

First You Push Them In, Then You Throw Them Out

The interests of the adivasis are largely ignored in the development paradigm. The well-being of these weak and voiceless communities gets trampled over the process. The proposed Scheduled Tribes Bill, 2005 is an attempt to redress this wrong. While the strength of the bill is that it is trying to convert an existing reality into an opportunity, its biggest weakness lies in its cut-off date, i e, 1980, because it could spark off a fresh round of contention and confrontation in forest areas.

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In the development paradigms of our time, there are those who do not find a place. Their interests are not merely ignored, but they are deeply wounded. Among them are the eco-system that nurtures life on earth, as also the aboriginal inhabitants of this planet, the adivasis. The

relentless juggernaut of rapacious consumption destroys forests, mines groundwater, pollutes rivers as also the air we breathe. The well-being of communities who are weak and without a voice, gets trampled over in the process. The adivasis of India have suffered great historical injustice. The proposed Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 is an

attempt to redress this wrong. At the same time the bill shows awareness of the needs of the eco-system. It is probably the most significant attempt in this direction since the National Forest Policy of 1988, which similarly tried to simultaneously address the concerns of ecological conservation and tribal livelihoods. The shrill tone adopted by some of the critics of the bill makes one shudder – at their misrepresentation of what the bill proposes, at their ignorance of the tribal predicament, at their unblinking attack on the weakest in our land without even a murmur of protest against the larger, much more dangerous forces of eco-destruction and at their lack of faith in democratic processes, however difficult and challenging they might be. I begin by a brief account of the adivasi predicament in India after which I summarise the key provisions of the bill, bringing out its misrepresentations in popular imagination. Finally, I address the genuine concerns of some of the more thoughtful critics of the bill and suggest how far these could be addressed through the bill itself.

Adivasi Predicament in India¹

The demography of adivasi India displays a striking singularity – high density coupled with minority status.² Adivasi pockets (clusters of hamlets) are surrounded by large masses of non-advasis. Their “enclavement” is a result of a long drawn-out historical encounter involving the subjugation of adivasis by stronger and better-endowed communities.³ Adivasis are the aboriginal inhabitants of India, driven over centuries, further and further away from alluvial plains and fertile river basins into “refuge zones”⁴ – hills, forests and drylands – in successive waves, by communities armed with superior military technology.

This entrapment of adivasis has provided the objective basis for resource emasculation of adivasi areas through a process of “internal colonialism”. Over time, in the refuge zones, the adivasis came to develop a relationship of symbiosis with their immediate environment. They revered and protected the forest, which provided their basic needs. This relationship was canonised in the form of customary rights over forest produce. With the advent of colonial rule, especially over the last century, this bond was ruptured. Even after independence, adivasi areas have not received their fair share of potential benefits from mainstream development. The state’s

perspective on forests has been of an irreconcilable opposition between national objectives and needs of the local people. As the pressure of forest-based people’s movements mounted all over the country, a gradual shift away from viewing forests as revenue earning assets became evident in the 1970s and 1980s. However, after the Forest Conservation Act 1980, the conflict has come to be seen as between environmental protection and needs of local adivasi communities. The adivasi response has been illegal felling of trees and grazing of forest grasslands. A wedge appears to have been driven between people and forests.

The National Forest Policy of 1988 did for the first time explicitly recognise that domestic requirements of local people should be the first charge on forest resources. It also emphasised safeguarding their customary rights and closely associating adivasis in the protection of forests. But movement towards a people-oriented perspective has not been matched by reality on the ground. Even after the much-touted joint forest management, it is the writ of the forest guards that rules the forest. Corruption is institutionalised and destruction of the forest by all parties proceeds apace. Deforestation has ruined original adivasi habitats and forced them to move out. Having first been driven over centuries to retreat into refuge zones, the adivasis are now being forcibly pushed out of an ambience with which they had gradually developed a close relationship. After independence this has happened in the name of “development”.⁵ No attempt has ever been made to secure the consent of those being adversely affected by these projects, to involve them in devising humane and appropriate strategies of rehabilitation or to make them a party to the benefits of this development. A vast majority of the displaced have been adivasis, either because the only sites remaining for location of these mega-projects, such as the Narmada, are in the adivasi hinterland or because adivasi homelands such as Jharkhand are extremely bountiful in mineral resources.

Following the breakdown of their relationship with the forest, adivasis in most areas have made a hesitant and faltering entry into agriculture. Census figures show that over 93 per cent of adivasis are employed in agriculture. The stereotype of adivasis living in isolated, self-contained, “hunter-gatherer” communities is no longer accurate. These adivasi farmers are subject to myriad forms of exploitation by the

highly interlocked non-advasi axis of power that dominates the land, land-lease, labour, credit and input markets. Often adivasis lose control over their land since they cannot repay their debts. Thousands of hectares of land have been lost in this manner. In an all-India study of the 1990s, Sundaram and Tendulkar (2003) find that, among all social groups, adivasi households are the ones most vulnerable to poverty. This is why many adivasi movements have responded in the idiom of violence, which appears to them to be the only language an insensitive state and civil society are willing to listen to. Especially when there are new challenges on the horizon – unprecedented pressures to open up adivasi hinterlands for commercial exploitation, abrogating many of the special provisions for their protection enshrined in the Indian Constitution.

Provisions of the Tribal Bill

It is in this context that the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 has been drafted. It recognises what sensitive conservationists have always emphasised – that India’s forests can only be saved if we involve the adivasis in their governance, while also providing them sustainable livelihood options that reduce pressure on forests. Making them secure and empowered stakeholders in the process. All successful examples of conservation in India have happened where adivasis feel this sense of ownership.⁶ The bill aims to move precisely in this direction. It secures 13 rights for the adivasis that include access to and ownership of minor forest produce, grazing rights, habitat and habitation for primitive tribes, settlement of old habitation and unsurveyed villages and the community right to intellectual and traditional knowledge relating to forest and cultural diversity. The vested forest rights are heritable, but not alienable or transferable. Significantly, they are to be registered jointly in the names of husband and wife. A key provision is for the conversion of forest villages to revenue villages, a long-standing demand of those familiar with the problems of carrying out any development activity whatsoever in forest villages. The right to community forest resources adivasis have traditionally managed is also recognised.

The bill links rights to responsibilities. Hunting is not permitted. It is clearly said that all rights may only be exercised for bona fide livelihood needs and not for

commercial purposes. Those who hold rights will also be responsible for protection, conservation and regeneration of forests. Forest right holders will ensure that no activity is carried out that adversely affects wildlife, forest and biodiversity in the local area. They will make certain that catchment areas and water sources are adequately protected. Any violation of these provisions will be punishable and just two offences will lead to the derecognition of these rights. There is thus a powerful combination of livelihood and conservationist perspectives in the bill. And it proposes a major reform in governance of India's forests by bringing the gram sabha centrestage. For it is the gram sabha that will be the authority for recognition and vesting of the 13 rights provided under the bill. In a sense the bill carries forward the small steps taken through the Panchayat (Extension to Scheduled Areas) Act (PESA) of 1996, which made special provisions for deepening the role of gram sabhas in panchayat raj institutions of adivasi areas.⁷

Addressing the Critics

The main issue that has raised the hackles of critics is "the right of forest dwelling scheduled tribes to forest land under their occupation for habitation or for self-cultivation for livelihood needs... provided further that the rights to forest land in no case would exceed 2.5 ha per nuclear family" [clause 3(4)]. Rule 3 (1) of the bill further states that this right is "subject to the condition that such forest dwelling scheduled tribes have occupied forest land or acquired forest rights before October 25, 1980". Critics of the bill have taken this to mean that 2.5 ha of forest is going to be parcelled out to each of India's 20 million tribal nuclear families, making it a total of 50 million ha out of the 68 million ha of forest land in India.⁸ This is simply not what the bill says. It is not about handing out any forest land whatsoever to anyone. Please note the words "under their occupation" and the cut-off date of 1980. The bill is only concerned with regularising so-called tribal "encroachments", which have been the main source of strife and confrontation between adivasis and the forest department. In Madhya Pradesh, for example, rights of 83 per cent forest dwellers remain unsettled even after five decades. A similar story is repeated in other forest states [Prabhu 2005]. In the absence of a secure title to land, adivasis are deprived of their rights as farmers – unable

to access credit, electricity or agricultural inputs and deprived of benefits of various anti-poverty programmes. Since their names do not exist in the land records, they cannot become members of tribal cooperative societies. This insecurity of livelihoods is what compels some of them to try and clear the forest. It is this that the bill is trying to stop – by giving adivasis security of tenure and by putting a complete halt to further encroachments.

We must also retain our sense of proportion regarding the magnitudes involved. The ministry of environment and forests itself declares that a mere 1.25-1.34 million hectares or 1.91 per cent of all forest land in India is under encroachment. It is quite extraordinary what brouhaha has been created by an attempt to secure rights of already settled adivasis to this minuscule proportion of forest land in India. What a small price it would be to pay to secure peace in the jungle! We must also note that in this respect the bill says nothing new at all. 1980 as a date for regularising tribal encroachments has always been recognised ever since the National Forest Policy of 1988. The bill, in fact, represents a going back to the order of the ministry of environment and forests (dated February 5, 2004) that sought to regularise tribal encroachments up to 1993. Incredibly, the ministry that is said to be opposing the bill, had itself stated in its affidavit to the Supreme Court in July 2004 that its order of February 5, 2004 was "based on the recognition that the historical injustice done to the tribal forest dwellers through non-recognition of their traditional rights must be finally rectified. It should be understood clearly that the lands occupied by the tribals in forest areas do not have any forest vegetation". Precisely what the tribal bill says. So the question of decimating forests by recognising this right just does not arise.

Many other misrepresentations of the bill abound in the media. Sheela Barse (2005) rages at "the bill's brutal audacity in taking away choices from the future generations". This is a baffling assertion. The bill is not forcing anyone to do anything. Following the Constitution of India, it adopts a framework that enjoins responsibilities to rights. It only offers an option for resolving a decades-long conflict that any adivasi is free to reject. The colossal ignorance of other critics is truly breathtaking. Tavleen Singh (2005) believes that the bill will ensure that tribals "can continue being hunter-gatherers". Which country is she living in? Her prescriptions

also reveal a strange vision. Describing the kind of future that should be built for India's adivasis, she recounts her visit to a chemical factory in a tribal area whose fumes she feels attract birds ("maybe it's the sulphur", she adds!). A more thoughtful critique of the proposed bill is articulated in Karanth and Bhargav (2005). While acknowledging the historical injustice suffered by India's adivasis, they produce impressive scholarly evidence of the deleterious impact of "habitat fragmentation" that follows upon human settlements near forest areas. Increasing human densities and economic aspirations endanger ecosystems. They prescribe that "we must now begin to defragment forests, not increase their fragmentation further" [Karanth and Bhargav 2005: 61]. I am afraid Karanth and Bhargav make two crucial errors. One, they assume that the bill will further fragment India's forests. As we have shown above this is not the case. These are the people already in occupation of land whose rights are being recognised. No fresh fragmentation is to occur. Indeed, this is an attempt at putting an end to all further encroachment. Two, their prescription (defragmentation) amounts to moving adivasis out of land that is currently under their occupation. They even suggest that, India perhaps has the agricultural land for this relocation. They show a surprising blindness to the repeated tragedy of resettlement of oustees of big dam projects (most recently seen in the Narmada dams) where governments have found it impossible to find land despite their own "land-for-land" policy, despite the clear orders from the Supreme Court to do so. Critics of the bill must see that adivasis did not go to the forest in the first place of their own free will. Now you want to throw them out, as you are concerned about the disappearing forest. What the adivasis take from the forest is a pittance. To meet all their fodder, fuel, housing and agriculture needs from the forest, would not require setting aside more than 5 per cent of the forest wealth of the country. Surely, this is a very small concession to make for a critical element in both adivasi survival and forest protection. What people like Karanth must vent their ire against is the primary cause of forest destruction in the world today – the energy-guzzling lifestyle of insatiable consumption in urban areas. If these desires are to be sated then big dams will have to be built and forests and adivasi homelands will be drowned. As they have been all these years. If we total up all the forest land lost through

“development” projects, the land being settled through the proposed bill would insignificantly pale in comparison. These are the prime culprits of forest destruction, not adivasi villages near the forest. As we show below, the latter could potentially be a part of the solution.

Other critics of the bill express a different kind of worry. They find themselves unable to trust the gram sabha. A former environment secretary of the government of India feels the bill will lead to “ascendancy of a land and timber mafia via a gram sabha drunk with power” [Jayakrishnan 2005: 29]. Another environmentalist states a view widely expressed in the popular media: “due to the deep ignorance and illiteracy (of the tribals), the timber merchants will soon have a field day” [Mohanty 2005: 31]. Images of adivasi as either gullible or predatory themselves. Also a complete inability of the imagination to visualise a time when the people would be able to govern themselves. These are, of course, not uncommon views. In India they have had an extended legacy. In the years leading up to independence from colonial rule, it was argued that the “natives” could not rule themselves. Lack of historical precedent was cited to establish that colonial rule was in the best interests of the natives themselves. But, independence was an idea whose time had come. It had come because there was a long history of failure of colonial rule. Today in India we stand at a similar crossroads, especially as regards adivasi areas where democratic governance has largely been on paper. Where the people feel so marginalised and alienated that they have developed a deep cynicism towards any possibility of development within the Indian Constitution. It is crucial that we make every effort to reach out to them. To restore in them a faith in democratic, people’s governance. And retain the humility within to recognise that we have had little better to offer to these people all these years. For, as every environmentalist would admit, the current system of governing India’s forests has failed both to protect the eco-system and the tribal people. It has also been a system that ranks abysmally low on transparency and accountability. With the coming of panchayat raj, it is at least in principle possible for a villager to get access to the watershed development plans of her area from the zilla panchayat. Can the same be said about the forest working plan? The present forest department functions in an orbit of its own, quite oblivious to the demands of a democratic

polity. We have to bring the forest within the purview of panchayat raj.

Yes, of course, panchayat raj is a system of governance in its infancy. It displays all the flaws of the political system it has inherited. The gram sabha is a deeply divided body even in adivasi areas and has not shown any spontaneous inclination to even meet, let alone transact the difficult business of ensuring transparency, accountability or equity. It reflects all the existing relations of power in rural India. Even so, I believe we must move decisively and fast towards empowering these grassroot institutions. For they are, well and truly, the last hope for Indian democracy. If forest protection plans are to be effective, they must be presented and dissected, debated and evaluated in the open fora of gram sabhas. This will be an untidy, slow process, with many glitches along the way. But it is only in this cauldron of participatory democracy that we can hope to evolve meaningful strategies for forest conservation.

Modifications Needed in the Bill

Of course, for these institutions to become truly effective requires that many procedural infirmities and ambiguities be removed from the bill. The strength of the bill is that it is trying to convert an existing reality (bemoaned by the critics) into an opportunity. It aims at making the people who live near the forest (seen as a problem by some) also responsible for its protection. If it is true that some locals are in league with the timber mafia, the bill suggests that it is only the local communities themselves who can stop them. This is where a lot more clarity is needed. As also a lot more support from many other stakeholders. Just to give one example, wildlife experts must be able to testify to the gram sabha about the state of the forest within its purview. And there has to be a way in which gram sabhas are held accountable for whether they are fulfilling the mandate devolved upon them by the bill. An unexplored area that the bill must incorporate is for gram sabhas to be empowered to provide “prior informed consent” for development projects proposed in their area, especially if they adversely impact their habitat and eco-system. After all, their protection is now to be the responsibility of the gram sabha.

The biggest weakness of the bill is that it takes 1980 as the cut-off date for recognition of tribal land rights.⁹ This is a retrogressive and potentially dangerous

step, bewildering in view of the ministry of environment and forests’ own adoption of 1993 as the cut-off date. It could spark off a fresh round of contention and confrontation in forest areas that would completely defeat the entire purport of the bill.¹⁰ It is difficult to visualise how millions of people are to be evicted from lands in their occupation for the last 20 years. How are we going to ascertain how long who has occupied which land? The only way forward I can see is to accept the current status quo and make this the full and final settlement of the issue. Clear and severe penalties for any further encroachments must be spelled out. There must be no loophole that allows cynical extension of the date of settlement for narrow political gain. Unless this is the final settlement, the entire exercise would lose all meaning. ■■■

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Notes

- 1 For detailed substantiation of the propositions in this section, please see Chapter 5 of Mihir Shah et al (1998).
- 2 This is true of all major regions of adivasi concentration, except the north-east.
- 3 For a summary of the historical sources, see my doctoral dissertation, Shah (1984).
- 4 See Raza and Ahmad (1990).
- 5 Even the government admits that nearly 20 million persons have been displaced by dams, mines, industries and wildlife sanctuaries. Seventy-five per cent of them have not been rehabilitated.
- 6 Ashish Kothari of Kalpavriksh, India’s leading environment action group, describes hundreds of such cases, many of which have been documented in detail [Kothari 2005].
- 7 However, PESA failed to address the root of the conflict in adivasi areas. It was silent on adivasi rights in forests that remained firmly in the grip of the forest department’s ill-equipped bureaucracy.
- 8 Malvika Singh (2005). She goes on to assert, with even less basis, that “the balance 26 per cent will be handed over by 2013”.
- 9 Another major concern is of non-tribal forest-dwelling communities who also need to be included within the ambit of the bill. The problem here is that this could lead to the inclusion of the very people who have, in many instances, been responsible for illegally grabbing adivasi land.
- 10 As also the commitment in the Common Minimum Programme of the UPA that “eviction of tribal communities and other forest-dwelling communities from forest areas will be discontinued”.

References

- Barse, Sheela (2005): ‘A Bill that Takes Away More than It Gives’, *The Hindu*, July 1.

- Jayakrishnan, P V (2005): 'Is There a Need for This Bill?', *Seminar*, August.
- Karant, K Ullas and Pradeep Bhargav (2005): 'Defragmenting Nature', *Seminar*, August.
- Kothari, Ashish (2005): 'Bungle in the Jungle', *Seminar*, August.
- Mohanty, B (2005): 'A Field View', *Seminar*, August.
- Prabhu, Pradip (2005): 'The Right to Live with Dignity', *Seminar*, August.
- Raza, M and A Ahmad (1990): *An Atlas of Tribal India*, Concept, New Delhi.
- Shah, Mihir (1984): *Capitalist Development and the Transformation of Agrarian Relations in Chingleput District, 1783-1980*, PhD dissertation, Centre for Development Studies, Thiruvananthapuram.
- Shah, Mihir et al (1998): *India's Drylands: Tribal Societies and Development through Environmental Regeneration*, Oxford University Press, New Delhi.
- Singh, Malvika (2005): 'May I Dwell in the Forest?', *Indian Express*, May 7.
- Singh, Tavleen (2005): 'Lies about Tribal Rights', *Seminar*, August.
- Sundaram, K and Suresh D Tendulkar (2003): 'Poverty among Social and Economic Groups in India in 1990s', *Economic and Political Weekly*, December 13.