

A Short Note on the Forest Rights Act of 2006

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“An Act to recognize and vest the forest rights and occupation in the forest land in the forest dwelling Scheduled Tribes and other traditional forest dwellers ...And whereas the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historic injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers...”

This is what the Preamble to The Forest Dwelling Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (in short, the Forest Rights Act) says. The recently enacted Act gives individual property rights to the tribals and other forest dwellers on the forest lands under their occupation for cultivation and dwellings and community rights on forest resources, including right to manage them, and total ownership rights on Non Timber Forest Produces (NTFPs). A most significant feature of the Act is that all these rights would be given in Protected Areas (Sanctuaries and National Parks) too. To gauge the significance of these rights, a brief history of forest lands and tribals' rights is in order.

A Brief History of Forest Lands and Tribals' Rights:

Unlike in many western countries like the USA and others, in India, tribals and other communities are not aboriginals in the sense of the former, but they have been living in the forests for the time immemorial. Though the forests were owned by the then princes and kings in the pre-British period, local people were free to use them for habitation, cultivation, grazing and other livelihood purposes. In many places, local communities had in fact evolved informal norms and rules for

protection and proper use of forests. But, with the growing demand of timber and to ensure its steady supply, the British, disregarding the usufruct rights of the local people, took over the ownership of vast chunks of forests, declared them as reserved forests and barred local people to enter, reside, cultivate or use them. Independent India continued with the British legacy - the huge and bureaucratic forest department and the Indian Forest Act of 1927. In 1980, the Central government centralized its powers further. It is interesting to note that the forest department is the biggest landlord in India today with 76.5 million hectares (23% of total land mass) as forest lands, though not necessarily under tree cover (which is 62.4 million ha. only).

Two Consequences:

All this had two consequences. One, the tribals and other local people were deprived of any opportunities of getting property rights on the long and peaceful occupation of lands, as is the case of acquisition of property rights world over. Secondly, they were stripped off any rights on forest resources. Alienation of the people from the forests was a perfect recipe for the tragedy of the commons. Well-managed forests turned into free for all resources. Millions of people have been living in the midst of the forests on which they have no legal rights. They could have been best keepers of these resources. In stead, they were turned into ‘thieves’ and ‘encroachers’ in their own lands. What could have been their legal property became ‘illegal’ possession. As a result, tribals/ forest dwellers and forests - both suffered. Wide-spread poverty persisted on the one hand and rich forest resources got depleted on the other. This is why the Preamble states that this legislation seeks to correct the historic injustice meted out to the tribals and other forest dweller communities. This legislation breaks away from the one and a half century old state monopoly over the forests and restores rights to the local people.

Struggle for Sustenance Gets Transformed into Campaign for Rights:

For 20 years, our (ARCH) struggle had focused on protecting the tribals (of Gujarat State) from the merciless harassment of the forest department and helping them save their “illegal” individual possessions of forest lands. In 2003, the proverbial last straw on the camel’s back came in the form of the Ministry of Environment and Forest (MoEF)’s directive to all state governments to summarily evict millions of such tribals and other local people from the forest lands, which were declared as forest lands completely disregarding their rights in the first place. Our struggle got transformed into a nation-wide campaign to put a stop forever to the monopoly and power of the forest department over the lives and livelihoods of the millions of tribals and others. Many organizations from 11 states spontaneously got together to say: enough was enough. By that time, we had thoroughly studied the history of how forests were nationalized with impunity by the British, how in 1850’s even some of the conscientious British officers had argued against trampling upon and taking over rights of the local people and how they were overruled. We had studied free market literature and had come to recognize the value of property rights. This was a unique combination of various factors, which prepared us to demand for property rights for tribals and other forest dwellers.) We were determined to have legislation to restore the rights, which were snatched away from them. It was our meeting with the Prime Minister that sowed the seeds of the legislation, which came into being with our active involvement in drafting and thread-bare discussing all the issues related to the rights of the people as well as protection of forests amongst ourselves and with many of the Members of Parliament and others.

Most of the groups and individuals with whom we had joined hands were largely socialists, and were deeply committed to tribals’ cause and many have lived their whole lives with them. Some of them, however, had deep reservations about tribals getting individual titles to lands and recommended campaigning for long-

term leases, with ownership of the land remaining with the government. While we and a few others believed that demanding titles to the land under their occupation was the right thing to do. Similarly, there were other differences like whether right to forest resources should be restricted for self use or it should also include right to sell the produce. The most interesting and encouraging aspect of this whole campaign has been that all these differences were freely and openly discussed in a true democratic spirit and a genuine understanding was reached on most of these issues.

The final Act gives individual property rights (jointly in the name of husband and wife) on the lands for cultivation and houses, though with some conditions attached to the lands (while these entitled lands would be heritable, they would not be transferable or saleable). Some of our libertarian friends thought that this type of property right was not worth no property rights. But we have to examine this from the perspective of generations-old ground reality, where there was no right at all and the people were all the time left to the mercy and whims of the mighty forest department. Moreover, in many of the states in India, there are restrictive policies, which prohibit tribals from selling their existing titled lands also. Looking at this issue in this backdrop, this is a great achievement for the property-less tribals and similarly situated other forest dwellers.

Serious Obstacles from Environmentalists:

A serious obstacle to the law, however, was from the MoEF, some environmentalists, academicians, judiciary, media and interestingly even some free marketers. Most of them seemed to share the perception of the forest department that these people were “encroachers” or ‘thieves’. One reason for such misconception is ignorance of the fact that it was precisely because of the forest centralization and nationalization that these people lack property rights and in the eyes of the law have become ‘encroachers’. Opposition from the forest department is explicable, as this law curtails its century old power and monopoly and gives

power to the people over forest land as well as forest resources. But, what is not explainable is why others were opposed to the Bill. One of the national dailies, 'Indian Express', which is considered to be a free market daily, went out with venom against the Bill with all its might. Most of them seemed to have forgotten the principles of free market and property rights!

Myths and Reality:

Other myths that were propagated against this Bill were that this legislation would give away forest lands to the tribals and thus destroy the forests. Both these perceptions are wrong. One, this legislation does not distribute forest lands *de novo* to the tribals, but only recognizes their long occupation rights and gives titles to them. This, in fact, is what Hernando de Soto advocates for bringing the "illegals" into the bell-jar of legality.

Another misconception that it would harm the forests is also contrary to the reality. In fact, it was the centralized management of forests that created the tragedy of the commons in the first place. Moreover, the forest department, with a few self-interested foresters who have no incentives /disincentives to protect the resources, can not look after the vast chunks of forests, and that too in a country like India, where people reside in the midst of the forests. The local people, with all the know-how of the forests and direct incentives/disincentives to manage them carefully, can become the best keepers of the resources. This is precisely what the present law does. It gives them the community rights to protect, use and manage the forests in their own way. Hence, there is a great potential in the Act of improving the conditions not only of the tribals and other forest dwellers, but of the degraded forests, too.

Protected Areas – A Baseless and Utopian Dream of Environmentalists:

Another main opposition of the environmentalists to the legislation is that it gives all these rights to the people living inside the Sanctuaries and National Parks also.

They believe that these Protected Areas should be kept inviolable and all the people living inside should be evicted and resettled outside. This is a very serious contention and we have to examine it in depth. Today, there are 600 odd Protected Areas in the country. More than 4 million people live in these Protected Areas (PAs). A question here is how and where these many people could possibly be resettled.

A most important point here is most of these PAs have been declared without any rhyme or reason and no scientific surveys have ever been carried out before their declaration. In fact, there is no provision in the relevant legislation (Wild Life (Protection) Act 1972) in this regard. The government can declare any government land as Protected Area, if it thinks it suitable for wild life preservation, irrespective of the fact whether any wild life worth the name exists there or not, let alone any wild life on the verge of extinction. The MoEF, together with some influential environmentalists, had somehow decided that 5% of the total land mass of the country should be made Protected Areas and be made inviolable. Nobody knows from where and on what grounds this magic figure was decided upon. Nobody ever thought that such a foreign idea can not work in a country where there is no wilderness area as such and people have lived there for generations. Again, there is no obligation on the government to give any compensation, if not land for land, as the people have no property rights on the land, and the existing law for land acquisition recognizes only legal property titles. The present legislation gives titles to their life-long possessions. This is the reason for this much opposition to the law. These environmentalists insist that the people should vacate these areas, even though declared without any scientific basis, to give way to the wild life that is non-existent in many cases. So, the important question is: What is the rationale and wisdom in making these areas inviolable? Is it in the interest of the wild life also?

A famous biologist and environmentalist Mr. Madhav Gadgil gave a good illustration of one Bharatpur Bird Sanctuary. After it was turned into a National Park, all the people with their cattle were removed from the area. Because of the absence of buffaloes, which used to bath in the ponds, the ponds soon were covered with some grass. As a result, the fish could not survive. These fish were the food of the Russian birds, Crain. Naturally, they stopped coming to Bharatpur! The whole food chain was severed. Similarly, the removal of cow-herds together with their cows caused great harm to the Asiatic lions in Gir National Park in Gujarat. Thus, in India, symbiotic relationship between human beings and wild life has traditionally evolved, the disruption of which causes greater harm than benefit to the wild life also. Yet, interestingly, many environmentalists, disregarding the welfare of the wild life itself, still insist on inviolable wilderness areas. Recently, a writ petition challenging some amendments in the Wild Life (Protection) Act, which are in line with the Forest Rights Act, was filed in the Supreme Court (SC) of India by some environmental groups arguing against the co-existence of people and wild life.

The Challenges Ahead:

One challenge would be from environmentalists. There is likelihood that the Forest Rights Act would also be challenged by them in the SC. After that hurdle is passed, there would be more challenges in the implementation of the Act. Before the implementation of the Act, the Rules would have to be framed. The process of rule-making is going on in the right earnest. We also have been deeply involved in the process and have submitted detailed suggestions to the Committee constituted for the purpose. The implementation of the Act would start only after the rules are framed and approved by the parliament.

Also there is the big challenge of proper implementation of the Act, once it becomes effective. The Act entrusts village assembly (*Gram Sabha*), i.e. assembly of all adult men and women of a village a major role of initiating “the process of

determining the nature and extent of individual or community forest rights or both by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim”. We shall have to be deeply involved in the whole process of making people aware of the provisions of the Act as well as preparing them for the huge task. Many villagers are illiterate. Yet, in many villages, they have started successfully measuring the lands and preparing maps after our training camps. They have also started the process of identifying forest areas that they would like to manage on their own for sustainable use and discussing various measures that they would take for regeneration of forests. More such camps / meetings shall have to be organized in the coming months. Also, it is not enough that they get titles to the lands, but soil and water conservation measures are also necessary to increase the soil fertility and productivity as well as water retention. For the last two years, we have started encouraging them to undertake some simple measures like erecting field-bunds and gully-plugging for this purpose and people have also responded enthusiastically to this.

The Act would be meaningful only if it is properly implemented and all the families and communities get their rightful dues. This is a big challenge. We have no option but to take up this challenge, at least for the areas where we have been working for past many years. Thus our work for the next couple of years is clearly cut out for us. We would need help and encouragement from friends and well-wishers in this work.

Vadodara

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