal case was registered against 4 minor tribal boys of Matrukha village in Giridih district of Jharkhand. The minors have been accused of destroying over 541 plants in the Purnanagar forestation area by bringing their cattle to the forest area for grazing. When the First Information Report was registered on 18 September 2002, one of the accused Sone Lal, son of Gushaw Kishku of Matrukha village was just over 14 months old. On 18 December 2006, the minor boy, along with his father, appeared before the court of Judicial Magistrate A.K. Pandey applied for bail and filed a discharge petition. By the end of the 2006, the case was pending.[\[4\]](#)

The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 re-christened as "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006" was brought essentially to circumvent the Supreme Court's order in the case of Godavarman Thirumalpad vs Union of India which banned regularization of tribal revenue villages. When the government of India passed the Forest Conservation Act on the mid-night of 25 October 1980, hundreds of thousands of indigenous/tribal peoples became illegal residents on land over which they have been living for generations. Yet, thousands of others also had legal rights under the Forest Conservation Act. For two and half decades, the state governments failed to record and recognize even limited those ancestral rights of tribal communities permitted by the Forest Conservation Act and the subsequent 1990 Guidelines issued by the Ministry of Environment and Forest. After the Supreme Court stayed the regularisation of revenue villages on 23 November 2001 in the aftermath of Godavarman Thirumalpad vs Union of India, all the tribals living in the forest irrespective of whether their rights were recognize under the 1980 Forest Conservation Act or nor were effectively extinguished.

The government essentially sought to address the denial of rights to the tribals. "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006" did not address the concerns of the

environmentalists but certainly they were successful to further erode the rights of the tribals.

ENDNOTES:

- [1]. Report of the National Consultation on the Draft Forest Rights Bill, 2005, AITPN, October 2005
- [2]. Over two lakh forest cases against Chhattisgarh tribals to be withdrawn, The Hitavada, 11 November 2005
- [3]. Naxalite bodies demand probe into police firing, The Statesman, 14 March 2005
- [4]. Criminal case against 5-year-old, The Hindustan Times, 21 December 2006