

The Forest Rights Act 2007: implications for forest dwellers and protected areas

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SUMMARY

The plight of tribals and other traditional forest dwellers is pitiable, as they continue to live without any rights over forest land or resources. Clearly this is undesirable. However, the newly enacted Forest Rights Act will help neither the traditional forest dwellers nor to conserve the forests, and might actually end up making both worse-off. Laws and policies related to nature and natural resources need to pass three tests in order to be considered progressive and effective. They need to promote equity, be scientific, and be implementable. The new Forest Rights Act fails all three tests. It also fails to include many other options available for addressing the injustices done to traditional forest dwellers while ensuring that conservation needs, and the rights of animals, are not trampled upon.

Keywords: forest, tribal, protected area, rights, India

Acte des droits des forêts de 2007 : implications pour les habitants de forêts et les zones protégées

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La situation des tribus et des autres habitants traditionnels des forêts est pitoyable. Ils continuent à vivre sans aucun droits aux ressources des forêts ou à leurs terres, ce qui est clairement indésirable. En dépit de cela, le nouvel Acte des droits des forêts acuellement mis en oeuvre ne va aider ni la conservation des forêts, ni leurs habitants traditionnels et risque même de faire empirer ces deux questions. Il faut que les lois ayant rapport à la nature et aux ressources naturelles passent trois tests pour pouvoir être considérées progressives et efficaces. Elles doivent promouvoir l'équité, être scientifiques et pouvoir être mises en pratique. Le nouvel Acte des droits des forêts échoue sur ces trois points. Il n'inclut pas non plus nombre des autres options disponibles pour essayer de pallier aux injustices faites aux habitants traditionnels de la forêt tout en s'assurant que les besoins de la conservation, et les droits des animaux ne soient pas piétinés.

La Ley de Derechos Forestales del 2007: implicaciones para habitantes del bosque y áreas protegidas

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Sigue penosa la situación de las comunidades tribales y otros habitantes tradicionales del bosque, quienes viven todavía sin ningún derecho sobre tierras o recursos forestales, y está claro que esta situación es indeseable. La Ley de Derechos Forestales que se acaba de aprobar, sin embargo, ni ayudará a los habitantes tradicionales del bosque ni favorecerá la conservación forestal, sino que puede incluso empeorar la situación de ambos. Para ser consideradas progresistas y eficaces, las leyes y políticas relacionadas con la naturaleza y los recursos naturales deben superar tres pruebas: deben fomentar la equidad, deben tener bases científicas y deben ser implementables. La nueva Ley de Derechos Forestales no logra superar ninguna de esta tres pruebas, ni tampoco toma en cuenta las otras opciones disponibles para tratar con las injusticias padecidas por los habitantes tradicionales del bosque, además de no asegurarse que las necesidades de la conservación y los derechos de los animales no sean pisoteados.

INTRODUCTION

The network of protected areas in India is perhaps the last refuge of wild animals and plants, and the biodiversity that they constitute. Though covering less than 5 percent (Singh *et al.* 2001) of India's land area and almost nothing of its ocean territory, these protected areas contain an amazing

diversity of fauna and flora and include many species that are found nowhere else in the world or, like the tiger, have been wiped out from most other parts of the world.

The protected area network, comprising over 100 national parks and over 400 wildlife sanctuaries, has been painstakingly built up over the last hundred years or so and has involved enormous effort and sacrifice on the part of

various stakeholders, including local communities, wildlifers and wildlife staff. This network, over the years, has faced many threats, including those from development projects, from commercial activities, from local communities, from land developers, and even from pollution and climate change. However, in the last couple of years, it has been facing perhaps its most significant challenge and this from a piece of legislation that promises to regularise landholdings of up to four hectares (ha) per individual in forest areas, including in national parks and sanctuaries.

The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007 (The Forest Rights Act), was passed by parliament in early 2007. It seeks to right the historical wrong done to tribals and other forest dwellers who were never given titles to their holdings within legally designated forests. The injustice was even greater for the many people whom the government brought to and settled in the forests to assist with the logging and working of the forests. Others, like some of the tribals, lived there for much longer before the areas were legally designated forest areas. Moreover, many of these communities are themselves not only users but also protectors of these forests. Therefore, they clearly have a good case for sustained access to these lands and resources.

Most reasonable people recognise the merit of these arguments and acknowledge the pressing need for measures to ensure that the injustice done to many of these communities is righted. There is also a recognition that many of these people are the poorest of the poor and that, even without debates about their moral and legal rights over forest lands, society must do all that is necessary to ensure that they have the wherewithal to survive, to grow and flourish, to aspire, and to fulfill their aspirations with dignity.

The problem starts when one examines the provisions of the newly passed law. As it stands today, it is a law that is unlikely to achieve any of its stated objectives; it will neither benefit the tribals or other forest dwellers; nor will it ensure that the forests are not destroyed. This law has all the potential to create havoc among the tribal and forest dwelling communities and to destroy much of the forests that remain. This is particularly regrettable, as there are reasonable and intelligent ways of achieving the laudable objectives outlined in the Act and of not creating all the havoc that this particular law will result in.

This paper is an attempt to assess this law in terms of some of its potential impact on the ecosystem and biodiversity of India's forests and wilderness areas, specifically those contained in the protected area network, and on the people dependent on these resources. It tries to highlight those parts of the law that are ineffective or counter-productive. It also argues that many of the assumptions behind these provisions are fallacious. It goes on to suggest a broad strategy that could have been adopted and that would have resulted in a much more satisfactory resolution of the problem without unfortunate side effects.

ASSESSING THE FOREST RIGHTS ACT 2007

In assessing the appropriateness of policy and legislative measures aimed both at conserving nature and meeting the legitimate needs of the people, especially the marginalised communities, it appears that there are at least three fundamental issues that need to be addressed.

First and foremost there is the issue of ethics. Is the proposed law (or policy) supportive of:

- Inter-generational equity—ensuring that the present generation of human beings does not impinge upon the resources and opportunities of future generations.
- Intra-generation equity—ensuring that justice is done to all segments of the society and that no one group benefits or loses inequitably.
- Inter-species equity—ensuring that it is not excessively anthropocentric and gives due consideration to other, non-human, living species.

Second, there is the issue of science and knowledge. Is the proposed law adequately sensitive to present levels of knowledge and scientific understanding and has it therefore incorporated the constraints and opportunities that scientific knowledge dictates?

Third, there is the issue of practicality. Is the proposed law prescribing methods and actions that are practical and can be implemented in the time frame prescribed and given the realities on the ground?

It is proposed, here, to comment on the Forest Rights Act, 2007, by assessing it within the framework described above.

Ethics: inter-generational equity

There are at least two ways in which this Act can have adverse impacts on inter-generational equity. First, in so far as it has the potential to adversely affect forest ecosystems, their degradation would leave future generations with fewer options and a poorer life-support system. Moreover, the Act effectively converts common property resources into private resources, thereby significantly depleting the stock of common resources for future generations.

The Act is silent on measures to prevent the honeycombing of forests. Honeycombing is both inappropriate from the ecological point of view and also makes it very difficult to provide to the forest-dwelling people the various development inputs and infrastructure that are their right as citizens of India.

It would have been better if there had been a provision that specified that, for each forest area, the government would have a right to move those who have been recognised as eligible for rights to the edge of the forest and in clusters. This would have enabled the government to more easily protect the remaining forests and also to provide road connectivity, electricity, water, schools, medical facilities etc., to the forest dwelling people. Regularising holdings scattered all over the forests is not only ecologically unwise but would make it very expensive for the government to provide the required infrastructure to each small settlement. As has been seen in some other government programmes (like

the Prime Minister's rural roads programme), even if roads are provided to small isolated communities, it is difficult to ensure that bus services run or that schools are manned or that markets are functional, for often the populations are too small to make these activities economically viable.

As the next generation of forest dwellers might not want to continue living in forests for ever, clustering them on the edge of the forests will ensure that these communities have their forest heritage on one side of their dwellings and possible future options on the other.

Ethics: intra-generational equity

The Forest Rights Act for all practical purposes only entitles tribals (who were in occupation prior to 13 December 2005) to obtain rights over forest land. Though, technically, it also allows rights to other forest dwellers, the fact that non-tribals have to have been there for at least 75 years before they become entitled—and this has to be proved—takes most of them out of the ambit of this law. As the Act effectively covers only scheduled tribes, it violates the principles of intra-generation equity. There are many other communities, apart from tribals, who are and have been critically dependent on forest lands and resources. Many of these communities are as marginalised as the tribals. Therefore, there is no justification for effectively excluding them from the ambit of this Act.

In any case, the said Act is unnecessarily self-contradictory in prescribing 13 December 2005 as the cut-off date for occupation of forest land for all traditional forest dwellers¹; it goes on to describe other traditional forest dwellers as those primarily resident in and dependent upon the forest and forest land “for at least three generations prior to the 13 day of December, 2005”. As a generation is further specified to be 25 years, this effectively shifts the cut-off date for non-tribals to 13 December 1930! Is this fair? Does this make sense?²

In fact, as the preamble to the Act talks about “Scheduled Tribes and other traditional forest dwellers who have been residing in forests for generations” and about the “historical injustice”³ done to them, it is not clear how persons who have first come to occupy forests on 12 December 2005 can be considered to have been residing there for generations and subjected to historical injustice.

The Act proposes to regularise land up to four hectares for each individual⁴. The logic of the four hectares is not clear. In the recently announced rehabilitation policy for India, the Government of India restricts the maximum land to be given to a family who have lost land because of a project, in lieu of land acquired, to one hectare—and only if government land is available, with no guarantees. Therefore, what makes someone who has settled on forest land eligible to four hectares per person (and perhaps 20 ha or more per

family) while families who are being uprooted from their legally owned lands mostly get no land at all, or at best one hectare per family?

Ethics: inter-species equity

Though the Act, in its statement of objects and reasons, talks about the historical injustice done to tribals⁵, as it should, it does not talk about a similar historical injustice done to animals. Moreover, it advocates exclusion rather than integration and goes on to suggest that the correct approach is to integrate tribals with their forest and wildlife. However, there is a parallel government thrust to integrate tribals into the mainstream. It must, however, be recognised that the mainstream today is essentially a modern, high-tech lifestyle, mainly based on the urbanised model. Nothing could be further away from the integration of humans with nature. Can one envisage this mainstream lifestyle being conducive to sharing our space with wild animals or wilderness processes?

In any case, the reduction of habitat and the establishment of human activities in wilderness areas will inevitably reduce space and resources for most other living creatures, including many species of plants. As is discussed later, it is wishful thinking that humans and wild animals can always happily coexist.

Specifically, the Act in section 3(1) (“e1”) excludes “the traditional right of hunting or trapping or extracting a part of the body of any species of wild animals”. Because of the way it is framed, however, it appears to apply only to sub-section 3(1) (“e1”), leaving it open for people to exercise rights under sections 3(1) (j) and (k) which involve the destruction of wild animals. This also leaves open the possibility of communities claiming and getting the right to hunt and trap, etc.

Usually, rights are accompanied by obligations. However, while recognising various rights, the Act, in section 5, stops short of describing the obligation of such right holders to protect wildlife, biodiversity, forests etc., but only lists these as “empowerments”, whatever that might mean.

Science

There are at least three scientific questions that are at the centre of the debate regarding the Forest Rights Act. The first is the claim by some that as humans and wild animals can happily coexist, there is no reason to fear that the settling of rights in forest lands will have an adverse impact on the wildlife. The second is the larger question of what impact the reduction of wild-animal populations and the consequent degradation of ecosystems and wilderness areas would have on the survival and well being of the human species, especially the tribals and other forest-dwelling people in whose name this Act is being promoted. Finally, there is

¹ Section 4(3) of The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007.

² Section 2(o) of The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007.

³ Preamble to The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007.

⁴ Section 4(6) of The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007.

⁵ Preamble of The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007.

the question about the extent of wilderness areas needed for conserving wildlife and where these are located.

As far as the question of whether human beings and wild animals can coexist, clearly some can, as many species have been domesticated and some of these are now incapable of surviving without human support. However, what is often not realised is that whenever wild animals start interacting with human beings, they change in many ways. These changes include their becoming dependent on human support and losing the ability to survive and flourish on their own in the wild. They also lose their natural fear of human beings and consequently become more vulnerable to poachers; and they also become more daring and aggressive towards humans, their crops, and their livestock. Scientifically, this also means that they lose much of their ecosystemic and biodiversity value.

There are, of course, other species which are difficult to domesticate, especially if they come into contact with human beings once they have grown up. It is difficult to imagine how human communities could coexist with tigers, elephants, or even leopards. A forest officer, reacting to efforts of various municipalities, including the Delhi municipality, to translocate monkeys out of the city, recently remarked that if urban people cannot even coexist with monkeys, how can they expect the rural people to coexist with tigers?

In any case, the major battle is not for land but for the resources that it represents. Human beings have always competed with other animals (and among themselves) for natural resources. Where these resources were plentiful, there was no conflict and even a shared mutuality. However, in most parts of the country today, there is a serious resource crunch. Human communities compete for the same grazing land and water for their livestock that wild animals need for their survival. And many of the endangered species are wary of human beings and would abandon areas frequented or inhabited by humans, thereby further reducing their range and subsequently their chances of survival. It is for this reason that the parliament ordained that a small part of the country, currently less than 2 percent, should be kept inviolate, as national parks and core areas of sanctuaries. We owe it to the future generations of human beings, and to all the other races of living things that share this planet with the human race, to respect this very wise decision of the Parliament of India, and not reverse it now, when the danger is even greater.

Scientific evidence regarding the second question is available in abundance. It can hardly be argued today that the continued existence of forest ecosystems is not critical to the well-being in perpetuity of the human race, and especially those among them who are poor, disempowered, and primarily dependent on nature and natural resources for their incomes and subsistence needs. Despite this, in this whole debate, the issue of balancing out today's needs with long-term sustainability has hardly received a mention.

Science: estimating land requirements

It has always been difficult to definitively determine how much wilderness area is required, undisturbed, in order to secure wildlife populations and biodiversity. This gap in our scientific knowledge has been fully exploited by certain sections of the government who, without any reliable estimate of how much forestland would be required to meet the provisions of this Act, have gone ahead and declared that its diversion would have no significant adverse impacts. It must be unprecedented in the annals of Indian legislation that an Act is passed granting rights to people without any idea how much those rights would amount to, and how much is available to fulfill those rights.

Though estimates of populations within protected areas differ, perhaps the most reliable of the estimates, though only for about a fourth of the protected areas, was made by the Indian Institute of Public Administration (IIPA) as a part of the survey of national parks and sanctuaries that the IIPA conducted from 2001 (Singh *et al.* 2001). According to the IIPA data, in the 150 protected areas studied for the purpose, the population inside (1991 census) was about 2.5 million (25 lakh⁶) people. If one extrapolates to 600 protected areas (PA), then the total would come to 10 million (100 lakhs). The scheduled tribe population was only 5 percent, that is, 125 000 (1.25 lakh) in 150 PAs, that could be extrapolated to 500 000 (5 lakh) in 600 PAs.

Fortunately, the rules notified by the government on 1 January 2008 do not accept the suggestion of the drafting committee that even those who do not reside within the forest areas but are dependent on such forests for bona fide livelihood needs should be eligible for benefits under this Act. The IIPA study had estimated that 6.763 million (67.63 lakh) people lived within a 10 km radius of the 127 PAs that responded (1991 census). By extrapolation, this would have meant that the population in the 10 km radius (usually considered the impacting zone) would have been nearly 32 million (320 lakh). If these had also been brought under the ambit of this Act, the pressures would have gone up many fold.

These estimates were acquired by obtaining names and locations of habitations on a map of the PA and surrounding areas, and then identifying these habitations (which often had a different name) on the maps attached to the census reports of the area. Once the habitations were conclusively identified on the census map and their position (inside or outside the PA) determined by using the PA map, their population was determined by looking at the detailed census tables for each habitation. Obviously, in this process, some forest villages were left out as they were not mentioned in the census records.

To sum up, just for the protected areas, the liability, if each person residing in them asked for and got the maximum of 4 ha, would be 40 million hectares (400 lakh hectares). Given that the total area under PAs is only a little over 16 million hectares (5 percent of the area of India), this would

⁶ 1 lakh = 100 000

wipe out the PA network nearly three times over.

However, it is unlikely that all the persons living inside would ask for and each get 4 ha. But even if 10 percent got it, one-third of the PA network would be wiped out. And considering that these lands over which rights would be given would not be consolidated at the edge of the PA, the honeycombing effect, the disturbance to animal corridors, and other disturbances, would impact much of the remaining two-thirds.

It is argued that, considering that these lands are already under cultivation and habitation, the impacts have already happened. But this is not necessarily true, for land where one crop of a traditional nature is grown has a very different impact than land where three cash crops start being grown, along with fencing, irrigation and pesticides, etc.

It is also argued that the actual land occupied is only a fraction of the PA network. This might also be true, but when the process of determining rights begins, the only interests that are going to be represented are those of the tribals and other forest dwellers, and of course of those rich, powerful and/or unscrupulous people who will manipulate and bribe their way into being recognised as rights holders. Who will speak up for the animals?

Science: excluding critical wildlife habitats

Though the Act recognises that some areas are critical wildlife habitats, it assumes that all these critical habitats are within existing national parks in sanctuaries. The provision in section 2(b) to demarcate areas from among national parks and sanctuaries that are “critical wildlife habitat” is unnecessarily restrictive in scope. It is well recognised that there are many very critical, unique and valuable wilderness areas outside the protected area network. It is unfortunate that the Government of India, despite a comprehensive gap analysis being done way back in 1988 (Rodgers and Panwar 1988), has not yet implemented many of the recommendations for including new areas or expanding existing areas. Therefore, neither the PA network nor all “critical wildlife habitats” within the PA network are comprehensive. Consequently, the determination of such habitats should not have been restricted to existing national parks and sanctuaries.

It would therefore have been far better if national parks and sanctuaries had not been included in the definition of forest land⁷. In its place, a national task force should have been constituted that, within a time frame of 12 months, rationalised the boundaries of all national parks and sanctuaries:

- a. Excluding from these national parks and sanctuaries areas that have little or no ecological value but large human populations (and there are many areas like that).
- b. Assessing for those areas where there is both significant ecological value and the existence of human populations, whether any other contiguous areas with similar

ecological value are available, with no or less human population. If so, these could then be included in the national park or sanctuary and the area of similar value but large populations excluded.

- c. Where areas with significant ecological value have no alternatives, identifying these as areas from which the resident human populations needs to be rehabilitated, with all due compensation and consideration.

The areas thus excluded from national parks and sanctuaries would then be treated like all other forest lands, and the people there entitled to rights, as per the law.

Practicability

As already discussed, this Act effectively covers only the tribals. Apart from the injustice involved, the restriction of this Act to only the tribals would also create major implementation problems, and is impractical. In many areas, tribals and non-tribals coexist in and around forest areas, using and sharing the same resources. If the tribals are suddenly given rights over these resources, and others excluded, there is a likelihood of social tension and even violence. In areas where the non-tribals are dominant, they could even ensure that the tribals not only do not get these rights, but are no longer allowed even the access that they have historically enjoyed over these forest resources.

Practicability: excluding critical wildlife areas

Though the Act provides for excluding “critical wildlife habitat”⁸ as determined by the Ministry of the Environment and Forests (MoEF), the process laid down to do so is unworkable. Section 4(2)(e) of the Act specifies that no resettlement of people can take place from such critical wildlife habitats without the written “free informed consent of the Gram Sabhas in the area concerned to the proposed resettlement and to the package”. As the details are not laid down, either in the Act or in the rules, it could be understood to mean the consent of a majority of the *Gram Sabha* and not the whole of it. However, even this would be difficult to get, especially as there is usually a disinclination to move, and a provision to endlessly negotiate the resettlement package. Besides, rule 3(1) empowers the *Gram Panchayats* to convene the *Gram Sabhas*. This would include many villages and be a large and unwieldy body, with serious conflicts within. As a result, it is unlikely that agreement would be reached on rehabilitation packages or on shifting.

On the other hand, where consent is finally obtained, if that ever happens, such a consent would always be open to the accusation, often made in the past, that it was obtained under duress by the concerned department, which made the lives of the local people so miserable that they were forced to give consent to shift.

The opening up of these matters to negotiations will also lead to some communities (the more powerful or influential ones) getting far better deals than the poor and powerless

⁷ Section 2(f) of The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007.

⁸ Section 2(b) of The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2007.

ones, the latter being the ones most in need of the best possible package.

Interestingly, the Government of India has refused to include, in its newly announced rehabilitation policy, a suggestion from the National Advisory Council that no displacement should take place for development and commercial projects unless at least 50 percent of the people in an affected *Gram Sabha* approve of it. Yet in critical wildlife habitats, this is considered feasible. Surely forests and wilderness areas are not less critical to human welfare and survival than commercial and infrastructure projects? Surely critical wildlife habitats need to be protected not just for the wildlife but for all the people of India (including the tribals and the forest dwellers) and, indeed, for the people of the world.

CONCLUSIONS

The Act, as passed by parliament, is certainly more balanced than the joint parliamentary committee report (the report of the parliamentary committee charged with the responsibility of examining the forest rights bill, as introduced in parliament and recommending changes, if any), but still leaves many issues that need to be resolved. In general, the processes laid down to determine who is entitled to what rights are likely to become a bonanza not for the tribals but for bureaucrats and *Panchayat* functionaries, who would have unprecedented opportunities to make money. If the Act is a serious attempt to redress an "historical injustice", then surely a system less susceptible to the historical practice of rent seeking could have been evolved and prescribed.

A realistic concern is that the Act will enable the well-to-do tribals and other powerful interests, including local politicians, to capture most or all of the available forest land by providing documentation of past use. Consequently, the tribals and other forest users who were, till then, using this land, even though under sufferance, would be evicted by the new owners and would be far worse-off than they were before. They would, ultimately, have no other option but to once again encroach on fresh forestland, thereby starting the whole process all over again.

This Act also seeks to convert public assets, in terms of land, into private property. By doing so, it condemns future generations to less and less community and public resources to bank upon for their survival. Clearly this would be an "historic injustice". And at the end of it all, whether the Act can ensure that these rights and assets will actually go to the poor and disempowered, who actually deserve them, or be cornered by the rich and powerful among the tribals and among other newly converted forest dwellers, remains to be seen.

The damage that might consequently be done to the forests, the watersheds, the grass lands, the wetlands and the biodiversity of India will affect us all, but most affected of all will be the tribals in whose name this Act was promoted. It would give them false promises of a more secure present while systematically and surely destroying their future.

It would have been far better to move towards a more rational community management of wilderness areas where the basic needs of local communities could be met without transferring ownership, and where short-term needs could be balanced with imperatives of sustainability. This would also be a regime where surplus resources and lands, with the wealthy and the powerful, could be progressively added to the pool of community resources, so that future generations would have more and not less to live off and conserve.

Those who are fighting to wrest from the animals, and from the people of India, the last wilderness areas, should have the courage and resolve to take on the real enemies of justice and equity. If they did, then land reforms could, for the first time, be rigorously enforced and the surplus lands thus identified could be redistributed to those who have been forced to encroach on forest lands and who are thereby slowly committing ecological suicide.

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