



## POLITICAL ECONOMY OF THE RECOGNITION OF FOREST RIGHTS ACT, 2006: CONFLICT BETWEEN ENVIRONMENT AND TRIBAL DEVELOPMENT

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**ABSTRACT** Politics has played havoc with tribals and the environment during the post-Independence period in India. Even after fifty years of Indian planning, deprived groups, and tribals in particular, continue to remain underdeveloped, with their living conditions deteriorating further. Taking a historical perspective, this article seeks to capture the political undercurrents of economic policy-making towards tribals and tribal development planning and specifically analyses the consequences of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 on the environment as well as tribal development. Examining whether this new, politically motivated law will provide an impetus for economic progress of the tribals and environmental sustainability, it is argued that this Act will neither benefit the tribal communities nor enhance conservation. Rather, it serves as a cloak to justify non-tribal intervention, with potentially disastrous consequences.

**KEYWORDS:** *Adivasi, conflict, environment, forest management, planning, political economy, traditional knowledge, tribals*

### **Introduction**

In an electoral democracy held hostage by populist politics, tribal development in post-colonial India has by and large been viewed from the angle of generating a vote bank, and not from a developmental point of view. It took many years to acknowledge the truth that the restrictions on tribal use of forest resources, imposed as a tool for conservation, was a historical injustice. When during the late 1970s tribal development emerged as one of the agenda of mainstream politics, some efforts were made to provide

infrastructural facilities, but the situation did not witness any remarkable change. Now, the recent legislation, in an attempt to correct historical wrongs, ensures tribals access to a hitherto forbidden area, the very forests in which they live. Interplay of power and populist politics have had an unmistakable role in both cases, affecting the historical restriction as well as the currently claimed revision. Since the core issue of tribal rights has remained largely unaddressed, it seems that even after fifty years of Indian planning, the deprived groups, particularly tribals, continue to remain underdeveloped, with their living conditions deteriorating further.

This article raises the pertinent question whether the new legislative move would provide an impetus to economic progress of India's tribals and at the same time enhance environmental sustainability. An attempt is made here to understand the different undercurrents beneath the post-colonial approach towards tribals along with underlying connotations as well as implications, both regarding the environment and tribal development, in the context of India's latest statutory development in this field, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

On the one hand, a skewed understanding of environmental protection has thus far curtailed the growth of the forest-oriented tribal economy. Restrictions imposed through the different Forest Acts since the late nineteenth century continued to operate during the post-Independence period. On the other hand, tribal development policies gave an impetus to create important infrastructural facilities. Bringing roads, communication, schools, hospitals and credit facilities to remote areas, they claimed to attempt to integrate the economy of the tribal communities with the mainstream society. The Tribal Sub-Plan of the last two decades of the twentieth century in particular aimed to accomplish this agenda. However, these measures, intended to protect the environment and to accentuate the pace of development initiatives, have largely failed. Neither was environmental protection ensured nor were there any dramatic improvements in the living conditions of tribals in many parts of the country.

It is in this context that the political economy of the new Recognition of Forest Rights Act, 2006 has to be subjected to scrutiny. Taking a historical perspective, political undercurrents of economic policy-making towards the tribals in the context of tribal development planning in the 1980s are examined in this article, before analysing the likely impact on tribal development and the environment of the Recognition of Forest Rights Act 2006.

Following this introduction, the article details the background of Indian forest policies from various perspectives and discusses the political economy of tribal development in India. Important aspects of the 2006 Act are then dealt with, linked to a discussion of the conflict between conservation and tribal development. The political thrust behind the Act leads to findings that are, unfortunately, quite pessimistic.

### **Tribal Development and Environment**

Though the focus of this article is on the contemporary period, the core issues concerning conservation and tribal development can never be seen in isolation from their colonial legacy. Since the late nineteenth century, blaming tribals for denudation and destruction of the green cover has been the standard rationale for imposing severe curbs on their use of forests. The colonial government imposed several restrictions under various Forest Acts to protect and preserve the environment. Under these Forest Acts, during the late nineteenth century, forests used by indigenous tribal communities without any interference from external agencies like Forest Departments, to a very large extent, were notified as reserve forests. While imposing these restrictions, the colonial government did not initiate any development programme in the hill regions (Saravanan, 1994). The same period also witnessed official encouragement to commercialise forest resources by the Forest Departments in different parts of the country.<sup>1</sup> Early postcolonial governments, then, did not differ much from their predecessors, both in terms of imposing controls on tribal access to forest resources and carrying out development measures (Saravanan, 1997a; 2006c; 2006e). Indeed, tribal development continued to be largely ignored in the absence of concrete programmes with adequate financial allocations.

However, this trend changed particularly after the 1980s, when the Tribal Sub-Plan concept was introduced during the Fifth Five-Year Plan. Since then, certain infrastructural facilities came to be established in tribal areas. Unfortunately, however, these initiatives have failed to bring any substantial improvement and the living condition of tribals has deteriorated further with a pathetic decline in their status, often from cultivators to labourers (Saravanan, 1994; 1997a; 2006c; 2006e). Interestingly, the post-colonial governments, too, continued to encourage commercialisation of forests (Gangwal, 2005; Saravanan, 2006c; 2006e). Accepting the failures of forest policy, the Ministry of Tribal Affairs began to critique restrictions on the tribals as historical injustice and sought to ensure access to forest resources, besides conferring ownership rights for the lands under their possession in the forests. However, curbs to access the forest resources were imposed wherever wildlife was affected.

Initial resistance to the new law in 2005, first in the shape of a Bill laid before the Parliament, came from the Ministry of Environment and Forests, indicating that it would hinder efforts to preserve forest resources. It was pointed out that the new legislation would require denotification of vast tracts of forests and elimination of legal protection for forest cover, which would lead to colossal ecological damage. Indeed, the Ministry had earlier initiated steps to regularise claims under dispute (Prabhu, 2005), and had already issued six circulars in this regard in 1990. According to these circulars, pre-1980 encroachments on forest lands were considered eligible for

regularisation, provided the State Governments had evolved certain eligibility criteria in accordance with local needs and conditions. But the state governments did not respond to these circulars (Jayakrishnan, 2005). Meanwhile, the judiciary was approached to stall the process. To vacate the stay of the Supreme Court on the February 2004 Circular to extend the date of regularisation to 1993, the Ministry of Environment and Forests stated that the rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these tribals have become encroachers in the eyes of law. It further stated that it should be understood clearly that lands occupied by tribals in forest areas do not have any forest vegetation, and regularisation will also significantly lead to better forest conservation (Kothari, 2005; Prabhu, 2005). Did this signal a change of mind and policy?

### **Forest Policies: An Appraisal**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 marks a clear paradigm shift in the approach of the Ministry of Environment and Forests towards the Scheduled Tribes, who were hitherto held responsible for the destruction of forests. So far, the plight of the tribals, whose economy was associated with forest resources, had been largely ignored and disregarded with utter contempt. It is a well-established fact that since the early nineteenth century, forest resources were increasingly extracted for commercial purposes, while restrictions were clamped on the indigenous tribals through a number of Forest Acts and a plethora of rules and regulations.<sup>2</sup> Several strategies, including force, were employed to control the forest areas to facilitate commercial exploitation (Saravanan, 1999a; 2003b; 2004a). For example, in the Madras Presidency, the Forest Department brought vast tracts of forest land under forest reserve by the close of the nineteenth century. Later, the Revenue Department initiated the survey settlement during the early twentieth century (Bhatia, 2005: 4891; Saravanan, 1999d; 2006a). It was an exercise whereby the Forest Department took over large chunks of forests, an inalienable part of the tribals' livelihood, and then handed the local tribals the remaining areas with ownership rights. While part of their livelihood sources was thus made inaccessible, the rest was permitted to be utilised with an eye on revenue generation from the tribals (Saravanan, 2006a).

After independence, forest resources continued to be extracted for commercial purposes increasingly to meet industrial needs. In addition, various developmental projects like dams and activities related to tourism consumed a very large extent of the green cover (Saravanan, 2006e). For example, in 2001 alone about 414 paper industries depended on forests for supply of raw materials. There were about 41,229 saw mills during that year, with a potential capacity of 29,564 thousand cubic metres per year. In addition to this, about 4,07,983.02 hectares of forest land were diverted for non-forest use between 1981 and 1998. According to such Forestry Statistics

(Indian Council of Forestry Research and Education, 2000), in 1998 about 7,14,855.30 hectares of forest land were under encroachment. According to the Ministry of Environment and Forests, the total area of forest land under encroachment by both tribals and others was about 13 lakh hectares.

Several states enacted laws to curtail tribal land alienation, but invariably they remained ineffective (Bhatia, 2005: 4892). In what is a clear case of locking the stable after the horses have fled, several states enacted relevant laws only when the issue of land alienation had reached its peak. Consequently, one could find a large number of non-tribal settlements in the hill/tribal areas (Saravanan, 1997a; 2000a; 2006e). The logical corollary was massive displacement of tribals, who were pushed into positions as labourers on their own lands, an index of deterioration in the hills (Menon and Saravanan, 1996; Saravanan, 1998c; 1999c; 2003a; 2004b; 2006e). The post-colonial forest policy, specifically the National Forest Policy 1952, had its thrust and focus on uninterrupted supply of forest resources, primarily to satisfy the needs of industry and other commercial purposes. Following the footsteps of the British government in India, the post-colonial government also continued to place blame on the tribals for deforestation and depletion of forest resources and tightened the restrictive grip, either through existing Acts or enactment of new legislation till 1988. In the history of forestry in the Indian subcontinent, tribal people's dependence on forests was first recognised through the National Forest Policy of 1988 (Government of India, 1988).

State intervention and attendant mechanism for development, too, proved to be futile (Saravanan, 1998c). Depletion of flora and diminishing fauna along with decline in the standard of life of hill inhabitants are very much evident. Consequently, realisation dawned gradually that without the active cooperation of tribals, conservation of forests and wildlife would be a difficult task. Recognising the symbiotic relationship between tribals and forests, the National Forest Policy of 1988 made provisions to safeguard the customary rights and interests of the tribals and forest-dwellers over the forest resources.

In fact, at that time—almost two decades earlier—the Ministry of Environment and Forests laid strong foundations for what would ultimately become the 2006 Act. Based on the National Forest Policy of 1988, the Ministry had issued several circulars in 1990 to regularise unauthorised lands held by the tribals in forest areas.<sup>3</sup> However, the state governments failed to act on these guidelines (Kothari, 2005). In addition to this, in the same year, the Government of India outlined a framework for creating a massive people's movement through involvement of village committees for the protection, regeneration and development of degraded forest lands. Conscious of this, the Forest Department also initiated confidence-building measures through the Joint Forest Management programme (Saravanan, 2006a; 2006e). The last two decades also witnessed several circulars being issued with a focus on conservation. But unfortunately, these measures were largely confined to degraded forests. As such, the 2006 Act coming at this juncture is to some extent an admission of the growing problems and plight of the tribals.

### **Political Economy of Tribal Development**

While the clamping of restrictions on the use of forest resources during the colonial period was not accompanied by any corresponding development initiatives for the socio-economic progress of the tribals, the same approach continued in the early post-colonial era despite several constitutional safeguards. In the absence of concrete programmes, the safeguards obviously lacked credibility. Some half-hearted measures were taken up in the hill/jungle areas as part of rural development programmes prior to the Tribal Sub-Plan. These failed to succeed, mainly because of the isolation of tribals and lack of communication facilities in the tribal areas. Developmental plans and programmes targeting tribals were initiated only during the Fifth Five-Year Plan with the launch of the Tribal Sub-Plan, which happens to be a milestone.

The Tribal Sub-Plan was implemented with the twin objective of assisting Scheduled Tribe families to cross the poverty line and to provide basic amenities and facilities in their areas. The plan was thus conceived to help tribal families in improving their socio-economic and educational status. Economic development programmes in the fields of horticulture, animal husbandry, soil-conservation, minor irrigation, sericulture, small industries and bee-keeping, besides locale-specific schemes for provision of drinking water, road connectivity, electrification, education and health facilities, improving forestry, communication, cooperation and social services were taken up. Whether these measures created the desired impact in the economic sphere requires closer scrutiny.

According to the 2001 Census, the total population of Scheduled Tribes in India stood at 84,326,240, roughly constituting 8.2 per cent of the country's total population (Census of India, 2001). Of this, 91.7 per cent lived in rural areas, while the remaining minuscule minority of 8.3 per cent resided in urban areas. That the development initiatives failed to create a positive impact was very much visible through a decline in the proportion of participation rates of tribals in economic activities. According to 2001 Census figures, the work participation rate among the Scheduled Tribes in India was as low as 49.1 per cent. About 69 per cent of these were classified as main workers, while the remaining 31 per cent were treated as marginal workers. Decline in the status of such workers was also evident from the fact that no significant structural transformation had occurred among tribals. About 82 per cent of the tribal workforce in India was engaged in primary sector activities (cultivation and agricultural labour). If agriculture and allied activities were included, this proportion might go up. At the same time, the proportion of cultivators to the total tribal workforce declined to 45 per cent, while the category of agricultural labourers registered an alarming increase of 37 per cent in 2001 (Census of India, 2001). More or less the same trend prevailed in different parts of the country (Saravanan, 2003c; 2004b). This provided clear indications that the tribal economy was on a downward slide with a visible downfall due to large-scale encroachment by the Forest Department and alienation of land by non-tribals (Saravanan, 2000a; 2006c; 2006e). For instance, in Tamil Nadu, the Forest Department has notified additional areas into the reserve forest since Independence.

Consequently, the area under forest cover has increased from 18,66,000 hectares in 1960–61 to 21,34,000 hectares in 1999–2000, or from 14.13 to 16.55 per cent of the total geographical area of the state (Saravanan, 2000b; 2006d; 2007). A survey undertaken among 2,631 tribal households in 1986 to ascertain the intensity of land alienation revealed that 37 per cent of the tribal households lost their lands to outsiders (Karupaiyan, 2000). Land was either sold or disposed of to meet rising domestic consumption, debt repayment, social and religious ceremonies, medical expenses and to some extent addiction to alcoholism (Karupaiyan, 2000). Further, illiteracy remained very high. According to the 2001 Census, about 53 per cent of the total tribal population in India was classified as illiterates. This proportion was very high among females, with 65 per cent.

Given the declining trends of tribal economy, the impact of development programmes providing safe drinking water, electricity and toilet facilities needs to be examined. According to the 1991 Census, only a meagre 3.23 per cent of tribal households had access to safe drinking water, electricity and toilet facilities. A tiny 5.02 per cent of households had both electricity and toilet facilities. Needless to say that almost all the tribal households, especially in the rural areas, are living without the basic minimum facilities, as shown in Table 1.

Table 1 **Sources of Facilities Available for the Tribal Households in India, 1991**

<i>Facilities</i>	<i>Total</i>	<i>%</i>
Safe Drinking water*	53,35,483	43.21
Electricity	28,14,885	22.80
Toilet facilities	8,92,116	7.22
Safe drinking water, Electricity and Toilet available	3,98,830	3.23
Electricity and Toilet available	6,20,324	5.02
Safe drinking water, Electricity and Toilet not available	55,93,598	45.30
Electricity available and Toilet not available	21,94,561	17.77
Electricity not available and Toilet available	2,71,792	2.20
Total	1,23,48,000	

Source: Census of India, 1991, *Tables on Houses and Household Amenities*.

\* Tap/handpump/borewell.

However, it cannot be ignored that some facilities were made available to a sizeable section of tribal households. For instance, 43.21 per cent of households had access to safe drinking water (either a tap, handpump or borewell), electricity (22.8 per cent) and toilet facilities (7.22 per cent). Interestingly, however, about 45.3 per cent of the tribal households do not have any of these basic facilities. According to the 2001 Census, about 63.5 per cent households and 47.8 per cent of villages in the tribal belt have no electricity. Further, only about 17 per cent of Scheduled Tribe households

have lavatories within their premises. What emerges from the above data is that basic amenities remain woefully inadequate in the hills. There are about 2,690 forest villages in 13 states which are still managed by the Forest Departments of the respective state. These villages are outside the Revenue Administration of the districts and have therefore missed the fruits of development (Goenka, 2005). Other tribal villages, too, are lacking basic infrastructural facilities. Shah (2005: 4897) notes:

In the absence of a secure title to land, adivasis are deprived of their rights as farmers—unable to access credit, electricity or agricultural inputs and deprived of benefits of various anti-poverty programmes. Since their names do not exist in the land records, they cannot become members of tribal cooperative societies.

Severity of penalties for ‘offences’ and violation of restrictions on use of forest resources, including collection of firewood, left the hill inhabitants with very little alternative sources even for cooking. This is confirmed by examining the sources of fuel for cooking. This does not require much explanation, since Table 2 clearly indicates that more than 97 per cent of the tribal households are dependent upon firewood:

Table 2 **Type of Fuel Used for Cooking in India, 1991**

<i>Type of Fuel Used for Cooking</i>	<i>Total</i>	<i>%</i>
Cowdung cake	6,32,835	5.13
Electricity	13,756	0.11
Coal/Coke/Lignite	1,95,360	1.58
Charcoal	54,034	0.44
Cooking Gas	1,32,479	1.07
Wood	1,08,05,582	87.51
Bio-Gas	20,101	0.16
Kerosene	2,38,101	1.93
Others	2,53,707	2.05
Total	1,23,48,000	

Source: Census of India, 1991, *Tables on Houses and Household Amenities*.

The trend would not have taken a different turn even if the 2001 Census data was considered. As the availability of day to day livelihood needs has come under increasing stress, many tribals face cases filed by the Forest Department, besides being subjected to harassment. This amounts to violation of their right to livelihood, an integral part of human rights. Most of the tribal households are trespassing into the forests in one way or the other, at least once a week for the collection of firewood. A large number of registered cases fall under the category of unauthorised felling, grazing and other

minor offences (Saravanan, 2006a; 2006e). Given this situation, the 2006 Act will facilitate tribal use of forest resources without facing any kind of threat and harassment from the Forest Department, and this will be helpful.

However, one can safely draw a conclusion here that the development initiatives have not so far effected a positive transformation in the livelihood pattern of tribal households in India. For, in the Government's own admission (Government of India, 2005a: 89):

The gap in the infrastructure in the tribal areas vis-à-vis the rest of the areas is further widening at much faster rate. For example, while on the one hand the quality of roads, health services, telecommunications, distribution of power, etc. are improving in the country through participation of private sector, the condition is deteriorating in the tribal areas due to even poor maintenance of already created assets.

Of late, however, there is a discernible shift in the official discourse on tribal development. Has the development paradigm turned upside down? Giving up the rhetoric of blaming the tribals for deforestation, the government has started arguing the merits of allowing them to use forest resources. Is this just a ploy to evade the responsibility for the unsuccessful development policies pursued over the last three decades? Even while denying access to forests, developing infrastructure facilities in tribal areas was one of the agendas in the politics of the 1980s. Now it appears that sending them back to the forests is the slogan of the present. It is more appropriate to quote Singh (2005: 38):

It should shame us that this is all that India, the future economic superpower, can offer its most desperate citizens in the 21st century. It should shame those who rule us that they have been able to do so little by way of development in nearly sixty years of independence that they offer our supposedly beloved 'tribals' stone age living standards. But they are not ashamed; they are proud.

### **Features of the Recognition of Forest Rights Act of 2006**

Indeed, after almost six decades of Independence, for the very first time the government realised the historical wrong committed towards the tribals and recognised their plight as well as their increasing marginalisation from the forests because of the different Forest Acts, Rules and policies. It should be pointed out that the parties in the ruling coalition at the Centre, the Congress-led United Progressive Alliance, had lost their vote share among tribals in different parts of the country. It appears thus that to regain their support and to retrieve lost ground, the government has brought the 2006 Act. As pointed out by Rangarajan (2005: 4888): 'The call for a fresh look at the issue of adivasi land rights did not spring from a vacuum but was rooted in the desire of the Congress and allied parties to recover lost ground among an increasingly assertive section of the citizenry'.

Hence, this agenda was included in the National Common Minimum Programme of the UPA. Based on this programme, the Government of India decided to introduce this legislation (Singh, 2005) and included it in the Presidential address. In his customary address to Parliament, enunciating the Government's priorities, the President stated on 25 February 2005:

Adivasis in this country have been leading a life of insecurity in many areas since their property rights have remained unsettled. It is necessary to recognise their need for assured property and land rights in areas they have been residing in for several generations. It is an irony that tribals who have been living in 'forest villages' and have been practising agriculture on these lands for several generations, have not been given due recognition of their rights. Their problems are engaging the attention of the Government and we will try to settle the issue of land rights of tribals. The outcome will be beneficial both to tribals and to the goal of forest conservation.<sup>4</sup>

Accordingly, the government introduced the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005. The objective of the Bill was stated as

[t]o undo the historical injustice by recognizing and vesting the forest rights and occupation of forest land to forest-dwelling Scheduled Tribes who have been residing there for generations and who are integral to the very survival and sustainability of the forest eco-system, including wildlife, but whose rights could not be recorded.

The Draft Bill proposed to give tribals several things: 2.5 hectares of land per family; ownership right to access of minor forest produce; the right to graze; and access to traditional seasonal resources.

### **Protest Over the Bill**

The participants in debates on the Scheduled Tribes (Recognition of Forest Rights) Bill of 2005, prepared by the Ministry of Tribal Affairs (Government of India, 2005b), could be broadly grouped into three categories: tribals and other forest-dwelling activist groups, supported by the Ministry of Tribal Affairs, argued in favour of the Bill; environmental/conservation activists dominated by the wildlife (particularly Tiger) protection groups, supported by the Ministry of Environment and Forests, opposed the Bill; other forest-dwelling groups assisted by civil society organisations and certain political parties supported efforts to include other forest dwelling communities.<sup>5</sup>

Against the proposed Bill, several criticisms cropped up that can be broadly grouped into three categories. The conservationists, environmentalists and wildlife activists, especially the pro-tiger enthusiasts, were in the forefront of opposing the Bill. Their contention was that the proposed legislation would cause irreparable damage to wildlife. Expressing apprehension that this Act would result in the transfer of 50 million hectares of the country's 67 million hectares of forestland to tribals and forest dwellers, they

pointedly called it a 'sell-out to vote-bank politics' (Munshi, 2005: 4406). It must be noted, though, that the argument put forward by the tiger conservationists was due to a misreading of the provisions in the Bill. Hypocrisy is thus rightly identified in the attack on the Bill by conservationists and some well-known journalists (Kothari, 2005).

Apart from these groups, the Ministry of Environment and Forests feared that this new law would affect the forest cover, arguing that the approach adopted in the proposed Bill requiring denotification of vast tracts of forest lands and elimination of legal protection for the forest cover would lead to irreparable ecological damage of immense proportions. Further it was said that, as reported by the *Indian Express*, 16 April 2005:

Failure on the developmental front should not be compensated by any mechanism which leads to the irreparable damage of our natural resource base. The draft bill, inter alia, proposes to compensate the failure on the developmental/welfare fronts by distributing natural resource base of the country.

The principal objections of the Ministry of Environment and Forests were: (i) giving power of settlement claims to village councils (*Gram Sabhas*) will result in local vested interests gaining control; (ii) distribution of 2.5 hectares of forest land to each family is against the goal of the National Forest Policy of 1988 to get one-third of the country under tree cover; (iii) denotification of vast tracts of forest lands and elimination of legal protection for forest cover will have disastrous consequences on the ecological balance; and (iv) over 60 per cent of India's forests will be handed over to 8.2 per cent of its population (Dang, 2005; Munshi, 2005: 4406; Lok Sabha Secretariat, 2006). Some of the tiger protectionists proffered dramatic solutions for tribal development (Dang, 2005).

Countering the environmentalist groups, the tribals and other forest dwelling groups submitted that the Bill would not distribute land, but would merely settle claims of people already living on these lands. Further, existing legal protection for forest cover would not get eliminated, since the Bill insists upon forest rights' holders not only to refrain from 'any activity... that adversely affects the forest and the biodiversity in the local area', but also required the entire community to 'stop any activity which adversely affects wildlife, forest and biodiversity, whoever is responsible'. In fact, this is the first law that actually required involvement of local communities to protect the forest.

Dismissing the claim of the environmental groups that the existing statutes contained enough guarantees for peoples' rights, they argued that except for the Panchayats (Extension to Scheduled Areas) Act of 1996, and a set of Ministry of Environment and Forests circulars in 1990, which as we saw proved to be unsuccessful, other Acts would not help to regulate the issue of land rights. The blame for degradation of forests was solely attributed to the timber mafia, land grabbers, industry (particularly mining) and diversion of a large proportion of the green cover for non-forest use.

According to this lobby, 3.33 million hectares of natural forests were cleared and replaced by industrial plantations between 1951 and 1979. From 1980 onwards, the forest authorities had diverted 9.81 lakh hectares of land for non-forest use, particularly for 11,282 development projects, but completed only 7.3 per cent of the required compensatory planting (Krishnaswamy, 2005: 4900). Due to harassment by the Forest Department staff, the tribals suffered so much that the new legislation has become necessary to protect them (Bhatia, 2005: 4891; Munshi, 2005: 4407; Krishnaswamy, 2005: 4899). The third group of lobbyists argued that the demand for the inclusion of forest-dependent Scheduled Castes and Other Backward Communities (Singh, 2005) gave room for further controversies.

The Bill was then referred to the Joint Parliamentary Committee on 13 December 2005. The Joint Parliamentary Committee suggested changing the nomenclature of the draft Bill to Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006. Further suggestions were (i) to include the communities who have been traditionally living in or adjacent to forests for at least three generations; (ii) that those who have occupied forest land before 13 December 2005 should be considered for recognition and vested with forest rights; and (iii) that each family should be entitled to four hectares of forest land rather than 2.5 hectares as suggested in the Bill.

On 23 May 2006, the Committee presented the revised Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill, 2006. The suggestions were accepted by the government and the Bill was finally passed in the winter session of Parliament, with Presidential assent granted on 29 December 2006. The Act was published in the Gazette of India, Extraordinary on 2 January 2007.

### **The Provisions of the 2006 Act**

The present article attempts to situate and contextualise the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006, arguing that this new law will have far-reaching implications on the environment as well as tribal development. The Act explicitly allows tribals to use forest resources for their livelihood, hitherto restricted by the earlier Forest Acts since the late nineteenth century. For instance, the Indian Forest Act, 1927, had prohibited any fresh clearing for cultivation and other purposes in the notified areas, cattle trespass and grazing, felling of trees and damaging of any tree besides hunting activities in the reserve forests. Under this Act, any violation of the rules would be punishable either with imprisonment or penalty or both. In addition, damage to property had to be compensated. In contrast, the 2006 Act has endowed the tribals with the right to live in the forest, the right to cultivate for their livelihood, the right to collect minor forest produce, the right to graze cattle, the right to convert leases or grants (*pattas*) to titles, the right to convert forest villages into revenue villages, the right to settlement in the old habitations and un-surveyed villages, the right to access and community right over intellectual property

and traditional knowledge related to forest biodiversity and cultural diversity, the right to manage the community forest resources, and the right to enjoy any customary/traditional practice, however excluding hunting.

The legislation accords due statutory recognition to what existed prior to the erstwhile Forest Acts and external interventions into the self-sustainable forest-based livelihood systems and traditional customary practices, of course, within the purview of the existing forest and wildlife Acts. It will ensure ownership rights to the tribals who do not have proper documents despite having lived in the hills for generations. In most states, the Forest Departments have notified vast tracts as forest reserve before granting ownership rights to the tribals for the land under their possession. For instance, in Madras Presidency, reserve forests were notified in hill areas in the last decade of the nineteenth century while the survey and settlement was held during the first decade of the twentieth century (Saravanan, 2000a; 2004a; 2006a). Consequently, the tribals who had no occupancy right were ironically treated as encroachers on their own land and lived under the constant threat of being evicted or penalised. According to official Forestry Statistics, about 6.17 lakh hectares of forest land were classified as encroachments (Indian Council of Forestry Research and Education, 1996). Setting right the anomaly, the Act would ensure removal of the bottlenecks in the implementation of the welfare measures, which were denied so far to so-called 'unauthorised settlements'.

Significantly, the new legislation is expected to drastically bring down the number of forest-related offences as well as harassment faced by the tribals and other forest-dependent communities. Illicit felling and grazing still account for the bulk of offences. According to the India Forestry Statistics (Indian Council of Forestry Research and Education, 2000), about 1,59,094 cases were registered and Rs. 8303.47 lakh was recovered during 1996–97 in the illicit felling category alone. Illicit grazing accounted for 37,190 cases during the same period (Indian Council of Forestry Research and Education, 2000; Saravanan, 2006e). Dismantling of decades-old barriers and legal hurdles would eliminate harassment at the hands of authorities and should greatly relieve tribals from the fear of officialdom.

### **Conflicts Between Environment and Tribal Development**

Earlier, a large proportion of the present forest cover was brought under reserve forests at the close of the nineteenth century and the process negated the customary rights of tribals. Naturally, a series of conflicts ensued between the hill communities and the Forest Department while demarcating the lands under the occupation of the former and also over access to natural resources. Several representations were made over time to exclude tribal land from the proposed forest reserves (Saravanan, 2003b; 2006a). Ultimately, the concept of reserve forest emerged to become a part of forest management and conservation.

The tribal population density in the hill areas even a century ago was very low. As such, enormous amounts of land in different regions remained unoccupied. This facilitated more and more forest terrain being brought under direct state control. Due to lack of communication and transport facilities, Forest Department staff mostly remained at villages in the foothills, while the tribals continued to use forest resources for their livelihood. Non-tribal settlements were initially confined to a few hills, where plantations were established (Saravanan, 2000a; 2004a). The advent of the plantation sector added another dimension to existing conflicts and sharpened them, especially with the increasing pace of land alienation. Development of infrastructure like communication, transport and road connectivity in the hills during the post-Independence period assisted the Forest Department to mount increased vigilance.

In this context, a pertinent question is how this new Act of 2006 would address the issue of tribal development and environment, always seen as a conflicting one rather than being complementary. The constitutional position on this is actually very clear. Article 48-A of the Constitution of India of 1950, added by the 42nd Amendment in 1976, provides that '[t]he State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country'. Article 46 of the Constitution further seeks to promote the interests of weaker sections of the population and provides:

46. Promotion of educational and economic interest of Scheduled Castes, Scheduled Tribes and other weaker sections.

The State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

In pursuance of such clear constitutional mandates, included among the Directive Principles of State Policy in Part IV of the Indian Constitution of 1950, several statutes were enacted to protect and preserve the environment and wildlife. Despite this, there was an alarming depletion of natural resources and wildlife species in India. With regard to tribal development, the state implemented several programmes, though they have failed to contain exploitation.

Unfortunately, the 2006 Act appears to be contrary to the Constitution in two ways. Firstly, attempting to recognise centuries-old, but now defunct, forest-oriented customary rights could turn out to be a great threat to the environment, ecology and wild life. Secondly, instead of assisting and facilitating the economic progress of the tribals and protecting them from exploitation, encouraging them to live in the forests could be interpreted as amounting to an evasion of responsibility.

In environmental terms, the existing green cover is far below the requisite proportion to the total geographical area of the country. At present, forests account for only about 20 per cent of the total area of India and the actual green cover could be even less. According to the norm set by international agencies, about one third of the total

geographical area should be covered by forests. Likewise, the National Forest Policy of 1988 envisaged an increase in forest cover to 33 per cent. As far as the hills and mountain regions are concerned, the National Forest Policy had suggested maintaining two-thirds of their area under forest cover. The Tenth Five-Year Plan document also indicated that this 33 per cent green cover could be achieved by the end of the Eleventh Plan period.

The main apprehension of environmentalists, as noted, is that the 2006 legislation, if implemented, would pave the way for handing over roughly 60 per cent of the present forest area to tribals. It is true that not necessarily all tribal households would get land from the forest, but the fact remains that all tribals and other forest dwellers are entitled to collect forest produce. Forest resources in their entirety have thus been virtually given back to the tribals and other forest-dwellers. Since denudation was rampant when there was restriction to collect forest resources, the consequences could be dangerous once unfettered collection becomes a matter of right. It is apparent that de-reserving forest reserves and allowing collection of forest produce, in the context of shrinking forest cover, could pose a serious threat to the ecosystem, already under severe stress from various actors. This raises the important question of how responsible tribals will feel for protecting the green cover of their living environment.

Admittedly, a shift from primary sector activities to that of secondary and tertiary sectors is a better indicator of economic transformation of any marginalised community or developing nation. Policies with this objective are invariably being pursued by different countries to attain faster growth and development. As far as India's tribals are concerned, a shift from forest-based subsistence economy to other economic activities becomes a prerequisite for their socio-economic transformation. Accordingly, the government has adopted strategies to integrate the tribals within the mainstream society by providing necessary infrastructural facilities since independence, particularly from the Fifth Plan onwards. Unfortunately, neither have the tribals been integrated within the national mainstream, nor has any tangible progress been made on the economic front in the hill areas. Instead, influx of non-tribals into the hill areas and consequent land alienation has continued unabated, pushing the indigenous tribes further into the inaccessible remote forests or turning them into dependants of non-tribals in and on their own land. Given this particular situation, it is doubtful whether granting forest rights could produce a positive transformation among the tribals. Rather, it might prove to be an attempt to push them still further backward, but empowering the non-tribal encroachers. Certainly, this Act would be helpful to people occupying land without land rights. But what about the landless labourers who account for about 39 per cent of the tribal population? Will providing forest rights help their betterment? It appears that this is yet another facet of popular politics which does not hold any hope for the economic progress of tribals.

It is a known fact that the tribals had only occupancy rights before the survey and settlement era. For, at the time of notifying reserve forests, the Forest Department questioned the validity of occupancy rights. Even after the survey and settlement,

when ownership rights were granted, the non-tribals alienated those lands on a large scale. Non-tribal settlements have thus increased in the tribal belts, particularly during the post-Independence period. As a consequence, as noted, many tribals have become landless labourers and to some extent 'encroachers' in the forest area. Though some states have enacted laws to prevent tribal land alienation, the desired results are not yet in sight.

At present, there are 194 Integrated Tribal Development Projects, 254 Modified Area Development Approach programs and 82 clusters spread over 21 States and two Union Territories. In every project area, a sizeable proportion of non-tribal settlement remains visible. In the context of continuing land alienation, what guarantee is there that ownership rights for the 'unauthorised' occupied lands of the tribals would prevent alienation in future? Moreover, this Act now confers legitimacy on the settlements and alienated or occupied lands of non-tribals. As such, it would actually sharpen the problem of land alienation. Despite the restrictions in force, non-tribals have managed to circumvent the rules and alienated tribal land. There is much evidence that powerful non-tribals continue to engage in this, adopting different strategies. Hence, treating non-tribals on par with tribals militates against reason. Instead, if the state had taken decisive steps to restore the lands alienated from the tribals themselves, this would have proved to be more viable, probably in terms of conservation as well.

Another significant feature of the 2006 Act is the emphasis on restoration of traditional tribal institutions, which were among the first casualties of colonial intervention, particularly during the early nineteenth century. For example, in the different hill regions of the Madras Presidency, the colonial government had crippled the functioning of tribal institutions. The modern village administrative system with elected representatives replaced the earlier community institutions. States like Tamil Nadu took steps to curb the traditional village *panchayats* in the plains, which seemed to be an anachronism to the rule of law. Moreover, in different parts of the country, the traditional tribal institutions either remain dead or have become ineffective. As rightly pointed out by Roy Burman (2005: 5515), 'gram sabhas in most parts of the country are ineffective and their existence totally depends on the *panchayat* bodies and government functionaries at the grassroot'. The existing democratic institutions at the local level are providing a much wider space than the earlier traditional system, not only in terms of electing its members and replacing hereditary lineage, but also by being instrumental in introducing various development programmes. In addition to this, they provide checks and balances with accountability, for there are elections at least once in five years. In these circumstances, restoring institutions which have disintegrated almost one and a half centuries back could at best be plain nostalgia and undesirable as well. Further, as Bhatia (2005: 4892) notes, 'the actual powers of the gram sabha, and the relation of the gram sabha to other authorities, are far from clear'.

Infrastructure development in the hills received priority after the Fifth Five-Year Plan, with the state drawing up several development strategies to expedite the pace of

socio-economic transformation of the tribal communities. However, the failure of the state to arrest non-tribal settlements left alienation of tribal lands to continue unhindered. Ultimately, the tribals were either pushed into the reserve forests or became dependent on others. Hence, unless the state restored these alienated lands from the non-tribals and ensured better delivery systems, no improvement of their living conditions could be expected (Saravanan, 2005). Past experience shows that development facilities have only paved the way for further displacement of tribals.

Under the Draft Bill, the cut-off date for the granting of rights was 1980. The Joint Parliamentary Committee recommended a cut-off date of 13 December 2005, which was accepted by the government. This means that those who had occupied lands prior to 2005 would become eligible. Here, a comparison with the colonial past becomes inevitable. Subsequent to the introduction of reserved forests during the late nineteenth and early twentieth centuries, the survey settlement conferred ownership rights on tribals for their lands under cultivation.

Now if there is any dispute between the Forest Department and tribals at the time of notification regarding the occupied lands, there is a presumption that ownership rights should be provided. While taking into account the 'unauthorised' tribal occupants, however, restoration of alienated tribal lands has now been conveniently ignored (Bhatia, 2005: 4892; Saravanan, 2005). The significance of this cannot be dismissed. Hence, along with tribal ownership rights to the land under their hold at the time of the forest notification, restoration of the alienated lands after the settlement should be done simultaneously to prevent further land alienation and protect the environment and ecology.

Suitable amendments to the Forest Acts of both the Central and State Governments remain a prerequisite for any corrective mechanism to yield the desired results. While the bureaucracy in the Police and Revenue Departments continue to have a role in maintaining a restrictive and coercive regime (Saravanan, 1997b), the Forest Department holds the key in many respects. According to Section 12 of the Forest Act 1927, '[i]n the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-Officer shall pass an order admitting or rejecting the same in whole or in part'. The Wild Life (Protection) Amendment Act, 2002, Section 34-A(a) authorises eviction of 'any person from a sanctuary or National Park, who unauthorisedly occupies Government land in contravention of the provisions of this Act'. It has been further pointed out that 'section 15 can effectively nullify the positive provisions of the Act through the very colonial legislation that the Act is supposed to rectify' (Krishnaswamy, 2005: 4901). Hence, making appropriate changes in the various Forest and Wildlife Acts to make them more compatible with the 2006 Act assumes very great importance.

Finally, the Act also attempts to ensure the intellectual property rights of the tribals. Knowledge was never documented among the tribal communities, who passed it on orally to the next generation. The state's restriction of tribal access to forests, which

was central to their social and cultural life, resulted in a critical disjunction. The generations after colonial intervention are obviously handicapped in terms of acquisition as well as transfer of traditional knowledge. Unlike their forefathers, they have had no unfettered access to the forests, and their knowledge levels will have gradually declined. The fact is that the intellectual properties of the tribals have been lost over the period, spanning up to one and a half century—attempts to retrieve them would prove futile. To be precise, then, this Act would also in this respect neither benefit the tribal communities nor enhance conservation, but would promote only the interests of the non-tribals.

### **Conclusions**

Admittedly, development has been broadly accepted to mean a process of improving the status and living conditions of people, while conservation denotes protection of natural resources. The present new legislation might facilitate tribals' use of forest resources for their subsistence and guarantees them ownership rights. At the same time, it has to be borne in mind that the 2006 Act is silent on restoration of lands from non-tribals, occupied prior to the cut-off date. Entry of non-tribals into the hills preceded the establishment of the Forest Department in the early nineteenth century. Even after the introduction of the reserve forests during the late nineteenth century, a very large extent of tribal lands was alienated to non-tribals. In addition a sizeable extent of tribal land was alienated by educational institutions, hotels, resorts and other tourism development ventures. Consequently, about 37 per cent of the tribal population in India has become agricultural labourers in 2001. No one can possibly argue that tribal households were excluded from forest lands prior to the intervention of the Forest Department or the advent of non-tribal settlements. Every household occupied the land for their own survival. While non-tribals cornered most of the fertile and cultivated lands, the tribals were forced to go deeper into the forests or become dependants. Hence, restoring alienated land is a more viable and sustainable option than just giving tribal people ownership rights to forest lands.

From the development perspective, as indicated earlier, a shift from primary sector to secondary and tertiary sector activities is a better indicator of economic progress. In tune with this, governmental policies provided the requisite thrust for improving infrastructural facilities in tribal areas, particularly during the last two and a half decades. However, it has made very little impact on their socio-economic development, primarily due to ineffective delivery systems. A participatory approach, involving tribals in the developmental process, could have created visible changes. Instead of ensuring the fruit of the developmental process, granting rights to collect and use forest produce besides regularising unauthorised lands would not sufficiently help them to move on the path of progress. These half-hearted measures contain the seeds of the danger—that of pushing the tribals further backward instead of facilitating their

integration into the mainstream. Unless land alienation is either arrested or kept under check, any developmental programme aimed at empowering the tribal communities is doomed to fail.

Unfortunately, the prime focus of the 2006 Act remains regularisation of lands held by tribals without any land deed or other documents, a measure which also benefits non-tribals. The Act is rather silent about the plight of the more than one third of the tribal population who have lost their land over the period. They have been left with no option but to go further into the forest—or to migrate elsewhere. In the Indian context, the political economy of land and the societal power relations associated with its possession need not be emphasised. Hence, any attempt towards achieving developmental objectives should necessarily commence from restoration of the now-alienated erstwhile tribal occupied lands. Equally important is the need to ensure a participatory approach and an efficient delivery system.

That the new legislation has failed to address all these crucial issues raises serious concerns about its purpose and stated objectives. The remedial measures contained in it, besides being inadequate to tackle the problems, if implemented, could turn out to be an impediment for empowerment of the tribals and conservation as an end in itself. In other words, as Singh (2005) indicates, its main achievement will be the destruction of our forests and not the betterment of tribal living standards. Initially, the Draft Bill proposed to recognise the inalienable rights of the tribal communities over the forests, but in the end, it has come to offer legitimacy on induced land alienation, the root cause of the problem since the colonial period. Hence, the 2006 Act itself appears to be politically motivated. It is not a surprising finding that the focus on granting ownership rights to tribals was just a cloak to justify and legitimise non-tribal intervention and the disastrous consequences attendant to it.

## Notes

1. For details see a large number of sources: Buchy (1998: 669), Dawkins and Philip (1998), Grove (1995: Chapter 8), Guha (1983: 1886 and 1892), Guha (1989: 29 and 185), Guha and Gadgil (1989: 148–57), Padel (1995: 28–9), Rangarajan (1998: 589), Sangwan (1999: 189), Saravanan (1998a; 1998b; 2003b; 2004a; 2006c) and Saxena (1999).
2. Apart from the sources listed in note 1 above, see for details Munshi (2005: 4407); Saravanan (1999a; 1999b; 2000a; 2006a).
3. Apparently there are six policies: (FP1) Regularisation of Encroachment; (FP2) Review of Disputed Claims over Forest Land; (FP3) Regularisation of *Pattas* and Leases; (FP4) Elimination of Intermediaries and Payment of Fair Wages to the Labourers on Forestry Works; (FP5) Conversion of Forest Villages into Revenue Villages and Settlement of Other Old Habitations; (FP6) Payment of Compensation for Loss of Life and Property Due to Predation/Depredation by Wild Animals.
4. <http://presidentofindia.nic.in/scripts/palatest1.jsp?id=7>. [Accessed 4 December 2007].
5. For details see Munshi (2005), and various contributions in *Economic and Political Weekly*, 40(47), namely Bhatia (2005), Krishnaswamy (2005), Rangarajan (2005) and Shah (2005).

See also several contributions in issue 552 of *Seminar* (August 2005), namely Dang (2005), Goenka (2005), Jayakrishnan (2005), Kothari (2005), Mohanty (2005), Prabhu (2005) and Singh (2005).

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