

Forest Rights Struggle

The Adivasis Now Await a Settlement

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The Adivasis of India have raised the issue of forest rights to the forefront of the nation's politics. As the state dithers, a process of legislative enactment to address the "historic injustice" has emerged. This article is a narrative that examines the context that precipitated this crisis, the issues, the ground reality, the emergent proposal, and the historic background of the continuing struggles of Adivasis against colonization and internal colonization.

Keywords: *Adivasis; India; forest dwellers; forest rights*

About 10 million or more forest dwellers, mostly Adivasis (literally meaning "original inhabitants" or "indigenous peoples"), will have much to celebrate if the United Progressive Alliance (UPA) government in power in India takes the bold step to follow through on the recommendations of the report of the Joint Parliamentary Committee on Scheduled Tribes (Recognition of Forest Rights) Bill of 2005. This bill was drafted in January/February 2005 and tabled on December 13, 2005, in the Parliament by the Ministry of Tribal Affairs, Government of India. A 30-member Joint Parliamentary Committee (JPC) was constituted from the Lok Sabha and Rajya Sabha (the upper and lower houses of the Parliament) in January 2006 to finalize the bill. The JPC tabled its report on May 23, 2006. The recommendations of the JPC were generally welcomed by the Adivasis and other forest dwellers for rectifying a number of anomalies in the draft bill itself. The final bill was widely expected to be introduced in the monsoon session of Parliament for its passage. This did not happen, despite the sit-in by hundreds of Adivasis from August 21 to 28 at Delhi organized by the Campaign for Survival and Dignity (CSD), a coalition of more than a hundred mass organizations across the country, as well as the pressure in the Parliament cutting across party lines, especially the left parties. The contents of the JPC report were a direct outcome of the struggles of primarily the Adivasis, the nationwide mobilization initiated by the CSD, and intense political lobbying. The CSD launched a nationwide mobilization and protests, culminating when the winter session of the Parliament is on, to force the government to enact a law on the basis of the recommendations of the JPC.

Background

Of the 5,653 distinct communities in India, 635 are considered to be “tribes” or “Adivasis.” Most Adivasi communities are classed under the administrative category of “scheduled tribes” (STs): a category neither comprehensive nor always sociologically valid. There are 577 ST communities numbering 84.32 million as per the 2001 census, comprising 8.32% of the total population, making the Indian subcontinent the abode of more than a quarter of the world’s 350 million or so indigenous peoples. India is divided into 28 states and seven union territories (UTs). STs are found in all the states/UTs, except Punjab, Haryana, Delhi, and the UTs of Pondicherry and Chandigarh. These indigenous peoples inhabit about 15% of the country’s geographical area, mainly forests, hills, and undulating remote terrain in plateau areas that is rich in natural resources. Numerically, these communities vary, with the Great Andamanese numbering only 18 to the Gonds numbering more than 5,000,000. They are also not evenly distributed. More than half of them are in the central region, whereas they are largely the majority population in the northeastern region (see Table 1).

Adivasis are not a homogeneous socio cultural category, making it difficult to clearly define anthropologically in terms of ethnicity, race, language, social forms, or modes of livelihood. There are the predominant Vedddids of Central and Southern India who are similar to the Australian Aborigines, the Paleamngoloid Austro-Asiatic all along the sub-Himalayan region of the northeast, the Greco-Indians who spread across the western region, and the Negritos of the Andaman Islands who are under threat of extinction. The descendants of the Kolarian or Dravidian tribes in the mid-Indian region speak dialects of Austric or the Dravidian language family. The Negrito and Australoid people of the central region speak the Mundari language of the Austro-Asiatic language family. There are some 200 indigenous peoples in the northeast belonging to the Mongoloid stock, speaking languages of the Tibeto-Burman language groups and the Mon Khmer. In the southern region, the proto-Australoid racial stock speaks dialects of the Dravidian family.

Prior to the British colonization of Adivasi areas, Adivasi habitations were largely independent realms, though large parts were nominally part of the regional kingdoms—a notional part of the “unknown frontier” of the respective states. These were, in effect, self-governing “first nations.” Some, as in the northeast, remained fiercely independent. Their autonomous existence outside the mainstream led to the preservation of their socioreligious and cultural practices, with most of them retaining also their distinctive languages. **Traditionally, they are considered outside the Indian caste structure, uncivilized or as lesser humans by the upper castes, though in recent times, there are distinct trends to assimilate and subsume them into the larger pan-Indian Hindu mainstream.**

Table 1
Scheduled Tribe Population in India (2001)

Region/State	ST Population	% in Total Population of the State/UTs	% of Total ST Population
Central region	44,271,468		52.51
Andhra Pradesh	5,024,104	6.59	5.96
Bihar	758,351	0.91	0.9
Jharkhand	7,087,068	26.30	8.4
Madhya Pradesh	12,233,474	20.27	14.51
Chhattisgarh	6,616,596	31.76	7.85
Orissa	8,145,081	22.13	9.66
West Bengal	4,406,794	5.50	5.23
Northeastern region	10,465,898		12.41
Sikkim	111,405	20.60	0.13
Arunachal Pradesh	705,158	64.22	0.84
Nagaland	1,774,026	89.15	2.1
Manipur	741,141	39.96	0.88
Mizoram	839,310	94.46	1.0
Tripura	993,426	31.05	1.18
Meghalaya	1,992,862	85.94	2.36
Assam	3,308,570	12.41	3.92
Northwestern region	1,714,658		2.03
Jammu and Kashmir	1,105,979	10.90	1.31
Himachal Pradesh	244,587	4.02	0.29
Uttaranchal	256,129	3.02	0.3
Uttar Pradesh	107,963	0.06	0.13
Western region	23,307,930		27.64
Rajasthan	7,097,706	12.56	8.42
Gujarat	7,481,160	14.76	8.87
Daman and Diu	13,997	8.85	0.02
Dadra and Nagar Haveli	137,225	62.24	0.16
Maharashtra	8,577,276	8.85	10.17
Goa	566	0.04	—
Southern region	4,479,496		5.31
Karnataka	3,463,986	6.55	4.11
Kerala	364,189	1.14	0.43
Tamil Nadu	651,321	1.04	0.77
Island region	86,790		0.11
Andaman and Nicobar Islands	29,469	8.27	0.04
Lakshadweep	57,321	94.51	0.07
All India	84,326,240	8.32	100.00

Note: Punjab, Haryana, Delhi, Chandigarh, and Pondicherry have been excluded. ST = scheduled tribe. UT = union territory.

The introduction of the alien concept of private property began with the Permanent Settlement of the British in 1793. The colonization of the forests that commenced formally with the Forest Act of 1864 and consolidated with the Indian Forest Act of 1927 reduced the rights of Adivasis to mere privileges conferred by the state. Incursions and invasions into the Adivasis homelands by the British led to stiff resistance. Beginning with the revolt of the Pahariya in Bihar in 1778, the Kolis of Maharashtra (1784-1785), the Tamar of Chota Nagpur in present-day Jharkhand (1789, 1794-1795, 1801), the Chuari Movement in Bihar (1795-1800), the Koyas in Andhra Pradesh (1803, 1862, 1879, 1880, 1822), the tribal revolts in Chotanagpur (1807-1808, 1811, 1817, 1820), the Bhils in Western India (1809-1828, 1846, 1857-1858), the Kols in Chotangpur (1818, 1831-1832), the Singphos in Assam (1825, 1828, 1843, 1849, 1869), the Mishmis in Arunachal Pradesh (1827, 1855), the tribals of Assam (1828), the Khasis of Assam (1829), the Mundas of Jharkhand (1820, 1832, 1867, 1889), the Kherwar uprising in Jharkhand (1832-1823), the Lushais of Assam (1834-1841, 1842, 1850, 1860, 1871-1872, 1892), the Daflas of Assam (1835, 1872-1873), the Naiks of Gujarat (1838, 1868), the Khampti in Assam (1839-1843), the Gonds of Bastar in Chattisgarh (1842), the Kondhs in Orissa (1850), the North Kachari hills of Assam (1854), the Santals in Jharkhand (1855, 1869-1870), the Naikdas in Gujarat (1858), the Syntengs of the Jaintia Hills of Meghalaya (1860-1862), the Phulaguri uprising in Assam (1861), the Juangs in Orissa (1861), the Sentinel Islanders in the Andaman Islands (1867, 1883), the Raig-mels of Assam (1868-1869), the Nagas of Nagaland (1879, 1932, 1963-1971), the Bastar tribal uprising (1811), the Tana Bhagat rebellion in Bihar (1913, 1914, 1920, 1921), the Gond and Kolam revolt in Andhra Pradesh (1941), the Koraput revolt in Orissa (1942), revolts against the Japanese occupation army by the tribes of the Andaman Islands (1942-1945), the Mizo revolt in Mizoram (1966-1971), the Warli revolt of Maharashtra (1956-1958), the Naxalbari in West Bengal (1967-1971), and so on, the resistance continued into the contemporary times in various forms.

The persistent resistance led to various administrative arrangements being ceded by the British as the Scheduled District Act of 1874, as well as subsequently in the Government of India Act of 1919 and later the Government of India Act of 1935. These classified the Adivasi-dominated hill areas of the northeast as "excluded areas" and the mid-Indian region as "partially excluded areas" from the purview of British administration. The self-governing structures were more or less to be left intact, but intrusion and expropriation of resources continued.

The British Crown's dominions in India consisted of four politico-administrative arrangements: (a) the presidency areas, where the Crown was supreme; (b) the residency areas, where the British Crown was present through the resident, and the ruler of the realm was subservient to the Crown; (c) the agency (tribal) areas, where the agent governed in the name of the Crown but left the local self-governing institutions untouched; and (d) the excluded areas (northeast), where the representatives of the Crown were but figureheads.

With the transfer of power, the presidency areas constituted the core of the Indian Union, whereas the residency areas ceded to the Union when the rulers of the residency areas signed the "Deed of Accession." However, the agency (tribal) areas, as the partially excluded areas were called, and the excluded areas (northeast) were assumed to have joined the Union. Large parts of the northeast, historically not part of mainland India, with the British annexation taking place only in the later part of the 19th century, claimed independence, leading to insurgencies for self-determination, which still persist in the region. However, the Adivasis in the mid-Indian region were relatively more preoccupied with their survival issues that aspirations remained muted, unlike the northeast.

Some of the ST peoples of Himachal Pradesh, Uttar Pradesh, West Bengal, Sikkim, Arunachal Pradesh, Nagaland, Manipur, and Mizoram have their counterparts across the border in China (including Tibet), Bhutan, Myanmar, and Bangladesh. The political aspirations of these transborder tribes who find themselves living in different countries as a result of artificial demarcation of boundaries by erstwhile colonial rulers continue to be ignored. The postindependent state formation on a linguistic basis divided the subcontinent on the basis of the dominant languages of the mainstream. In the process, the Adivasi homelands were divided among the states. Jharkhand, in the mid-Indian region, was divided among Bihar, West Bengal, Madhya Pradesh, and Orissa, although the Bihar part of Jharkhand became a separate state with the same name in 2000 after a prolonged struggle since the early 1900s. However, the formation of a separate state has belied the aspirations of the Adivasis as large tracts of its forests and lands rich in minerals are being taken over by mining companies and industries, causing large-scale displacement and destruction of environment. Similarly, Chhatisgarh, another Adivasi tract, was constituted as a separate state in 2000, bifurcating Madhya Pradesh. Since then, large parts of the thickly forested regions have become violent conflict zones, with the conflict between the Maoists and the armed might of the state escalating. At the same time, large tracts are on offer to the mining sector. The Gond region is shared between the states of Orissa, Andhra, Maharashtra, and Madhya Pradesh. Similarly, the states of Maharashtra, Madhya Pradesh, Gujarat, and Rajasthan divide up the Bhil region. In the northeast, for instance, the Naga traditional homelands are divided into Nagaland, Manipur, Assam, and Arunachal Pradesh besides the neighboring Myanmar. Further administrative subdivisions within the states into districts, *talukas*, and *panchayats* have been organized in such a way that the Adivasi concentration is broken up further, increasing the physical and political marginalization.

Independent India maintained a continuity of the British arrangement with modifications under Article 244 (Schedule V for the mid-Indian region and Schedule VI for the northeast region) of the Constitution of India, providing various degrees of self-governance based on traditions and, particularly, the protection of land rights. It is under the Panchayat (Extension to Scheduled Areas) Act (PESA) enacted in 1996 for the V Schedule that, for the first time, there is a clear direction that the legislature

of a state shall not make any law that is not in consonance with the customary law, social and religious practices, and traditional management practices of community resources. This law itself came into existence consequent to a mobilization of Adivasis in the mid-Indian region to enact such a law. Removal of dissonance between Adivasi tradition of self-governance and modern legal institutions was the most important outcome that was expected of PESA. A village itself is defined as a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs, and the village assembly shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources, and the customary mode of dispute resolution. Although the act was enacted a decade ago, none of the nine states with V Schedule areas have passed legislations in total conformity with the provisions of PESA. The states have disregarded the major components of PESA, did not amend existing laws to be in consonance with PESA, and continue to violate PESA. In addition, the president of India and the concerned governors of the state have the duty to preserve, protect, and defend both the Constitution, including this special feature concerning the scheduled areas, and the law subject to only one condition—namely, that it does not affect the basic structure of the Constitution. The governor is given immense power to apply or not apply any act to the scheduled area and make regulations for peace and good governance of the scheduled area. But these too have been belied. The result of these acts of omission and commission is the further exacerbation of the crisis and conflicts in Adivasi/indigenous people's areas, creating a situation of a virtual breakdown of the Constitution itself. Most of the Adivasi/indigenous people's homelands have officially become conflict areas.

In the VI Schedule areas, the district councils and regional councils in the northeastern states of Assam, Tripura, Meghalaya, and Mizoram have the powers to make laws related to social customs. In these areas, there are the formal state laws, traditional customary laws of the community, and laws by autonomous district councils. The VI Schedule areas bar application of acts of Parliament and state legislature to areas in the subject matters where the autonomous council is authorized to make and extend laws. These provide scope for these bodies to evolve appropriate laws that recognize the customary rights, provided that the political space also evolves through a democratization process in the context of an intense conflict situation for greater autonomy with the formal modern administrative bodies and, to a lesser extent, the autonomous district councils, trampling on traditional system.

Articles 371A and 371G, specifically for the northeastern states of Nagaland and Mizoram, respectively, confer special powers on these states for greater autonomy, a result of the early militant struggles. Under these provisions, no act of Parliament in respect of religious or social practices of the Nagas and Mizos, their customary law and procedure, administration of civil and criminal justice involving decisions according to customary law, and ownership and transfer of land and its resources shall apply to the states of Nagaland and Mizoram unless the legislative assembly of

the concerned states so decides. These legally provide scope for the development of a self-determining, self-governing system based on traditions. However, the empowerment was not permitted to take its logical course, but instead political and administrative interventions led to continued insurgencies. Large parts of the northeast are subject to military counterinsurgency operations legitimized in law through the Armed Forces (Special Powers) Act of 1958, which is operational in the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura.

The state-sponsored development and conservation have displaced, mainly in the mid-Indian region, as a conservative estimate, 10 million Adivasis. The Planning Commission of India estimates that of the 21.3 million persons displaced for various "development" projects between 1951 and 1990 alone, 8.54 million were scheduled tribes constituting 40% of the displaced persons and predominantly living in forest areas. Only 2.1 million of them are reported to have been rehabilitated, and the remaining 6.4 million were left to fend for themselves. Since 1990, the pace of displacement has increased, with the government intent on achieving an 8% to 10% annual growth rate, and 62.9% of Adivasis are officially landless. Resistance to the take over of land and resources is being met with state violence such as, for instance, the police firings in Kashipur in 2000, where Utkal Alumina, a joint venture between ALCAN (Canada) and HINDALCO of Birla India for bauxite mining, was involved, as well as Kalinganagar in early 2006, which involved TATA Steel. Waves of migration into Adivasi areas, often state sponsored or mediated, have led to resource conflicts and a systematic weakening and breakup of the traditional governance system. These areas continue to be left adrift and maladministered that many of the Adivasi areas are now designated as disturbed areas. The colonial legacy continues with the Adivasi areas being treated as internal colonies while a modern repressive administrative system is superimposed on the traditional self-governing system, despite enabling constitutional provisions.

Prelude to the Forest Rights Struggle

Forest covered a large portion of the geographical area of the country in ancient times, 85% by some estimates. The Forest Survey of India data for 2003 show a recorded forest area for the country as 774,740 sq km or 23.57% of the country's total land area. This was 96,407 sq km or 2.93% more than the actual forest cover, which includes areas such as coconut plantations and sugarcane fields as forest. As such, at least 12.4% of the country's recorded forest area has no forest cover. Despite this, the area classified as forest has been increasing to reach an arbitrary target of 33% set by the Forest Policy of 1952.

Twenty-two percent of the forest area or 5% of the total land area has been declared as protected areas, with the establishment of 90 national parks and 501 wildlife sanctuaries. About 4.3 million people, mostly Adivasis, continue to inhabit

the protected area, with progressive restriction of access to resources and the threat of forced eviction. As of June 30, 2005, there were 2,690 forest villages, with hundreds more that are not officially recorded.

According to the Forest Survey of India Report of 2003, about 37.82% of the forest cover of the country and 63% of the dense forests lie in 187 tribal districts (out of a total of 449 districts in the country). These districts comprise 33.6% of the country's geographical area. Of 58 districts that have more than 67% of their area under forest cover, 51 are tribal districts. There was also a net increase of 321,100 hectares in forest cover in tribal districts between 2001 and 2003. These are clear pointers to both the strong symbiotic relationship between the STs and the forests, as well as conservation ethos of the tribals. The number of cultivators declined to 45% (as compared with 32.5% of the general population) in 2001 from 68.18% in 1961, whereas agricultural laborers increased to 37% from 19.71%. This indicates their steady loss of land. Of the 587,274 villages in the country, 170,379 villages supporting a mixed population of 147 million show forest as a land use. These villages are all located in the vicinity of forest areas. The total forest area of these villages is 32,198,305 hectares.

Adivasis became a national issue for the first time since the British left the country 58 years ago and, in the process, the forests too, due to swelling unrest in the Adivasi areas. Large swathes of these areas have been overrun by the Maoists (popularly known as Naxalites), 170 districts in nine states by the latest count, especially the contiguous mid-Indian tribal tracts of Andhra Pradesh, Orissa, Chattisgarh, Jharkhand, and Maharashtra. The central and state governments see this as a national security concern.

Adivasis and their homelands—the forests—have been ravaged by both state and nonstate actors at a great loss to the nation of its forests and its peoples. The instrument used—the colonial forest act and forest regime. The Scheduled Tribes (Recognition of Forest Rights) Bill of 2005 emerged at this late hour to rectify this “historic injustice.” This was formally recognized by the government in July 2004 when its Ministry of Environment and Forest (MoEF) accepted this fact of Indian history in its affidavit to the Supreme Court in the *T. N. Godavarman Thirumalpad v. Union of India and Others* (Writ Petition [Civil] No. 202 of 1995 in the Supreme Court) that the “rural poor, especially tribals, had been deprived of their livelihood rights.” This case came to be known as the “forest case.”

According to the Indian Forest Act of 1927, the government could proclaim any piece of land to be “forest” by issuing a notification to this effect and declaring it to be government land. For most areas in India, especially Adivasi areas, record of rights did not exist. The legal procedure for settlement of rights was, to a large extent, dealt with casually and perfunctorily during the creation of forest areas and administrative consolidation of forests. Consequently, they have become encroachers in the eyes of law. After independence during the amalgamation of princely states, lands of ex-princely states and the zamindari lands (large real estates held by feudal landlords) were proclaimed as reserved forests without settlement of Adivasi

rights as the records of rights never existed for Adivasis. Large tracts in some states were “deemed” to be reserved forests where even the procedure for settlement of rights could itself be legally done away with.

Prior to 1980, there was indiscriminate diversion of pristine forest land for non-forestry purposes, out of which most of the forest land was diverted for agricultural practices. Even this benefit of indiscriminate diversion remained in the hands of few powerful lobbies. Adivasis again were at a loss as their rights continued to remain largely unrecorded and unrecognized. The central government, taking note of the unabated diversion of forests, brought an ordinance for the judicious regulation of diversion and de-reservation, which was later converted into the Forest (Conservation) Act of 1980. Instead of paving a way for legal solutions to long-pending settlement of rights of Adivasis living on forest lands since time immemorial, it resulted actually as a tool to deny outright legal rights and for large-scale eviction in the name of conservation. All these were duly acknowledged by MoEF in its affidavit to the Supreme Court.

Ironically, the National Forest Policy of 1988, gave

due regard to traditional rights of tribal people on forest land . . . recognizes symbiotic relationship between tribals and forests . . . envisages agencies responsible for forest management . . . associate[s] tribal people closely in protection, regeneration and development of forests . . . provide[s] gainful employment to the people living in and around forests . . . safeguard[s] customary rights and interests of the tribal people on forest lands . . . emphasizes need for undertaking integrated area development programs to strengthen tribal economy in and around forest areas . . . [and has]provisions for alternative sources of domestic energy on subsidized basis, to reduce pressure on the existing forest areas. (*National Forest Policy*, 1988)

To fulfill the commitments of the forest policy to settle people’s rights, especially that of the Adivasis, over forest lands in a regulated manner, the central government issued guidelines on September 18, 1990, after obtaining approval of the Union Cabinet. It requested the state governments/UT administrations to follow these guidelines. But these did not evoke the required response while the Adivasis continued to be deprived of natural justice.

The central government reiterated these guidelines on October 30, 2002, and reminded the state governments/UT administrations to consider the settlement of disputed claims of Adivasis over forest land and to submit the proposals in this regard. Still there was no progress. Furthermore, the MoEF guidelines of February 5, 2004, were based on the recognition that the historical injustice done to the tribal forest dwellers through nonrecognition of their traditional rights must be finally rectified, especially because the lands occupied by the tribals in forest areas did not have any forest vegetation. But this too did not evoke the desired response. Illegal eviction continued unabated. However, the series of guidelines issued since 1990

requires that any person in possession of forest land prior to 1980 has a right to regularization, no person can be evicted without “due process,” and proof of a claim can rest on oral or situational evidence and should be decided through a tiered system of committees as laid out in the November 3, 2005, MoEF order.

Precipitation of the Crisis

The current crisis was precipitated ironically by the MoEF itself, when its inspector general of forests issued a circular on May 3, 2002, to the chief secretaries, as well as the secretary (forests) and principal chief conservator of forests (PCCF) of all states and union territories, outlining a “time-bound action plan” for the eviction of encroachers by September 30, 2002. Between May 2002 and March 2004 alone, evictions were carried out from 152,400.110 hectares (Lok Sabha Starred Question No. 284, dated August 16, 2004). About 300,000 forest dwellers were evicted from their habitat and deprived of their livelihood during this period. Their houses were burnt, crops and food were destroyed, women were raped, and men were shot at and killed. Hundreds of villages were set on fire or demolished, which led to clashes and deaths in police firings.

According to the Forest Department, any possession of forest land after 1980 was regarded as encroachment under the Forest Conservation Act of 1980. Officially, some 1,343,000 hectares of forest (or 1.73% of total forest area) is under encroachment (Lok Sabha Starred Question No. 339, April 18, 2005). Adivasis and other forest dwellers became encroachers simply because their ownership rights have not been recorded and settled by the officials as stipulated by forest laws. Rather than take action against the officials for dereliction of their duty and for violation of the forest laws, the violators became aggressors of the victims.

Making matters worse, judicial pronouncements of the Supreme Court in 1996 on the “forest case” extended the ambit of the Forest Conservation Act to all lands, conforming to the “dictionary definition of forest,” irrespective of ownership. Besides staying regularization of even eligible pre-1980 encroachments and de-reservation of forest land or protected areas (irrespective of whether these have been finally notified after due settlement of rights), the Supreme Court in 2000 also banned the “removal of dead, diseased, dying or wind fallen trees, drift wood and grasses, etc” from all national parks and wildlife sanctuaries. MoEF and the Central Empowered Committee (CEC), set up by the Supreme Court, interpreted this to mean that “no rights can be exercised” in protected areas and banned the collection and sale of all nontimber forest produce (NTFP) from them. This deprived about 4 million people living inside protected areas from access to a critical source of survival income. It was in this context that the May 3, 2002, order of the MoEF asking all states and UTs to evict all forest “encroachers” within 5 months was issued, which was misconstrued and misinterpreted further as emerging from an order of the Supreme Court.

In the central Indian state of Madhya Pradesh, a Korku hamlet of 10 families was looted and burnt in July 2003. In the Khandwa district, an Adivasi was shot dead when he confronted the forest officials who picked up his wife after chasing the villagers away from their lands. In May to June 2004, in Neapanagar and Khaknar Tehsils, Burhanpur District, 35 villages had crops and houses burnt down; an unknown number were injured in burnings, and three youth were seriously injured by police firing. In the Betul District, 60 people were illegally detained by the Forest Department; in Bhandarpani village, houses and crops were destroyed, and families were forced to live in plastic tents. On April 2 and 7, 2005, 92 houses were burnt; one villager was shot dead on April 10, and a pregnant woman was dragged out of her house while in labor in the Khandwa District.

In June to July 2003, Adivasis were beaten, one was killed by forest officials, bribes were demanded, and women were molested in the Dangs District of Gujarat. The Special Reserve Protection Force (SRPF) was deployed in the Adivasi areas of Gujarat to help the forest department officials to forcibly evict them from lands that they had been cultivating for generations.

In the Adivasi-dominated state of Chhattisgarh, the Central Reserve Police Force (CRPF) had been deployed to stop the indigenous forest communities from going near the forests. In places such as Bastar, the villages are surrounded by the CRPF. At the slightest sign of opposition, these Adivasis are branded as extremists, arrested, or shot at and killed. Three hundred households were bulldozed and 15 persons who protested were detained in Dhamtari and Nagri.

Similar actions have taken place in the western Indian state of Rajasthan. In April 2005, arrest warrants were issued against 107 Sahariya Adivasis, and 40 were arrested despite many having title to the lands in the Baran District. In total, 150 families were given eviction notices despite having proof of their rights to their land in the Sirohi District. In August to September 2002, eight villages were cleared, the houses razed by the Forest Department. Elephants were used to raze houses, and Adivasis were left homeless in the rains in the Melghat District, Maharashtra. In May to June 2002, an estimated 40,000 families were evicted from their homes, with 15,000 families forced out in the Sonitpur District of Assam alone; 8 people were killed in police firings in different parts of the state. Elephants were deployed to raze the villages. On February 19, 2003, peaceful protest occupation of barren, deforested land for the purposes of protection and afforestation by Adivasis was cleared with mass police force, with 1 protester killed and hundreds injured in the Muthanga Wildlife Sanctuary of Kerala. In December 2003, police killed 2 women Naxalites in Kudremukh National Park in Karnataka, where the people were protesting against eviction from lands that they had settled for the past 200 years. In the Nilgiris District of Tamil Nadu, 300-odd land grabbers seizing hundreds of acres of forest lands were ignored by the authorities, but over the past 2 years, 5,000 mostly Dalit (scheduled castes) forest-dwelling families received eviction notices for lands that they have been in possession of for decades.

In Maharashtra, after a militant demonstration by more than a hundred thousand Adivasis on October 10, 2002, the state government announced a new government resolution for regularizations. It recognized that government records could not be the method of determining rights. It made oral evidence admissible and required that verification should take place by a committee before the *gram sabha* (the village assembly). This was a major step forward. It acknowledged that communities had knowledge of rights in forests and that they could be the primary determinants in settling these rights. This struck a blow at the Forest Department's colonial foundations. Mass movements used the space created by this government resolution to effectively push for recognition of Adivasi land rights.

The unprecedented nationwide eviction drive led to widespread protests. The CSD emerged as a result in the latter part of 2002. In July 2003, the CSD held a public hearing in Delhi, the nation's capital, where the horror stories from different parts of the country were narrated (Campaign for Survival and Dignity, 2003). In a coordinated move to thwart large-scale evictions, the Adivasis and other forest communities in the states of Orissa, Maharashtra, Gujarat, Rajasthan, Madhya Pradesh, Tamil Nadu, Chattisgarh, Jharkhand, Andhra Pradesh, and West Bengal started filing claims of their rights in the office of the respective district collectors in hundreds of thousands. This process of filing claims to their lands has taken the shape of a mass movement. Around 70,000 Adivasis from the impoverished districts of Kalahandi, Bolangir, and Nuapara in Orissa declared their boycott of the parliamentary elections if their ownership rights were not settled.

The MoEF was compelled to issue a clarification order in October 2002 that the 1990 circulars remained valid and that not all forest dwellers were illegal encroachers. The then ruling National Democratic Alliance, in a bid to tackle the growing discontent among the Adivasis before the parliamentary elections in early 2004, announced its intention to settle the ownership rights of Adivasis who have been in possession of land up to 1993, an extension from the existing cutoff date of October 1980. The Supreme Court stayed this order. The UPA government came to power toward mid-2004 with the promise to "take all measures to reconcile the objectives of economic growth and environmental conservation, particularly as far as tribal communities dependent on forests are concerned. . . . Eviction of tribal communities and other forest-dwelling communities from forest areas will be discontinued" in its Common Minimum Programme. In July 2004, the MoEF itself filed an affidavit acknowledging the historic injustice and violations of laws by the governments. In October 2004, the government was seized with the crisis, and dialogue with CSD commenced. On December 21, 2004, the MoEF was forced to issue yet another order to all states/UTs to stop evictions of forest dwellers until their rights had been settled. Even this had no effect. The prime minister, in a meeting held on January 19, 2005, with the ministers and other heads of all concerned departments and the Planning Commission, decided that the Ministry of Tribal Affairs would formulate a "Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act" with the

assistance of a technical support group, keeping the discredited MoEF at bay though not out of the process.

On August 15, 2005, while the nation celebrated Independence Day, the forest dwellers launched a nationwide protest where well over a hundred thousand participated. The CSD declared filling up jails as a form of protest, demanding the forest rights bill. About 80,000 courted arrest from mid-November until December 13, 2005, when the bill was introduced in Parliament. Meanwhile, the MoEF again issued fresh guidelines for the settlement of rights in November. The Joint Parliamentary Committee reexamined the bill, improving upon the existing draft by incorporating major changes as demanded by the various Adivasi and forest dweller organizations. The left political parties had also begun taking active interest in the issue. The JPC report was tabled in the Parliament in May 2006 (Joint Committee, 2005).

While the forest department went on a rampage, evicting the forest dwellers from forest areas in several parts of the country since 2002, diversion of forest lands for nonforest lands, which the Forest Conservation Act of 1980 prohibited except with the concurrence of the central government, went up. Diversion increased from 1,331.7 hectares in 1981 to 33,079.496 hectares in the first quarter of 2004 alone. From 2002 to April 19, 2006, when the eviction was rampant, 305,266.39 hectares of forest area were in fact diverted for nonforestry purposes. Of the total of 1,133,123.93 hectares diverted from 1980 to March 2006, 51% (573,164 hectares) was diverted just in the last 5 years alone from January 1, 2001, to April 19, 2006 (as per information provided by the Ministry of Environment and Forests in the Report on Net Present Value to the Supreme Court, April 30, 2006). More forest area was diverted for nonforest uses during the last 5 years than during the first 20 years of the enactment of the Forest Conservation Act of 1980. And yet between 1951 and 1988, the colonial Indian Forest Act of 1927 was used to enlarge the "national" forest estate by another 26 million hectares (from 41 to 67 million hectares). The area under forest increased from 20.55% in 2002 to 23.28% in 2006 with the addition of lands through land acquisition. Of the 921,759.53 hectares diverted for nonforest purpose from 1980 to 2003, 94.69% (872,791.991 hectares) were for developmental projects such as dams, mining, industries, and roads (Rajya Sabha Unstarred Question No. 395, dated December 5, 2003).

The JPC Report

The rights covered under the proposed act are (a) the right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest-dwelling scheduled tribe; (b) rights such as *nistar* (customary rights over local natural resources), by whatever name called, and uses in erstwhile princely states, Zamindari, or such intermediary regimes; (c) the right of access to, use, or disposal of minor forest produce;

(d) other rights of uses or entitlements such as grazing (both settled and transhumant) and traditional seasonal resource access of nomadic or pastoralist communities; (e) the right of habitat and habitation for primitive tribal groups and preagricultural communities; (f) rights in or over disputed lands under any nomenclature in any state where claims are disputed; (g) rights for conversion of *Pattas* (land titles) or leases or grants issued by any local authority or any state government on forest lands to titles; (h) rights of the conversion of forest villages into revenue villages; (i) rights of settlement of old habitations and unsurveyed villages, whether notified or not; (j) the right to access biodiversity and the community right to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity; (k) the right to protect, regenerate, or conserve or manage any community forest resource that they have been traditionally protecting and conserving; (l) rights that are recognized under any state law or laws of any autonomous district council or autonomous regional council or that are accepted as rights of tribals under any traditional or customary law of any state; and (m) any other traditional right customarily enjoyed by the forest-dwelling scheduled tribes that is not mentioned in clauses (a) to (l) but excluding the right of hunting.

The draft bill was debated intensely for the major part of 2005. It came under severe criticism from those concerned about the plight and rights of forest dwellers as well as the health of the forest and its biodiversity. For quite some time, the issue was wrongly posed, often in deliberate mischief, as “people’s rights versus forest.” However, very soon, this was largely set aside as when sections of the environmentalists asserted that people’s livelihood rights are intricately linked so obviously to forest protection. Therefore, forest rights and forest protection are to be integrated and the bill redrafted accordingly, with forest dwellers having the pivotal role in determining rights as well as in protecting and conserving the forest. The JPC attempted to do precisely this and largely succeeded. However, the concept of “wilderness” free from human habitation, a borrowed American fiction, continues to hold sway among a section of vocal environmentalists and conservationists. The enclosure approach to conservation that necessarily is policed continues to sway this section.

The stated objects and reasons of the bill itself were that the

forest dwelling Tribal People and forests are inseparable. One cannot survive without the other . . . conservation of ecological resources by forest dwelling tribal communities [has] been referred to in ancient manuscripts and scriptures. . . . Colonial rule somehow ignored this reality for greater economic gains. . . . After independence . . . we continued with colonial legislations . . . the reservation processes for creating wilderness and forest areas for production forestry . . . ignored the bonafide interests of the tribal community from the legislative frame. . . . The simplicity of tribals and their general ignorance of modern regulatory frameworks precluded them from asserting genuine claims. . . . Modern conservation approaches also advocate exclusion rather than integration. It is only recently that forest management regimes have . . . realised

that tribal communities, who depend primarily on the forest resources cannot but be integrated in their designed management processes. . . . Forests have the best chance to survive if communities participate in [their] conservation. . . . Insecurity of tenure and fear of eviction . . . are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands. This historical injustice now needs correction before it is too late to save our forests from becoming the abode of undesirable elements. . . . Recognition of forest rights enjoyed by the forest dwelling Scheduled Tribes on all kinds of forest lands for generations and which includes both bonafide needs of forest land for sustenance and usufruct from forest . . . are the fundamental bases on which the proposed legislation stands. The Bill . . . reinforces and utilises the rich conservation ethos . . . and cautions against any form of unsustainable or destructive practices; lays down a simple procedure so recognition and vesting of forest rights . . . become legally enforceable . . . provide for adequate safeguards to avoid any further encroachment of forests and . . . thereby [strengthen] the conservation regime by giving a permanent stake to STs dwelling in forests . . . in a symbiotic relationship with the entire ecosystem. (Scheduled Tribes, 2005)

The biggest problem with the earlier draft was that the bill was applicable only to STs. The problem with this area-specific administrative criteria is that not all Adivasis are STs, nor are all STs Adivasis. STs in one part of the state are not scheduled in another part of the same state. STs in one state are not scheduled in another state. STs in one area, for instance, are classified under various caste categories in another area. There also have been large numbers of equally marginalized and non-ST forest dwellers living in and adjacent to the forests for generations. They often have been brought into the forest regions by the forest department as forced labor constituted as forest settlements or villages since the British period, burning forest areas that had been clear-felled to practice agriculture on plots allotted to each family, as well as raise and protect plantations of commercial species on these plots. There are those who were encouraged by the government to occupy the forest, for instance, under the “Grow More Food” campaign during World War II. There are those who have been pushed into the forest by development projects when they were forcibly evicted, mostly without any rehabilitation or compensation in the “public interest,” simply because their legitimate rights were not recorded by the authorities. The widening of the scope of applicability of the bill by the JPC beyond STs to “other traditional forest dwellers” was but elementary.

Another objectionable component in the bill was the cutoff date of 1980, which the MoEF was insisting on with the only conceivable reason being that the “Forest Conservation Act” was passed in 1980. But 1980 is a date that is more than a quarter century old. In the absence of a record of rights, which anyway was the crux of the present problems, a crime for which the forest and revenue bureaucracy has yet to answer, the situation on the ground as of 1980 would be hard to determine. Such ambiguity would lead to a very high degree of arbitrariness, confusion, and allegations of injustice besides being susceptible to manipulation.

Millions of people who have been forcibly displaced since 1980 to make way for various development and conservation projects without rehabilitation or satisfactory rehabilitation or unjustly evicted by forest officials had to simply return, entering another part of the forest just to survive. They would have to face another bout of displacement. The JPC, adopting the “as-is-where-is” principle, fast forwarded the cutoff date to December 13, 2005, the date the draft bill was tabled in the Parliament, to make possession or enjoyment of rights verifiable and concrete on the ground. At another level, it takes care of the post-1980 displaced and abandoned victims of the state, the internal refugees. Together with a more transparent and participatory process of determining and settling rights, the new cutoff date has given the officials, politicians, and fixers less scope for manipulation.

The disinformation campaign by some zealous environmentalists that the whole of India’s forest was to be parceled off to “all” tribals in the country at 2.5 hectares per nuclear family reached a high pitch. But lacking any substance, this campaign could not hold for long. The bill did not envisage distribution of any new land except that which people were using. Less than a mere 2% of the forest area would have to be given thus. The massive diversion of forests for development projects does not see such outcries as it did on the issue of tribal rights, which is a telling commentary on their urban industrial bias. Moreover, quality and productivity of land used by the forest dwellers would be generally poor, unlike the irrigated plain areas. The land use pattern in the forest region is also diverse. The JPC, taking into consideration all these ground realities, felt confident to go one step ahead to remove the 2.5-hectare ceiling itself. However, the fact still remains that by and large, an average Adivasi family does not have holdings more than 2.5 hectares cultivated using family labor.

The draft bill conceived the concept of “core areas” left to be arbitrarily defined by the MoEF where rights are to be granted on “provisional basis” for 5 years pending “relocation with due compensation.” If relocation was not carried out in this fixed time period, then such rights would become permanent. This clause was superfluous anyway. Conferring rights permanently does not bar the state from acquiring these rights with due compensation in “public interest,” whether for conservation, industries, mining, dams, or roads under the Land Acquisition Act, which is the normal practice anyway. But the JPC modified the clause instead of dropping it altogether, introducing a new nomenclature, *critical wildlife habitats*, with the stricture that these should be established on a scientific basis, case by case, through a process of broad consultation. This attempts to take care of the unscientific and arbitrary manner in which wildlife sanctuaries and national parks are carved out. Furthermore, the JPC stipulates voluntary relocation with the right to return if rehabilitation is unfulfilled. The Tiger Task Force, constituted by the prime minister to examine and report on the vanishing tigers in its report of August 5, 2005, also unambiguously stated that “the protection of the tiger is inseparable from the protection of the forests it roams in. But the protection of these forests is itself inseparable from the fortunes of people who, in India, inhabit forest areas” (Tiger Task Force, 2005).

The draft bill provided for determination of the rights by the gram sabha, examination by a subdivisional committee, and approval by a district-level committee. The committees were to be solely constituted with officers of the departments of revenue, forest, and tribal affairs of the respective state. This undemocratic procedure, controlled by the bureaucrats and away from public scrutiny, would have led to the all too familiar refrain of “failed implementation,” misuse of powers, official apathy, highhandedness, and corruption. This bureaucratic mechanism anyway failed to deliver all these years that rights of tens of millions of people have remained unsettled. The JPC went significantly further to democratize the procedure, first with opening the committees to nonofficial members. Second, decisions on rights are to be taken by the gram sabhas. And third, only disputes would come within the purview of the committees at the higher level, with decision-making powers with the district-level committee. This is the most crucial and critical component of the report in terms of actualizing these legal rights. However, there is ambiguity on what happens with the decisions of the gram sabhas where there are no disputes. Can the district-level committee overturn the gram sabha’s undisputed decisions? Would this committee be able to manipulate the gram sabha’s decisions? This needs to be made explicitly clear in law.

The JPC has made it clear that no purpose would be achieved if the rights conferred under this bill could be subject to acquisition in the crude, unjust manner that is the current practice. It recommends that such rights should not be acquired. And in the event these rights are acquired, then the procedure of a “consultation” with the gram sabha as stipulated by the Panchayat Raj (Extension to Scheduled Areas) Act of 1996 for the V Schedule areas is followed. But the fact that this is more often violated by governments, with the courts turning their face the other way when the acquisitions are for “public interest,” is another matter altogether.

The JPC also recommends that those conferred rights under the bill would have the right to protect the forests. Interestingly, this is the first time that a statutory law, if enacted, confers right to the citizens to protect forest, although the Constitution of India, in Article 51-A (g), casts a fundamental duty on every citizen of India “to protect and improve the natural environment including forests, lakes, rivers, wild life and to have compassion for living creatures.” So far, protection of the forests through the law was the exclusive preserve of the forest bureaucracy, with devastating results. The forest bureaucracy considered any act of the citizen to protect the forest as essentially illegitimate and unlawful. With legal approval to the forest dwellers to protect the forest, the state should have no legal reasons to violently repress forest people’s struggle for forest protection. However, rights ought to have gone along with responsibility and authority, with penal powers to the right holders. Then there are those who are not eligible for settlement under the bill, for which the JPC recommends rehabilitation with the offer of employment upholding the principle of social justice.

Finally, once the bill is passed and becomes law, it cannot afford to be checkmated by litigations, effectively becoming a dead letter. Under general recommendations, the JPC has recommended that the act be placed in Schedule IX of the Constitution and therefore free from being challenged in any court of law.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act was passed by the Parliament in its winter session in December 2006 following a nationwide mobilization of Adivasis in November. The act was declared as both a “victory and a betrayal”—“victory,” as for the first time, the Adivasi rights to the forests have been given specific formal recognition, and a “betrayal,” as the role of communities in the process of determining and deciding these rights have been diluted besides others. The government continued to delay the notification of the act for another year, during which the movements declared that the act will be implemented by the people anyway and, with widespread protests, came into force on December 31, 2007. The year 2006 also saw the amendment to the Wild Life Protection Act of 1972, with the introduction of a special section for the protection of tigers and tiger reserves where the role of village communities has been given key consideration, a departure from the arbitrary and authoritarian system that is the hallmark of conservation and protection of wildlife.

The current and countercurrent on the “forest rights act,” as it has come to be popularly known, has been swelling up across the country in 2008. The governments at the center and the states, the forest bureaucracy, and a section of the conservationist nongovernment organizations continue to be active to subvert the act. A spate of court cases has come up in the high courts and the Supreme Court demanding that these rights to Adivasis be declared null and void.

With globalization, newer avenues for private capital investment in extractionist industries, timber production, and conservation, either through de-reservation or through public-private collaboration, promoted by international financial institutions, multilateral donor agencies, and corporates, are being contemplated and introduced. A large number of mining licenses have been granted recently in the mid-Indian region. In total, 149 dams, of which 26 are megahydel projects, are being contemplated in the northeast. India has become a major international destination for investing in projects for the carbon market through the carbon sink plantations, most often under the garb of ecodevelopment but essentially timber plantations. Large-scale biofuel plantations have been launched. India is already a global major for sustainable timber production. The government is planning to privatize large parts of forest area, with a multistakeholder partnership between private companies and government agencies offering a share also to the local communities. Large parts of the forests that are designated as protected areas are being promoted as an international destination for ecotourism. All these target the forest and adjacent Adivasi territories. Besides changing the ecology and land use, these alter the relationship and livelihood base of the Adivasi communities as never before. Even if the forest rights are

settled, the Adivasis know that the battle to retain their special relationship to the forests and lands is far from over.

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