



LAW
ENVIRONMENT AND
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LEAD

THE INDIAN FOREST RIGHTS ACT 2006: A CRITICAL APPRAISAL

Lovleen Bhullar

COMMENT



VOLUME
4/1

LEAD Journal (Law, Environment and Development Journal)
is a peer-reviewed academic publication based in New Delhi and London and jointly managed by the
School of Law, School of Oriental and African Studies (SOAS) - University of London
and the International Environmental Law Research Centre (IELRC).

LEAD is published at www.lead-journal.org

ISSN 1746-5893

*The Managing Editor, LEAD Journal, c/o International Environmental Law Research Centre (IELRC), International Environment
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This document can be cited as
Lovleen Bhullar, 'The Indian Forest Rights Act 2006: A Critical Appraisal',
4/1 Law, Environment and Development Journal (2008), p. 20,
available at <http://www.lead-journal.org/content/08020.pdf>

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1

INTRODUCTION

Historically, the relationship between tribal communities in India and forests was characterised by co-existence and these communities were considered integral to the survival and sustainability of the ecological system. This symbiotic relationship was acknowledged and crystallised as customary rights over forest produce. But these rights were not recognised and recorded by the government while consolidating state forests during the colonial period as well as in independent India.¹ The resulting insecurity of tenure and the threat of eviction led to the alienation of tribal communities from their ancestral forest lands. This historical injustice was perpetuated by the Wildlife (Protection) Act 1972 (the 'WPA') and the Forest Conservation Act 1980 (the 'FCA'), which identified environmental protection and recognition of the rights of tribal communities as mutually irreconcilable objectives. Other legislative and executive measures in the post-independence era continue to perpetuate these differences.

In response to the resulting tribal agitations and unrest, the Ministry of Rural Development, Government of India constituted a committee headed by Mr. Dileep Singh Bhuria, a tribal Member of the Parliament, to make recommendations on the salient features of the law for extending provisions of Part IXA of the Constitution of India ('Panchayats') to Scheduled Areas (which are primarily tribal areas identified for special protection in the Fifth Schedule of the Constitution).² The report of the Bhuria Committee, which was released in 1995, *inter alia* argued for the legal recognition of

the Gram Sabha (or the village council comprising the assembly of all adult residents of a village) as the primary centre of tribal governance. It also recommended that the long-standing demand of tribal control over productive land and forests should be conceded to and administrative interference in their affairs should be minimised.³ Following this report, the Parliament passed the Panchayats (Extension to the Scheduled Areas) Act 1996 (the 'PESA'), which recognised the rights of tribals to self-governance, but the actual implementation of the PESA has been far from satisfactory.

However, in a recent shift in approach, the Parliament has enacted the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (the 'Act') to 'undo the historical injustices' suffered by tribal communities.⁴ Not surprisingly, the enactment of the legislation was preceded by extensive debate and discussion, which highlighted the tensions between social activists and environmentalists and conservationists on certain core issues. It is, therefore, important to consider the reasons for the emergence of the Act in the face of such divisiveness. We also need to consider the provisions of the Act to determine the extent to which it has succeeded in striking a balance between livelihood security and the conservation goals. Unfortunately, a review of the legislation and secondary literature indicates that the potential scope and impact of the Act has been reduced.

This paper commences with an overview of the traditional governmental responses to the plight of tribal communities in India. It then lays out the historical context for the Act and proceeds to discuss the key provisions of the Act and their legislative history. As the Rules determining the procedure and implementation of the Act have been notified recently, the paper also addresses them in the context of certain specific provisions of the Act. The paper concludes with some observations in relation to the Act.

1 Ministry of Tribal Affairs, 'Note on the 'Scheduled Tribes (Recognition of Forest Rights) Bill, 2005'', available at <http://tribal.nic.in/bill.pdf>.

2 'Report of MPs and Experts - To Make Recommendations on the Salient Features of the Law for Extending Provisions of the Constitution (73rd) Amendment Act, 1992 to Scheduled Areas', available at http://www.odi.org.uk/livelihoodoptions/forum/sched-areas/about/bhuria_report.htm.

3 Dr. Smitu Kothari, 'To be Governed or to Self-Govern', *The Hindu*, 16 July 2000.

4 The text of the Act is available at <http://tribal.nic.in/actTA06.pdf>.

2 SHIFT TOWARDS REFORM - LOCATING TRIBAL RIGHTS IN INSTITUTIONAL RESPONSES

The state machinery's traditional response to the plight of tribal communities has been marked by indifference and suspicion. However, in 1988, the linkages between environmental and social concerns in terms of community rights to natural resources were recognised for the first time and the National Forest Policy (the 'NFP') highlighted the need to involve tribal communities in the management of forests.⁵ In order to implement this policy objective, the Ministry of Environment and Forests (the 'MoEF') released a set of six circulars on 18 September 1990, which decreed that pre-1980 occupation of forest land would be eligible for regularisation, provided the State Government evolved certain eligibility criteria in accordance with the local needs and conditions.⁶ Unfortunately, this people-oriented process was never implemented on the ground.⁷

On the contrary, the MoEF misinterpreted the Supreme Court's order,⁸ which required any regularisation of forests encroachments to be cleared by the Court, as a direction to summarily evict 'all illegal encroachment of forestlands in various States/ Union Territories'.⁹ This resulted in country-wide eviction drives by the forest department.¹⁰ However, following mass protests by tribal communities, after the May 2004 general elections, the UPA (United Progressive Alliance) Government, in its Common Minimum Program, committed itself to discontinuing the 'eviction of tribal communities and other forest-dwelling communities from forest areas'.¹¹

The task of drafting the legislation was assigned to the Ministry of Tribal Affairs (MoTA),¹² which constituted a Technical Resource Group, consisting of representatives of various Ministries, the civil society and legal specialists, to draft the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 (the 'Bill').¹³ Several provisions of the Bill met with stiff opposition from various quarters. Wildlife conservationists and the MoEF expressed concern over the purported potential adverse impact of its implementation, which could, according to them, extensively damage the existing scarce forest cover. The veracity of these allegations was denied by the pro-Bill lobby, which viewed the legislation as a means to rectify the 'historical injustice', which

5 Ministry of Environment and Forests, Government of India, *National Forest Policy* (1988), available at <http://envfor.nic.in/divisions/fp/nfp.pdf>. See also Rucha S. Ghate, *Forest Policy and Tribal Development: A Study of Maharashtra* 54 (New Delhi: Concept Publishing House, 1992) and Mihir Shah, 'First You Push Them In, Then You Throw Them Out', 40(47) *Economic & Political Weekly* 4895, 4896 (2005).

6 Circular No 13-1/90-FP of Government of India, MoEF, Department of Environment, Forests & Wildlife dated 18 September 1990 addressed to the Secretaries of Forest Departments of all states/Union Territories, available at http://www.prsindia.org/docs/bills/1167469383/bill53_2007010153_MOEF_Guidelines_of_1990.pdf. See also Jean Dreze, 'Tribal Evictions from Forest Land', March 2005, available at <http://nac.nic.in/concept%20papers/evictions.pdf>.

7 Madhu Sarin, 'Comment: Who is Encroaching on Whose Land?', *Seminar*, November 2002, available at <http://www.india-seminar.com/2002/519/519%20comment.htm>.

8 *T.N. Godavarma Thirumulpad v. Union of India and others*, IA No. 703 of 2001 in W.P. (Civil) No. 202 of 1995 (order dated 18 February 2002), available at <http://judis.nic.in/temp/202%20%20%20%20%20%20%20%201995323112001p.txt>. See also Kaushiki Sanyal, 'STs (Recognition of Forest Rights) Bill', *India Together*, 14 December 2006, available at <http://www.indiatogether.org/2006/apr/law-forest.htm#hilite>.

9 The order of the MoEF dated 3 May 2002 addressed to the Chief Secretaries, Secretaries (Forests) and the Principal Chief Conservators of Forests of all States/ Union Territories, available at <http://www.kalpavriksh.org/kalpavriksh/f1/f1.2/Annexure%201.doc>.

10 See Bela Bhatia, 'Competing Concerns', 40(47) *Economic and Political Weekly* 4890, 4891 (2005) and Madhu Sarin, 'Scheduled Tribes Bill, 2005: A Comment', 40(21) *Economic and Political Weekly* 2131, 2132 (2005).

11 *Id.* See also Dreze, note 6 above.

12 Indra Munshi, 'Scheduled Tribes Bill, 2005', 40(41) *Economic and Political Weekly* 4406 (2005). See also Sarin, note 10 above, at 2132.

13 The text of the Bill is available at <http://tribal.nic.in/bill.pdf>.

resulted in non-recognition of the forest rights of tribal communities during consolidation of forests. The advocates of land rights for tribals and those who favour continued retention of lands by the forest departments also exhibited a similar polarisation.

In December 2005, the Bill was referred to the Joint Parliamentary Committee (the 'JPC') in order to settle these differences. The JPC's recommendations, which were presented to the two Houses of the Parliament on 23 May 2006,¹⁴ were also hotly contested by conservationists. In order to resolve the crisis, a group of ministers was asked to arrive at a consensus,¹⁵ which took the form of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006 (the 'revised Bill'). Once again, the revised Bill was also criticised, *inter alia*, on account of its failure to integrate the livelihood and conservation concerns. The dilution of the JPC's recommendations by the group of ministers also became the cause of discontentment among forest rights groups and activists.¹⁶

Nevertheless, the revised Bill was approved,¹⁷ and the Act was passed by the Parliament on 18 December 2006. Subsequently, the MoTA set up a technical support group¹⁸ to prepare the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 (the 'draft Rules'),¹⁹ which supplement the procedural aspects of the Act. After a one-year delay, the Act was finally notified on 31 December 2007 and the final Rules (or 'the Rules') were notified on 1 January 2008.²⁰

Following the notification of the Act and the Rules, and the Prime Minister's letter to the Chief Ministers of the different States,²¹ it was hoped that the benefits of the Act would soon be received by its beneficiaries.

Unfortunately, recent developments have dealt another blow to the efforts to implement the Act. These have manifested themselves as public interest litigations, which have been filed before the High Courts of Madras, Bombay and Andhra Pradesh questioning the validity of the Act. More recently, two wildlife organisations - the Bombay Natural History Society and Wildlife First - filed separate public interest litigations before the Supreme Court of India wherein they have challenged the constitutional validity of the Act *inter alia* on the ground that distribution of land is a matter, which is within the exclusive legislative competence of state governments and therefore, the Parliament cannot distribute land by enacting this legislation. On 28 March 2008, the Court admitted these petitions and issued notices to the Union Government and the states.²²

3

KEY FEATURES OF THE ACT

The purpose of the Act is to recognise the rights of forest-dwelling communities and to encourage their participation in the conservation and management of forests and wildlife. The interpretation and implementation of the Act in the coming years will determine whether it was merely an attempt by the government to offer a quick-fix solution or a long-term strategy towards the comprehensive resolution of the conflict. However, an overview of several key provisions of the Act, the context in which they have emerged and the concessions that have been made to arrive at consensus suggest that the tribal rights activists and environmentalists remain deeply divided on various issues.

14 Ashish Kothari, 'Rights and Promises', *Frontline*, 28 July 2006, page 64. See the Report of the JPC available at http://www.prsindia.org/docs/bills/1167469383/bill53_2007010353_joint_committee_report.pdf.

15 Sonu Jain, 'Green Light for Tribal Bill Changes will be in House this Session', *The Indian Express*, 8 December 2006.

16 Aparna Pallavi, 'Forest Rights Bill - Rights Denuded in a Forest of Words', *India Together*, 24 April 2007, available at <http://www.indiatogether.org/2007/apr/env-forbill.htm>.

17 Special Correspondent, 'Rajya Sabha Passes Forest Bill by Voice Vote', *The Hindu*, 19 December 2006.

18 Special Correspondent, 'Panel to Frame Rules for Forest Bill Implementation', *The Hindu*, 13 February 2007.

19 The draft Rules were published on 19 July 2007 and are available at <http://tribal.nic.in/rules-190607.pdf>.

20 Brinda Karat, 'Towards Implementation of the Forest Rights Act', *People's Democracy*, 4 February 2008.

21 Venkatesh Ramakrishnan, 'Hope & Fear', *Frontline*, 29 February 2008, page 4.

22 Special Correspondent, 'Apex Court Notice to Centre on Forest Rights Act', *The Indian Express*, 29 March 2008.

3.1 Expansion of the Beneficiaries of the Act

The Bill had initially identified FDSTs as the sole beneficiaries of the Act and excluded the non-tribal forest-dependent population, which stayed in or depended on forests for livelihoods, but had never been recognised as forest-dwellers.²³ Social activists apprehended that this exclusion would lead to societal conflict between people who have historically lived in a mutually beneficial relationship vis-à-vis the forests.²⁴ It was, therefore, proposed that the distinction should be drawn between those who are in the forests for survival and livelihood reasons and those who are there for commercial purposes and profit making.²⁵ The Bill also raised the question of equity, recognising that a tribal community could be subjected to differential treatment in two different States simply because it was categorised as a Scheduled Tribe in one State but not the other.²⁶ Further, in many cases, tribal communities had migrated from their place of origin and settled in other areas for livelihood purposes. Given the limited scope of the Bill, it was feared that they could be disintitiled from claiming rights to forest land, which they had traditionally inhabited and cultivated.²⁷

The most significant feature of the revised Bill (and the Act), which resulted from the incorporation of a JPC recommendation, was an expansion of the beneficiaries of the Act to include 'other traditional forest dwellers'.²⁸

This was heavily opposed by wildlife conservationists, such as Valmik Thapar, who believe that the Act does not include any safeguards for wildlife and fear that the extension of its mandate would lead to further incursions into inviolate forest spaces.²⁹ The Act could have addressed this concern by providing a sharp definition of 'other traditional forest dwellers' but the broad sweep of the definition adopted in the Act fails to exclude cases where vested interests have encroached on forest land, or where forest dwellers have themselves extended their encroachments.³⁰ This further buttresses the conservationists' apprehension that non-tribal persons, who have occupied forest land, may take advantage of this vague definition to claim rights under the Act as 'other traditional forest dwellers'.³¹

Further, the Act defines a 'generation' to mean a period comprising of twenty-five years. Hence, in order to qualify for forest rights under the Act, the 'other traditional forest dwellers' must prove that they have primarily resided in and depended on the forest or forest lands for *bona fide* livelihood needs since the year 1930. The inclusion of such a restrictive provision would render the claims of nomadic tribes and members of the more vulnerable non-ST forest dwelling tribes, who may have relied on other means of livelihood since the year 1930, ineligible.³² The discriminatory nature of this provision is borne out by the fact that no such requirement is imposed on the FDSTs.

The Act fails to provide any guidance on the nature of admissible evidence to prove the beneficiaries' claims to forest rights. Given the stringent time requirement, which requires proof of residence for a period of seventy-five years, which would commence in the pre-independence period, it was

23 See Kothari, note 14 above.

24 Praful Bidwai, 'Confused and Ambivalent', *Frontline*, 3 June 2005.

25 Editorial, 'Controversial Law Giving Tribals Rights Over Forest Land Shelved', May-June 2005, available at <http://infochangeindia.org/200506094394/Environment/News/Controversial-law-giving-tribals-rights-over-forest-land-shelved.html>. According to an unofficial estimate, the number of scheduled tribes and non-scheduled tribes in India are equal in population, i.e., approximately 84 million each. See Ranjit Sau, 'Non-Scheduled Tribes', 41(33) *Economic and Political Weekly* 3550 (2006).

26 See Bhatia, note 10 above, at 4892 and Smita Gupta, 'Limited Rights', *Frontline*, 21 April 2006, page 95.

27 See Sarin, note 10 above, at 2131.

28 According to Section 2(o), 'other traditional forest dweller' means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depended on the forest or forest lands for *bona fide* livelihood needs. It is to be noted that 13th December, 2005 is the date on which the Bill was first tabled in the Parliament.

29 Geetanjali Jhala, 'Conflict Will Go Up by 10,000 per cent', *Daily News and Analysis*, 23 December 2007, available at <http://www.dnaindia.com/report.asp?newsid=1140969>.

30 Kalpavriksh, Comments on the Joint Committee Report on the 'Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 (Delhi: Kalpavriksh, 2006).

31 See K. Venkateshwarlu, 'Conflicts Feared', *Frontline*, 12 January, 2007, page 31; Sushanta Talukdar, 'Doubts on Efficacy', *Frontline*, 12 January 2007, page 23. See also Jhala, note 29 above.

32 Special Correspondent, 'Tribals Feel Betrayed by Rights Law', *The Hindu*, 20 December 2006.

argued that if oral evidence and spot verification were not included as admissible evidence, a large section of genuine claimants would be deprived, as government officials would rely on colonial records for the settlement of rights.³³ As it happens, numerous peoples have resided on certain lands without formal colonial records. In a step forward, Rule 13 provides a very detailed list of documentary and oral evidence for recognition and vesting of forest rights. But it goes on to state that the Gram Sabha and the committees shall consider more than one of these evidences in determining the rights, which could lead to denial of forest rights in many cases.³⁴ Rule 31 of the draft Rules had also provided for a presumption in favour of the claimant, in case of a dispute between the claimant and a State agency, unless proved otherwise. This would have safeguarded the interests of the claimants but it has not been adopted in the Rules.

Similarly, the Act fails to explain the requirement to 'reside in... forests or forest land', which is applicable to both categories of beneficiaries. This could be interpreted to mean living in areas recorded as forest land whereas most forest dwellers live in areas recorded as revenue lands and cultivate forest land and use forest resources.³⁵ It is also unclear whether the satisfaction of both these conditions, that is 'reside in' and 'depend on' is necessary for eligibility or could either be adequate. The choice is clearly a difficult one as most 'forest dwellers' do not strictly dwell inside the forests, living on forest land, but are heavily dependent on the forest land and resources for their livelihood. Therefore, a very broad definition could bring in various people who really have no strong traditional links with forests while a very narrow one could exclude many traditionally forest-dependent people who may not be surrounded by forest but continue to depend on

it. In all cases, a traditional link with the forest and a heavy dependence on it for survival and basic livelihood should be part of determining who should get priority in eligibility.³⁶

Unfortunately, although Rule 2(6) of the draft Rules explained the requirement, the final Rules have failed to clarify whether those who reside outside the forests but are dependent on forests for fulfilment of livelihood needs are also eligible beneficiaries of the Act. The Act is also silent on the definition of 'bona fide livelihood needs'. In order to remedy this oversight, which may create additional difficulties in the determination of claims, Rule 2(2) of the draft Rules proposed a definition, which was similar to the one included in the Bill. However, both these definitions lack a sustainability dimension.

3.2 Right to Forest Land

Section 3 of the Act provides for the grant of several heritable, inalienable and non-transferable 'forest rights' to the beneficiaries. However, the scope of this provision was the subject matter of heated debates and very acrimonious exchanges between tribal rights activists and conservationists, especially in case of the right to hold and live in the forest land under individual or common occupation for habitation or for self-cultivation for livelihood. The two particularly contentious matters were the area of forest land to be distributed and the cut-off date for the recognition of the right.

3.2.1 Area of Forest Land to be Distributed

The Bill had envisaged the recognition of occupation of forestland to a maximum of 2.5 hectares per nuclear family of a FDST. However, environmentalists feared that this provision intended to distribute 2.5 hectares of forest land to each of India's 20 million tribal nuclear families, which is a

33 Archana Prasad, 'Survival at Stake', *Frontline*, 12 January 2007, page 4.

34 Campaign for Survival and Dignity, 'Campaign Welcomes Notification of Forest Rights Act, Rules', 1 January 2008, available at http://forestrightsact.awardspace.com/updates/update_01.01.08.htm [hereinafter CSD] and Down to Earth 'Forest Rights Diluted', *Down to Earth*, 31 January 2008, available at www.downtoearth.org.in/full.asp?foldername=20080131&filename=news&sid=3&sec_id=4.

35 Editorial, 'Forests and Tribals: Restoring Rights', 42(1) *Economic and Political Weekly* 4 (2007).

36 Kalpavriksh, 'The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006: Critical Amendments, Clear Rules and Assessment Period Needed', March 2007, available at <http://www.kalpavriksh.org/f1/f1.2/Tribal%20Forest%20Rights%20Act%202006.doc> and Ashish Kothari, 'A Long and Winding Path', *Frontline*, 29 February 2008, page 18.

total of 50 million hectares out of the 68 million hectares of forest land.³⁷ According to them, given that only 22 per cent of India's total area is under forest cover, this would result in fresh encroachments, loss of forest cover, and transfer of forest land into the hands of the land and timber mafia³⁸.

This concern was clearly misplaced as the Bill was merely regularising the so-called existing tribal 'encroachments' on forest land for livelihood purposes only. Moreover, the land was heritable but not transferable or alienable, there was a ceiling of 2.5 hectares for each family and most of the land consisted of already degraded or completely denuded forests.³⁹ The MoEF also argued that the grant of 2.5 hectares of forest land to each family was contrary to the objective of the NFP to get one-third of India under forest.⁴⁰ However, this was contrary to the MoEF's own observation that the total area of forest land under 'encroachment' (whether by tribals or other communities) is a mere 1.25-1.34 million hectares, which is less than two per cent of the recorded forest area in India.⁴¹

The JPC recommended the removal of the 2.5 hectares ceiling and instead sought the grant of forest land on an 'as is where is basis', which was fiercely opposed by conservationists. Finally, Section 4(6) of the Act adopted a compromise solution and provided for the right to a maximum area of four hectares of forest land under actual occupation of an individual or family or community. Although there is no scientific or legal basis for this determination, this is an important development given that over 70 per cent of SC and ST land-holders in India own less than one-third of a hectare.⁴²

However, it has been argued that regularisation in the hands of nuclear families will lead to fragmentation of forest land, which was previously managed by the communities as a collective, for example, certain tribal communities in the North-East exercise jurisdiction over nearly 300-400 kilometres of land.⁴³ Rule 30 of the draft Rules had included special provisions for North-Eastern States whereby the claimant of forest rights shall be, under the Acts, rules and regulations in force, eligible to hold land and live in the area in question but the final Rules are silent.

3.2.2 *Cut-off Date for Recognition of the Right*

Tribal rights activists also considered the Bill's adoption of 25 October 1980 (the date on which the FCA came into force) as the cut-off date for recognition of occupation of forest land to be too conservative and they demanded the adoption of a later date. On the other hand, environmentalists opposed any such extension on the ground that it would lead to greater loss of forest cover.⁴⁴ They also felt that the extension suggested regularisation of encroachments, which is not the purpose of the Act.⁴⁵ However, their arguments ignored the '1990 guidelines' formulated by the MoEF itself, which had established a procedure for the regularisation of so called 'encroachments' that occurred prior to the cut-off date of 1980.⁴⁶ Further, 1980 as a date for regularising tribal encroachments has been recognised ever since the NFP.

Eventually, pursuant to the JPC's recommendations, section 4(3) of the Act provided that the forest land should have been occupied before 13 December 2005. However, there is a possible contradiction between this 2005 cut-off date and Section 2(o) of the Act, which specifies that 'other traditional forest

37 Malvika Singh, 'May I Dwell in the Forest?', *Indian Express*, 7 May 2005. See also Bidwai, note 24 above.

38 See Munshi, note 12 above, at 4406. See also Kishor Rithe, 'When Politics Strikes at Forest Roots', *The Hindu*, 1 September, 2006.

39 See Bidwai, note 24 above.

40 See Munshi, note 12 above, at 4406 and Nirmala Ganapathy, 'Environment Ministry Strikes at Root of Tribal Land Rights Bill', *The Indian Express*, 14 April 2005.

41 See Bhatia, note 10 above, at 4893 and Editorial, 'Woolly Headed Environmentalism', *Down to Earth*, 31 May 2005, available at http://www.downtoearth.org.in/full6.asp?foldername=20050531&filename=Misc&sec_id=48&sid=1.

42 Mahesh Rangarajan, 'Fire in the Forest', 40(47) *Economic and Political Weekly* 4888, 4889 (2005).

43 J.J. Roy Burman, 'The Tribal Bill: A Rejoinder', 40(52) *Economic and Political Weekly* 5514 (2005).

44 See Munshi, note 12 above, at 4406.

45 The intent of the Act is to record the unrecorded rights of tribal communities. See Sanjay Upadhyay, 'Missing the Tribal for the Trees', 3 February 2008, available at <http://www.livemint.com/2008/02/03232126/Missing-the-tribal-for-the-tre.html>.

46 See Rangarajan, note 42 above, at 4891. See also Shah, note 5 above, at 4897.

dwellers' have to be at least 75 years in occupation.⁴⁷ The 2005 cut-off date may also conflict with Clause 6.4(iv) of the Draft National Displacement Policy, 2006, which states that only those project affected families who are/were having possession of forest lands prior to 25 October 1980 will be included in the survey of the Administrator for Resettlement and Rehabilitation.⁴⁸

Another criticism of the Act stems from the fact that it fails to provide adequate protection to FDSTs and other traditional forest-dwellers who started cultivating after the 2005 cut-off date. Besides failing to clarify the conditions under which people may be displaced, Section 4(5) of the Act provides no guarantee that displaced persons will get an adequate resettlement package, and be treated in a fair and humane manner. In order to address this concern, Kalpavriksh had proposed an amendment to the Act to revert to the 1980 cut-off date for regularisation of forest land, in consonance with the FCA.⁴⁹

3.3 Other Forest Rights

(i) The Act grants the right of ownership, access to collect, use and dispose of minor forest produce (which includes all non-timber forest produce of plant origin), which has been traditionally collected within or outside village boundaries, even in protected areas. However, as a concession to the conservationists who had expressed concern about the adverse effects of grant of rights over forest resources, the definition of 'minor forest produce' does not incorporate the JPC's recommendation to include 'fuel wood and the like, stones, slates and boulders and products from the water bodies including fish, weeds and the like' and the right to transport it.⁵⁰ Further, the final Rules do not include the provision in Rule 13(7) of the draft Rules, which required the Gram Sabha to ensure that the exercise of this right includes the responsibility of sustainable

use and prevention of any destructive practices in the collection of such minor produce.

(ii) The right to protect, regenerate or conserve or manage any community forest resource which communities have been traditionally protecting and conserving for sustainable use, has the potential to enhance conservation. But as 'community forest resource' was not defined in the Bill, it was unclear whether this right would extend to government-owned forests.⁵¹ Section 2(a) of the Act clarified this ambiguity by including resources within reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access. The Bill also included the right to impose penalties on anyone violating traditional rights of conservation,⁵² but the same has not been included in the Act.

(iii) The right to access bio-diversity and the community right to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity is an important inclusion. The JPC's recommendations had also imposed an obligation upon the government to protect these rights but the absence of a similar provision in the Act lends credence to the argument that the Act attempts to distance the State from its responsibility of forest conservation.⁵³

The absence of any provision elaborating how such protection shall take place is another major lacuna in the Act.⁵⁴ It was recommended that the rules should consider that the right can be made effective only if communities are permitted to continue to freely use and exchange genetic resources and their associated knowledge, as well as to apply measures to protect the knowledge, as they feel appropriate.⁵⁵

47 See Pallavi, note 16 above.

48 Asian Centre for Human Rights, 'A Review of India's Draft National Displacement Policy', 18 April 2007, available at <http://www.achrweb.org/Review/2007/163-07.htm>.

49 See Kalpavriksh, note 36 above.

50 M.D. Madhusudan, 'Of Rights and Wrongs: Wildlife Conservation and the Tribal Bill', 40(47) *Economic and Political Weekly* 4893, 4895 (2005).

51 Ashish Kothari and Neema Pathak, 'Will the Forest Rights Bill Save Both Tribals and Tigers?', 14 July 2006, available at <http://www.merineews.com/catFull.jsp?articleID=123265&catID=28&category=Nation>.

52 Ashish Kothari and Neema Pathak, 'Forests and Tribal Rights', *Frontline*, 3 June 2005, available at <http://www.flonnet.com/fl2211/stories/20050603001508800.htm> [hereinafter Kothari and Pathak II].

53 Ritambhara Hebbar, 'Forest Bill 2005 and Tribal Areas: Case of Jharkhand', 41(48) *Economic and Political Weekly* 4952 (2006).

54 See Kothari and Pathak, note 52 above.

55 See Kalpavriksh, note 36 above.

Accordingly, Rule 21(1) of the draft Rules provided that the right shall include ‘rights to regulate access, control, develop and protect traditional science and technology associated with biodiversity resources’. As the relationship between this right and the Biological Diversity Act 2002, which also proposes such protection, required elaboration,⁵⁶ Rule 21(2)-(5) of the draft Rules provided for coordination between the Gram Sabha and the BDA. Unfortunately, these provisions of the draft Rules have not been included in the final Rules.

(iv) The inclusion of the right to *in situ* rehabilitation including alternative land in cases where the STs or other traditional forest dwellers have been illegally evicted or displaced from forest land without receiving their legal entitlement to rehabilitation prior to 13 December 2005 is laudable 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. However, combined with the expanded definition of ‘traditional forest dwellers’, it expands the potential for State governments, land mafia and local elites to exploit the situation.

3.4 Obligations under the Act

The Act ‘empowers’ the Gram Sabha, village level institutions in areas where there are any forest rights holders and the forest rights holders to *inter alia* protect the wild life, forest and biodiversity and to ensure that their habitat is preserved from destructive practices affecting their cultural and natural heritage. Given the failure of the government’s traditional command and control approach, this provision offers an opportunity for the communities to adopt a transparent and participatory approach to biodiversity management.⁵⁷ However, these provisions will be rendered meaningless unless empowerment includes responsibilities for conservation.⁵⁸

Therefore, it was necessary to authorise these bodies to regulate and manage common resources and to penalise violators of community decisions on conservation.⁵⁹ Although the Bill included specific provisions listing the responsibilities and duties of right-holders to conserve nature and natural resources, and the penalties for failing to do so, the revised Bill placed the onus on the Gram Sabha to ensure conservation without providing any recourse if it failed to do so.⁶⁰ The Act is completely silent on this topic as well as on the legal means of ‘empowerment’.

The draft Rules have sought to redress some of these concerns. For instance, Rule 24(1) sets out the activities that the Gram Sabha and the village-level institution are empowered to undertake. Under Rule 24(2), the Gram Sabha may *inter alia* request the assistance of the Forest Department or other local authorities for implementing its norms and take corrective actions where there is violation of its norms or direct the concerned authorities to proceed in accordance with law. However, the final Rules fail to include this provision. Moreover, both the Act and the Rules are silent as to redressal mechanisms in cases where the Gram Sabha fails to fulfil its responsibility.

3.5 Relationship with Existing Laws

The provisions of the Act are in addition to and not in derogation of other laws that are in force, such as the Forest Act, the FCA etc. As a result, while FDSTs and/or other traditional forest dwellers may be vested with certain forest rights under the Act, they may be unable to exercise them because they may be subject to the provisions of the other applicable laws. Problems may also arise regarding the jurisdiction of the various authorities under these separate but overlapping laws.⁶¹ This provision may also adversely affect the relationship between the provisions of the Act and other laws if explicit requirements for conservation and sustainability, which are embodied in the other laws, do not complement the provision of rights under the Act.⁶²

⁵⁶ See Kothari and Pathak, note 51 above.

⁵⁷ Madhav Gadgil, ‘Empowering Gram Sabhas to Manage Biodiversity: The Science Agenda’, 42(22) *Economic and Political Weekly* 2067, 2070 (2007).

⁵⁸ Ashish Kothari, ‘For Lasting Rights’, *Frontline*, 12 January 2007, page 14.

⁵⁹ Bela Bhatia *et al*, ‘Scheduled Tribes Bill 2005’, 40(43) *Economic and Political Weekly* 4566 (2005).

⁶⁰ See Kothari, note 14 above.

⁶¹ See Kothari and Pathak note 51 above.

⁶² See Kothari, note 14 above, at 71.

Further clarity is required in this regard to address cases where forest/ wildlife/ biodiversity damage is caused by the establishment and enjoyment of rights granted under the Act. It is also important to note that the application of this provision is subject to the other provisions of the Act. Therefore, in case the provisions of the other laws contradict the process of recognition of forest rights stipulated in the Act, the latter will prevail.⁶³

4 PROCEDURE FOR VESTING OF FOREST RIGHTS

4.1 Primacy of the Gram Sabha – a Move towards De-Centralisation

The Act is the first legislation to clearly and elaborately lay down the *process* for determining the nature and extent of forest rights. The JPC's recommendations had envisaged community control to counter the monopoly of the forest department, and vested the Gram Sabha with the sole authority and responsibility for settling forest rights of the FDSTs and other traditional forest dwellers within the local limits of its jurisdiction under the Act. Although the Act authorises the Gram Sabhas to initiate the process, it dilutes the recommendation by also involving Panchayati Raj officials (including sarpanches etc.) and the officials of the forest department in the process. Moreover, the actual determination of rights is carried out by sub-divisional committees.⁶⁴ Additionally, the Rules include state agencies in the list of aggrieved persons who can appeal against the decision of the Gram Sabha. All these provisions will undermine the spirit of decentralisation which supports the vesting of the power to verify the claims under the Act in the most basic democratic body – the Gram Sabha – as opposed to the Panchayat regime, which does not vest administrative powers directly in the Gram Sabha.

⁶³ See Upadhyay, note 45 above.

⁶⁴ See Pallavi, note 16 above.

Further, under the draft Rules, the Gram Sabha could comprise a hamlet or a group of hamlets or even adult members of the village, managing their affairs in accordance with their traditions and customs. In contrast, Rule 3(1) redefines the Gram Sabha as the gram sabha of the panchayat, which is a larger entity and may oversee several villages. This may open the door for extraneous influences, adversely affecting the democratic functioning of the Gram Sabha and diluting forest rights.⁶⁵ Further, in areas where these communities form the minority, the primary objective of the Act to protect the rights of FDSTs and other traditional forest dwellers would not be achieved.⁶⁶ The Rule also contradicts section 2(p) of the Act, which clearly states that the Gram Sabha in Scheduled Areas should be that of the hamlet as well as the PESA.⁶⁷

Rule 24(2) of the draft Rules also provided that the Gram Sabha may seek assistance of the forest department or other local authorities for implementing its norms and that it may guide the functioning of committees or institutions that are responsible for the management of forest resources. The final Rules do not include any such provision. Even the draft Rules were silent as to whether the Gram Sabha has the power to override these committees or institutions in relation to areas over which they have legal rights.⁶⁸

The Bill had been silent about conflicts between two or more Gram Sabhas or between two communities in a Gram Sabha.⁶⁹ In order to remedy this deficiency, the revised Bill included a provision for dispute resolution amongst two or more Gram Sabhas on shared forest lands and resources but this was not included in the Act.⁷⁰ According to Rule

⁶⁵ V. Venkatesan, 'On the Fringes', *Frontline*, 29 February 2008, page 15.

⁶⁶ See CSD, note 34 above. See also Nitin Sethi and Akshaya Mukul, 'Forest Act Notified, Tribals Unhappy', *The Times of India*, 2 January 2008.

⁶⁷ *Id.*

⁶⁸ Neha Sakhuja, 'Forest Rights Rules Inconsonant With Act', *Down to Earth*, 31 July 2007, available at http://www.downtoearth.org.in/full6.asp?foldername=20070731&filename=news&sec_id=4&sid=12.

⁶⁹ Madhuri Krishnaswamy, 'One Step Forward, Two Steps Back', 40(47) *Economic and Political Weekly* 4899, 4901 (2005).

⁷⁰ See Pallavi, note 16 above.

6(f), one of the functions of the SDLC shall be to hear and adjudicate disputes between Gram Sabhas on the nature and extent of any forest rights but there is no provision for any mechanism to resolve disagreements between the Gram Sabhas and the forest department.⁷¹

4.2 Powers of the Government-Centric Committees under the Act

The Act requires the State Government to constitute the Sub-Divisional Level Committee (the 'SDLC'), the District Level Committee (the 'DLC') and the State Level Monitoring Committee (the 'SLMC'). At the first stage, the SDLC will examine the resolution passed by the Gram Sabha and prepare the record of forest rights, which is then considered and approved by the DLC. The Gram Sabha can veto the SDLC's decision but the decision of the DLC is final. The Act does not clarify whether the SDLC and the DLC are to consider the ecological implications while approving or rejecting the rights proposed by Gram Sabhas.⁷² The SDLC and the DLC are also responsible for considering and disposing petitions preferred by aggrieved persons against the resolution of the Gram Sabha and the decision of the SDLC respectively. A clear hierarchy is maintained in the process as no petition against the Gram Sabha's resolution can be preferred directly before the DLC. However, the committees are not mandated to provide the Gram Sabhas with transparent and prompt feedback and reasons for their decisions.⁷³ The failure to specify time limits for the determination of claims by the various committees may also uncertainly delay the grant of forest rights and defeat the purpose of the Act.

The Act also requires the SLMC to monitor the process of determination of rights and to submit returns and reports to the nodal agency (the MoTA), or any officer or authority authorised by the Central Government. This provision effectively allows the Central government to overrule all the decisions taken at the grass root-level. Rule 29(3) of the draft Rules also sought to empower the SDLC to perform

the functions of the Gram Sabha in certain circumstances but this provision has not been included in the Rules.

The institutional structure and the procedure for the recognition of forest rights, as set out in the Bill, were heavily biased in favour of the bureaucracy.⁷⁴ The composition of the committees precluded the participation of the peoples' representatives in determining the claims to forest land. Given the fact that the forest bureaucracy has failed to regularise the land occupied by forest-dwelling communities despite the passage of considerable time, the reliance on the same machinery now to verify and recognise claims was certainly not a confidence-building measure.

In a shift from this trend, the Act provides that the committees shall consist of officers of the department of Revenue, Forest and Tribal Affairs of the State Government and three members of the Panchayati Raj Institutions at the appropriate level, of whom two shall be the ST members and at least one shall be a woman. Rules 3-10 have further elaborated the compositions and functions of the various committees. However, neither the Act nor the Rules provide for representation of the relevant social action and conservation NGOs and individuals on the committees, which could assist the latter in taking informed decisions, as also to mediate between community representatives and government officials.⁷⁵

5

PROTECTION OF CORE AREAS – ESTABLISHMENT OF CRITICAL WILDLIFE HABITATS

The Bill proposed to grant provisional rights (for a five-year period) to tribal people who lived in core areas of sanctuaries and national parks, but they could be evicted with due compensation. However, if they

⁷¹ See Sakhuja, note 68 above.

⁷² See Kothari and Pathak, note 51 above and Kothari and Pathak II, note 52 above.

⁷³ See Kalpavriksh, note 36 above.

⁷⁴ See Gupta, note 26 above, at 96.

⁷⁵ See Kothari, note 14 above, at 71.

were not relocated during this period, their rights would be made permanent. In contrast to this uniform and arbitrary approach, which lacked any scientific basis,⁷⁶ pursuant to the JPC's recommendations, the revised Bill introduced 'critical wildlife habitats', which were subsequently defined in section 2(b) of the Act as areas of National Parks and Sanctuaries that are required to be kept inviolate for wildlife conservation using scientific and objective criteria.

Under Rule 34 of the draft Rules, after consultations, the MoEF and the MoTA could issue detailed guidelines about the nature of data to be collected, the process for collection and validation of the data, its interpretation, etc. in determining the critical wildlife habitat. These guidelines were to take into account the existing guidelines relating to documentation of biodiversity and wildlife and delineation of areas such as heritage sites and national parks. However, the final Rules have completely by-passed the science-based approach, leaving it to the discretion of the bureaucrats to define critical wildlife habitats.⁷⁷

Nevertheless, the resettlement provisions of the Act certainly represent a way forward. The safeguards, which are included in section 4(2) of the Act,⁷⁸ are

⁷⁶ See Gupta, note 26 above, at 96.

⁷⁷ See Venkatesan, note 65 above.

⁷⁸ The pre-conditions for modification or resettlement of forest rights recognised under the Act in 'critical wildlife habitats' are as follows:

- (a) the process of recognition and vesting of forest rights is complete in all the areas under consideration;
- (b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the WPA that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
- (c) the State Government has concluded that other reasonable options, such as coexistence are not available;
- (d) a resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and policies of the Central Government;
- (e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;
- (f) no resettlement shall take place until facilities and land allocation at the resettlement location are completed as per the promised package.

in sharp contrast to the government's approach to wildlife conservation in the past, which involved relocation of local communities from protected areas without considering the impact of relocation and what can be done to manage or mitigate it.⁷⁹ On the other hand, the Act does not define several key terms, such as 'irreversible damage', 'co-existence' and 'free informed consent', and their parameters have also not been established. In contrast, the Bill had defined 'co-existence' and also provided for the free informed consent of the concerned individuals. The Act also excludes a provision in the revised Bill whereby communities had a right to their original habitation if they were unsatisfied with the rehabilitation. However, this is a welcome deletion given the vagueness of the term, as dissatisfaction with any form of displacement is a natural reaction and does not necessarily indicate failed rehabilitation.⁸⁰

The Act explicitly provides that the government cannot divert critical wildlife habitats from which rights holders are relocated for other uses. Therefore, no subsequent permission for development activities can be granted in these areas.⁸¹ Further, the conditions laid down in Section 3(2) of the Act,⁸² which provides for diversion of forest land for developmental projects (such as schools and hospitals), serve as a community-based check against the widespread diversion of forest lands for destructive 'development' projects.⁸³ It is also in compliance with the *Samata* judgment,⁸⁴ wherein the Supreme Court held that the Gram Sabhas shall

⁷⁹ Asmita Kabra, 'Wildlife Protection: Introduction and Relocation', 41(14) *Economic and Political Weekly* 1309 (2006). Tiger Task Force, 'Joining the Dots', Report to Ministry of Environment and Forests, Government of India, New Delhi 88 (2005), available at http://envfor.nic.in/pt/TTF2005/pdf/full_report.pdf.

⁸⁰ See Kothari, note 14 above, at 67.

⁸¹ *Id.*

⁸² The conditions are as follows:

- (i) The number of trees felled shall not exceed seventy-five trees per hectare.
- (ii) The forest land to be diverted is less than one hectare in each case.
- (iii) The clearance of the developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.

⁸³ See Kothari, note 14 above, at 64 and Madhusudan, note 50 above.

⁸⁴ *Samatha v. State of Andhra Pradesh*, (1997) 8 SCC 191.

be competent to safeguard and preserve community resources. This provision is also significant in the context of a great push by the MoEF to open up forests to the corporate sector through the new Environmental Impact Assessment Notification of 15 September 2006.⁸⁵

In contrast to the traditional view, which envisaged an absolute severance of any human relationship with the protected areas, the identification of 'critical wildlife habitats' could lead to a more site-specific, species-based approach. It also provided the opportunity to initiate a dialogue on participatory management of forest resources.⁸⁶ However, the anti-tribal lobby demanded that the government should notify critical wildlife habitats in all protected areas and evict tribals from these areas before the Act came into effect. They argued that the coming into force of the Act would result in land settlement taking place in all wildlife areas.⁸⁷

Taking advantage of the resulting delay, on 31 December 2007, even before the notification of the Act and the Rules and the operationalisation of the term 'critical wildlife habitat', the MoEF issued guidelines to notify critical wildlife habitat.⁸⁸ It then identified 'critical tiger habitats' in the core areas of 28 existing and eight proposed tiger reserves under the amended WPA, which mandates the declaration of critical tiger habitats that can then be made inviolate.⁸⁹ As a result, these tiger habitats are

excluded from the purview of the Act and the residents of the 273 villages, which are included in the areas notified as critical tiger habitats, cannot benefit from the provisions of the Act.

In addition to the argument that due procedure has not been followed in the identification of these areas, even before the notification, the Future of Conservation Network had highlighted certain problems with the guidelines, *inter alia* including that:⁹⁰

- (i) They were issued for implementation and finalisation by state governments before the Act was notified.
- (ii) They can be operationalised only in tiger reserves under the WPA, but not in other protected areas.
- (iii) They provide for an unrealistic time frame for the state level processes to be completed by early 2008.
- (iv) The criteria for identification of critical wildlife habitats was too broad to be of practical use, was scientifically questionable and could lead to situations of trying to create inviolate areas even where not required.
- (v) Consultation with local communities during the identification and notification process is given as optional, rather than being mandatory as required by the Act.

Despite these objections, the conservationists' argument that the beneficiaries of the Act cannot be granted forest rights in respect of most of the national parks and wildlife sanctuaries, which have still not been notified, carried weight with the MoEF.⁹¹ Following the MoEF's guidelines, several

⁸⁵ See Prasad, note 33 above, at 8.

⁸⁶ Arshiya Bose and Ashish Kothari, 'Sensitive Zones', *Frontline*, 29 February 2008, page 20.

⁸⁷ Kirtiman Awasthi, 'Tiger Trouble – Balancing Act Gone Awry', *Down to Earth*, 31 January 2008, available at http://www.downtoearth.org.in/full16.asp?foldername=20080131&filename=news&csec_id=4&sid=1. See also Nitin Sethi, 'Tiger Reserves to be Kept Out of Forest Rights Act Ambit', *The Times of India*, 1 January 2008.

⁸⁸ Government of India, 'Guidelines to Notify Critical Wildlife Habitat Including Constitution and Functions of Expert Committee, Scientific Information Required and Resettlement and Matters Incidental Thereto' (New Delhi: Ministry of Environment and Forests, 2007).

⁸⁹ See Awasthi, note 87 above. According to the government, 31,940 sq km has been notified as critical tiger habitat, which is almost the entire area of existing tiger reserves. See also Karat, note 20 above and Shankar Gopalakrishnan, 'Forest Rights: Why the New Law Needs to be Implemented', 2 December 2007, available at <http://www.boloji.com/opinion/0444.htm>.

⁹⁰ Future of Conservation Network, 'Comments on the 'Guidelines to Notify Critical Wildlife Habitat Including Constitution and Functions of Expert Committee, Scientific Information Required and Resettlement and Matters Incidental thereto', issued by MoEF, November 2007' (Bangalore: Future of Conservation Network, 2007), available at http://www.atree.org/foc_com_moef_cwh.pdf.

⁹¹ Madhu Ramnath, 'Surviving the Forest Rights Act: Between Scylla and Charbydis', 43(9) *Economic and Political Weekly* 37, 39 (2008).

states have started identifying 'critical wildlife habitats' within their protected areas with the purpose of making them inviolate. This approach of the MoEF, which interprets 'inviolate' as being completely free of human use and thereby requires compulsory relocation of people, completely discounts small-scale human activities that may potentially be compatible with conservation.⁹²

6 CONCLUSION

The tumultuous history of the Act bears testimony to the differences between the pro-tribal lobby, which has heralded the legislation as a landmark in the prolonged struggle of tribals and other forest dwellers, and the environmentalists, conservationists and the MoEF, who fear that the Act will sound the death-knell of the attempts to protect our natural resources. One cannot deny that several provisions of the Act have been drafted without considering the adverse impacts of their implementation on conservation. For instance, pursuant to the JPC's recommendations, the benefits of the Act have also been extended to other traditional forest dwellers. However, given the ambiguity surrounding the criteria for determining the beneficiaries of the Act, the concern of the pro-environment lobby that the benefits of the Act may be extended to other persons appears to be justified.

Further, although the MoTA had promised that the Rules and the amendments to the Act would address such problematic provisions,⁹³ the Rules continue to undermine the key elements of the Act.⁹⁴ An example is the manner in which the Rules have reinvented the definition of the Gram Sabha, thereby withdrawing the local government's decision making power and vesting it with the government machinery, which has been hitherto responsible for the injustice that the Act intends to correct. While

the draft Rules contained detailed provisions relating to the rights and duties of forest-dwellers, which are necessary for the meaningful implementation of the Act, the final Rules have completely ignored these aspects and focused instead on the process of recognition of rights.⁹⁵ Moreover, the fact that the task of finalising the Rules was undertaken by a two-member committee comprising Valmik Thapar, a tiger conservationist, and Mahendra Vyas, the Secretary of the Central Empowered Committee has also not been well received by the pro-tribal lobby.⁹⁶

Despite these shortcomings, the legislative intent to correct a historical injustice is praiseworthy and several forest-dependent communities do have a great interest in protecting forests, which are their sources of livelihood and sustenance.⁹⁷ In fact, in many cases, destructive development activities, rather than the activities of tribal and other forest-dependent communities, are responsible for the over-exploitation, neglect and denudation of forests.⁹⁸ The authority of the MoEF to assail the Act is also questionable as it has itself granted permissions to various companies, in the guise of development activities, to divert forest land for non-forest purposes.⁹⁹ However, it remains to be seen whether the implementation of the Act will, in fact, restore the rights of these communities.

⁹² See Bose and Kothari, note 86 above, at 21.

⁹³ See Pallavi, note 16 above.

⁹⁴ See CSD, note 34 above.

⁹⁵ See Sethi and Mukul, note 66 above.

⁹⁶ See Venkatesan, note 65 above.

⁹⁷ See Munshi, note 12 above, at 4407 and Ashish Kothari, 'Bungle in the Jungle', *Seminar*, August 2005, available at <http://www.india-seminar.com/2005/552/552%20ashish%20kothari.htm>.

⁹⁸ See Rangarajan, note 42 above, at 4889.

⁹⁹ Since 1980, an average of around 40,000 hectares of forest land has been diverted annually (this figure has risen from around 25,000 in the early 1990s), and in 2004, the MoEF stated in Parliament that 9.8 lakh hectares have been diverted for 11,282 'development projects' since 1980. Over 1.6 lakh hectares have been diverted for mines alone, and in just last three years alone, about 300 mining projects involving a diversion of over 20,000 hectares of forest land have been cleared. See Krishnaswamy, note 69 above, at 4900 and Prasad, note 33 above, at 8.

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