

Indian Forest Act Amendment and its Impact on Adivasis in India

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INTRODUCTION

On March 20th, 2019, the Government of India proposed an overhaul of the Indian Forest Act 1927 which was framed and used by the erstwhile British colonizers primarily to produce and extract timber, while curtailing the rights of millions of tribals who shared a symbiotic relationship with forest land and its resources traditionally held control over it. While the Government claims that the purported intent of the new Act is to increase forest cover by addressing the contemporary challenges faced by the Indian forests, the draft bill which has been sent to the State Governments to be reviewed by them before June 7th has been accused of being repressive and dismissive of the rights accorded to socially marginalized tribal groups over traditionally held forest resources by Article 244, schedule 5 and schedule 6 of the Indian Constitution. The draft bill, by centralizing power over forest territory in the hands of the Central and State governments, also seemingly undermines the provisions of the Forest Rights Act 2006 [1].

The Bill seeks to accord local forest department officials with quasi judicial powers by providing them with immunity from prosecution for warranted or unwarranted use of force, to prevent forest offences. The Act also gives forest officials with the right to conduct an enquiry against, arrest, or shoot a citizen in response to a 'suspicion' that he or she may have committed a forest related crime. These legal protections provided in the Act to the forest department officials by this act are akin to those provided to soldiers in conflict zones under Armed Forces Special Protection Act (AFSPA). The draft Act also marginalizes the role of local systems of self governance by enabling these officials to run parallel systems of 'village forests' in which they would be given the last say, and additionally allows them to veto the provisions of the Forest Rights Act 2006, making all the rights accorded to the local citizens subject to the discretion of the officials.

Amendments have also been proposed to the nature of relationship shared by Central and State governments in terms of the control that they hold over forest resources. The bill contains clauses that allow the Central government to interfere with the State Government's management of these resources, overruling orders passed by them if it deems fit. These proposed

amendments override the administrative powers accorded to the State Governments, and go against the federal system of relationships between the Centre and the States by centralizing power in the hands of the Centre. They also strip the State governments of the authority to come to the aid of locals who have been accused of illegal extraction of forest resources by taking away their power to withdraw the cases that have been registered against these tribals.

The proposed provisions also harshly curtail the rights of the local tribal communities, alienating them from the land and resources that they traditionally owned and continue to be dependent upon. The Act intends to make previously bailable offences non bailable, shift the onus of proving their innocence onto them and also incorporates the colonial era practices of collective punishment for crimes committed by individuals by stating that if any theft of forest resources or grazing occur, the State governments can respond to the same by directing that all rights to pasture and rights to forest produce within that area be suspended for any period of time that they deem fit. In addition to this, it allows the State government, in consultation with the Centre, to reduce the forests dwellers' access to forest produce, which the Forest Act 2006 recognizes them as owners of, by paying them money or granting them non forest land. Such an act by the state could amount to the eviction of the tribal population from the forests, and a blatant violation of the rights that have been accorded to these forest dwelling communities, who have already been systematically subjected to historical injustices by the instruments of the institution of the State [2].

While the Act undermines the rights of the tribal communities and the authority held by local bodies of administration, it incorporates provisions for the commercialization of forests in accordance with the principles of neo liberal policies by providing for a new class of 'production forests' to promote commercial agriculture. The proposed piece of legislation allows the State government to open up any piece of land that it deems fit for commercial plantations that would be managed either by forest administration or by private entities. It also provides for the privatization of forest land, thus undermining the clauses of the Forest Rights Act 2006 which provides for a democratic governance of forests and accommodates the interests of the

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vulnerable communities that have a stake in the management of the forests and their resources. The proposed Act, thus, allows for private accumulation of forest resources at the cost of already impoverished and marginalized groups.

Adivasis and other members self governing tribal communities that traditionally share a codependent relationship with the forests of India are the most vulnerable stakeholders who are directly impacted by the provisions of this Act. Over 8.08% of the Indian population consists of these Adivasi tribals whose interests are affected by the implementation of the Draft Act. Currently, the nature of the relationships that these tribals share with the forests, the State and the officials belonging to the forest department must be examined and comprehended in all of their complexities in order to gain an understanding of how the proposed bill when implemented, would impact their livelihood and their means of sustenance, and whether or not it would lend itself to the purpose of conservation of forest resources, the achievement of which it claims to facilitate.

A majority of the Scheduled Tribe communities, as a result of being alienated from the fruits of the developmental processes of the modern era, are heavily dependent on the forests and their produce for their sustenance. The various facets of this socio cultural exclusion that they are subjected to is further magnified by the fact that their interests are inadequately represented within public institutions. This lack of understanding on the behalf of the State and its institutions leads to the ineffectiveness in the framing and the implementation of policies, plans and programs that are formulated to strengthen tribal rights. Often, the same also culminates into an exploitative relationship between these Adivasis and the forest officials. Efforts by such officials to conserve the forests by curtailing the rights of the tribal communities have not led either to the enhancement of tree cover or to the protection of wildlife that form a part of these forests. Instead, they have merely contributed, either directly or indirectly, to the growth of extremist groups in these regions by creating an environment where the marginalized tribals are attracted to such groups which pose as response mechanisms against the atrocities of the State and its machinery. The alienation of these tribals from their forest land also prevents them from investing time and energy into ensuring the conservation of its resources by introducing a sense of impermanency into the relationship shared by the two entities. Thus this curtailing of rights by the Government with the purported interest of ensuring conservation often has a counterproductive impact on the sustenance of these forest resources. When faced with such a situation, it becomes imperative for the government to recognize the symbiotic nature of the relationship between the tribals and the forest land; and to understand that the only sustainable way of ensuring the preservation of these resources is to involve the tribals in the processes of forest conservation in a way that accommodative of their needs. To do this is to realize that the survival of the forest is dependent upon the survival of its people [3].

In spite of the plethora of developmental interventions carried out by the State in post independence India, the tribal communities by and large remain marginalized barring few

exceptions. The same can be deduced from the poorness of the Human Development index (HDI) indicators in these regions. It has been found that Scheduled tribe communities score 32% lower in the HDI index than other communities. Literacy rate amongst forest dwelling tribals according to the 2011 Census is only 59% as opposed to the national average of 63%, and while there has been an improvement in the gap between the ST's and the rest when it comes to the completion of primary schooling, post liberalization, the gap between the two groups has gone up from 14.2% in 1991 to 17.7% in 2001 in the important area of secondary education. It has also been found that 28.9% of such tribals have no access to healthcare facilities and only 43.3% of them have access to clean drinking water. All these layers of deprivation culminate in the Human Poverty Index rankings which show that ST communities rank 29% higher than the rest of the country in all metrics of poverty, and the fact that 49.5% of all forest dwelling tribals in India reportedly live below the poverty line. In the face of such data, it becomes evident that the current system of development does not accommodate the interests of these traditionally disadvantaged citizens. When faced with an intrinsically exclusive economy that's increasingly antithetical to their needs and aspirations, these communities having been cut off from basic educational and socio economic resources, remain dependent on the forest resources that were traditionally possessed and managed by them.

A large portion of the members belonging to these tribal communities engage in agricultural activities as a means of sustenance. 83% of them cultivate patches of cleared out forest land, a practice known as 'nevad' while another 8% of them are landless agricultural laborers. The dependence of these communities on the bounty that they receive from the forests around them is multifold. Since almost all of the Adivasis have marginal landholdings, their livelihood is largely dependent upon the use of forest resources and the maintenance of livestock. Access to the fodder that is provided by the forests allows them to have livestock which they wouldn't otherwise be able to sustain. The forests are also an important source of building material, firewood, medicine, and various other forms of minor produce that can be sold in the haat. Forest land additionally, helps these communities ward off starvation during periods of drought or famines as it enables them to draw resources from, make artifacts out of them and use the proceeds from the sale of these artefacts, and other forms of forest produce, to ensure their sustenance. These alternate sources of income derived from the forests also prevents these communities from having to migrate during times of drought.

The incontestable economic dependence of the tribals on forest resources and the contextuality of the socio cultural, and religious relationship that they share with the forests that they reside in, therefore, must be recognized and understood. The Adivasis understand the individuals and the communities as entities that belong to the forest land by virtue of the fact that their ancestors reside within it. The territory is considered an extension of the communities' collective conscience with not only economical, but also great social, political and cultural significance. This symbolic meaning attached to the forest by the tribal communities ensure that their members interact with it in a way that ensures that they remain protective and their

resources, conserved. Their respect for the judicious and constrained use of forest resources is also embodied in ritualistic practices that are traditionally followed by these communities. It is considered taboo for example, to feed one's cattle green fodder or to pluck certain plants and flowers before the end of the rainy season. This systemized consideration for the forest's resources stems from the tribals' sense of ownership of and belongingness to the forest land.

State policies, laws, and practices, however, have systematically attempted to uproot the Adivasis from the forest land, thus consistently depriving them of the forest produce that they rely on for their sustenance. Legislation, which arose in the colonial era to allow for the commodification of the Indian forests did so by undermining the needs of these marginalized communities. In order to secure timber for ship building and railway expansion, the colonial government enacted the Indian Forest Act 1927, which gave the state "exclusive control over forest protection, production and management", placing the previously self sufficient Adivasi communities at the mercy of a centralized governing body. The tribals found themselves having to approach the government to access resources that they had previously taken directly from the forests. The practice of 'nevad' which provided these communities with their means of subsistence was labelled as 'biotic interference', and made illegal and punishable by law. Taxes were imposed on the agriculture carried out by the tribals first on the basis of the fertility of the land that they were cultivating and then at pre determined standardized rates. The need to pay these taxes forced the otherwise self sufficient Adivasi communities to engage with the market by selling their agricultural produce in the haats in order to earn the money required to pay these taxes. The livelihood of these tribals was suddenly made dependent on market forces beyond their control and simultaneously, the same piece of legislation also divorced them from economic security provided to them by the traditionally held forest resources [4].

State ownership of forests was carried over to post colonial India, effectively sealing the fate of these tribal communities by making them permanently dependent on the State to gain access to resources that were traditionally possessed and controlled by them. The Indian State sought to improve the lives of tribals but intended to do so through the implementation of reservation and attempts to industrialize the tribal areas instead of recognizing the tribal communities' rights over resources that were traditionally held by them. The alignment of the State with corporate interests resulted in the governments' practice of acquiring pieces of forest land held by the tribals through one time payments, and converting them into avenues for commercial plantation. Handouts were given in times of distress but no investments were made to ensure the long term improvement in the quality of lives of these Adivasis. Public systems that recognize the lives of these tribals to cultivate forest land, and make investments in irrigation equipment, etc, could positively benefit these citizens in the long run. Short term employment schemes such as those carried out by the State in the form of road building etc, on the other hand, provide temporary employment but fail to address the underlying causes for poverty in these regions.

The only State acknowledgement of the Adivasis' entitlements over forest resources came in the form of the Forest Rights Act that was enacted in 2006. The draft bill at hand however, systematically undermines the provisions of this Act, which provide Adivasis some degree of control over the use and management of forest resources.

While the government has attempted to justify this alienation of tribals from forest land by garbing it as an attempt at preserving forest resources, there is no data to show that conservation effort carried out by the forest department without the active participation of local communities have resulted in any discernable enhancement of forest cover. This proves the ineffectiveness of these 'reserved' forest enclosures. On the other hand, measures that seek to conserve forests by curtailing the rights of local communities have been found to be counter productive due to the psychological impact that they have on the local tribals. Fear of eviction creates a sense of impermanency in the relationship shared by these communities with the forests around them, and creates an environment where they feel like they have no stake in the long term well being of the forest land. This prevents them from interacting with the forest and its resources in a manner that ensures conservation.

Stripped of the thinly veiled ruse of conservation, it becomes evident that the interest of the state lies in the commercialization of forest produce and in the privatization of forest plantations. Such commercialization of forest resources and cultivation, the increase of which the draft bill supports, leads to increased forest degradation. While the State seems to be intent on framing the narrative around illegal encroachments by tribals preventing the conservation of forest resources, research shows that without competing State sponsored deforestation and the pressure of an increasing population density, activities such as nevad would be both politically and economically stable. This neoliberal orientation of State policy seeks to accord increased access to forest resources to commercial entities at the cost of the livelihoods of already marginalised communities. The State's antithetical approach to the needs of these disadvantaged groups is heightened by the Inadequacy of political representation of these forest dwelling communities in parliaments and legislative assemblies which prevent their interests from being articulated at a policy making level [5].

The serious dearth of representation of Scheduled tribe interests in the central as well as the State legislative bodies is at least partly to blame for the State's ignorance of the needs of these communities. While article 330 and 332 of the Indian Constitution reserve seats for members of Scheduled tribes in the House of Parliament, this measure falls flat and fails to ensure adequate representation of tribal interests as most Members of Parliament and Legislative assemblies who come under this category and belong to big parties are constrained by party ideologies and peer pressure and so, lack the space to assertively fight for the rights of the communities that they're a part of. While this lack of representation of these Adivasi interests makes it unlikely for the government to frame policies that cater to the needs of these forest dwellers, even the few policies that do seek to recognize their rights over forest

resources, prove to be ineffective due to the nature of the relationship shared by these marginalized tribals and the government officials in such areas.

The relationship between the Adivasi citizens and the administrative officials at the local level is characterized by corruption and a sustained exploitation of power. Since the Adivasis themselves are not given high administrative positions at the local administrative bodies, there is a clear socio cultural divide that exists between the citizens, and the local officials. This gap often gives rise to various forms of exploitation and blatant human rights violations. The locals are forced to pay hefty amounts to corrupt patvaris for acquiring of state documents that are supposed to be free, and are also constantly terrorized by forest department officials who engage in excessive litigation against them, often on trumped up charges. This form of exploitation would be expanded by an implementation of the draft bill, which enhances the scope of power accorded to these officials, without making any provisions to ensure that they remain accountable. In such a system, where the dispossessed tribals already look at the State as an antagonistic force, initiatives such as those within the proposed within the draft act which seeks to separate the tribals from the forest resources and increase their dependence on government officials, often push these citizens towards violent extremism.

Historically, attempts made by British colonists to strip these Adivasi communities of the access that they had to the forest resources that they traditionally owned collectively were met with a series of over 75 major riots across the country. Independent India has also seen instances where attempts to stop nevad have sparked off large scale resistance by these tribal communities who depend on the agricultural income that is generated through such a practice for their sustenance.

In addition to instigating violent reactions in the near future, policies such as those that form a part of the draft bill place the State and its interests in opposition to the Adivasis and theirs. This creates an environment where these tribals turn to movements such as the naxal movement to secure their rights because they begin to associate the ideal of democracy with the hegemonic power of a State which is sensitive, only to commercial and business interests. This feeling of alienation from the institution of the State propels the local tribals to turn to alternative systems of justice and governance such as those offered by the Maoists, who they believe are more readily responsive to their needs. The overlap that exists across the country, between States that are dismissive of the tribals' claim over forest resources and States that have seen a rise in mobilization for such movements stands to show that its the government's neglectful attitude towards the interests of these vulnerable citizens that makes these regions fertile for the proliferation of naxalism. This can be seen in the territory of Jharkhand (where forest land acquired from tribals was used for timber cultivation) as well as Andhra Pradesh (where tribal communities were evicted to facilitate use of forest land for the development of infrastructure), amongst others.

In the context of the facts stated above, it becomes evident that the provisions included in the draft bill curtail the right of marginalized citizens to access forest resources without lending

themselves to the purpose of ensuring forest conservation. In an environment wherein the relationship between the tribal communities and the State has historically been marked by the tyranny of exploitation and subservience, to increase the power of State officials is to alienate the already disadvantaged communities from the resources that they've traditionally had access to and continue to be dependent upon. This prevents the Adivasis from being invested in the sustenance of the forest resources around them by creating a sense of impermanence in their relationship with the forest land. Acts, like the draft bill at hand therefore, due to their neo liberal orientation and lack of recognition of tribal rights, work against the causes of forest conservation that they profess to forward. They could also lead to an increase in instances of smuggling (or the sale of forest resources by the officials themselves) due to a removal of checks and balances. Increased power accorded to these forest department officials also expands the scope of corruption. The draft bill also lends itself to an increase in the number of human rights violations against the Adivasis by leaving them with no defense against the trumped up charges filed against them and no way to hold the exploitative officials accountable for their misdoings. In addition to this, the Act by undermining the self governing capacity that has been accorded to these tribal communities in Article 244 of the Indian Constitution, pushes them towards violent extremist groups.

Far from passive victims, the Adivasis have actively been asserting their rights to access resources that the Bill seeks to distance them from. The release of the proposal has been followed by marches across the country where thousands of members from these tribal communities come together to articulate their demand for self governance and autonomy. The Act's provisions' undermining of the powers accorded to the Gram Sabha, a local administrative body that supervises the allocation of resources amongst the tribal population has been widely challenged by disenchanting Adivasis who refuse to allow their access to resources that they consider their own to be regulated by a distant state or judiciary that doesn't understand the intricacies of their needs and aspirations. They ask for the government to take notice of the fact that they've put in decades of unpaid labor hours to take care of the forest lands the State now seeks to separate them from in the name of conservation, and to implement the provisions of the Forest Rights Act. Faced with a population that refuse to be victimized by the systems of administration that have marginalized their interests for decades, it is incumbent upon the State to recognize the autonomy of these groups. It is time for them to understanding that the survival of the forest is dependent upon the survival of its people, and that if they prosper, so will it. A comprehension of this truth will direct the government to the formation of policies that protect the traditional rights of the tribal communities, and fund conservation programs that work in collaboration with them instead of investing in arms and lock up cells that strip them of their means to survival.

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