

HUMAN RIGHTS IN INDIA

Theory and Practice

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Indian Institute of Advanced Study
Rashtrapati Nivas, Shimla

First published 2011

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ISBN 978-81-7986-087-8

Published by
The Secretary
Indian Institute of Advanced Study
Rashtrapati Nivas, Shimla

Typeset by
3A Graphics
New Delhi 110 005

Printed at
Pearl Offset Press Pvt. Ltd.
5/33, Kirti Nagar
New Delhi

FORESTS, THE STATE AND ADIVASI RIGHTS

Ishwar Singh*

In 1983, when I was visiting Bastar for the first time, one Government officer said to me that nobody ever wants to visit the jungle and its jungli-illiterate habitants on her/his own. Whoever comes is invariably the victim of 'P'. Amidst all-round laughter from those present there, he went on to enumerate the 'P's as posting, promotion and punishment – the three reasons, which forced educated urban people to this backyard of civilisation. A trader hastened to add that Bastar was also a good place for making profit. Later I realised that they had forgotten a major 'P' – 'preaching'.

In Bastar or any other adivasi area, most of the non-adivasi consider themselves as the representatives of civilisation. They are the Knights of Enlightenment in these backward and primitive areas. They nurture either hatred or mercy or pride or all the three for the natives. They want to exploit and salvage them at the same time. People working in these areas who have become rich by exploitations of adivasi do not miss opportunities to teach lessons on 'development' and 'values' to the 'savages' living in these primitive areas. Young people coming from nouveau rich bureaucrats insult, abuse and ill-treat the elders of the adivasi communities.

Adivasi movements see the State power, development and

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the law, which go to the adivasi areas in the garb of a liberator, a hero, who can rescue them, across the country as victimisers and villains. A cursory glance at the constitutional and legal provisions and programmes for the adivasi areas would give an impression of governance dedicated to the upliftment and welfare of the adivasis. But the figures of casualties due to disease and hunger, the all round exploitation of these adivasis ousted from the jungles, and many a time evacuated from their native land by quartet of politicians-traders-industrialists-bureaucrats point to a different story altogether – that the multiple constitutional rights and laws are those sacred testaments, which can be invoked from time to time in the name of adivasi welfare.

One conclusion, which can be inferred from the aforesaid situation, is that all the laws pertaining to the issues of adivasis are mere frauds. But this is an inference hastily arrived at. Provisions such as job reservation and those enumerated in the Fifth and Sixth schedules have definitely helped the adivasis to some extent.

The other invariably drawn conclusion is that the existing acts and regulations, especially the Panchayat (Extension to the Scheduled Area) Act, 1996 are sufficient to do justice to the adivasi cause and no further laws are required. What is required is the implementation of the existing laws with honesty and empathy. It is true that whatever few laws exist in favour of the adivasis are either never or badly implemented. One reason given for this is the absence of education, literacy, especially legal literacy among the adivasis. But the issue is not just that of honest implementation. It is also that of loopholes within the laws or existence of another law, which delimits certain laws or sometime makes it completely defunct. Innumerable laws, incongruous with and violating various constitutional provisions and PESA Act, 1996 exist, which render laws favouring adivasi rights meaningless.

After more than sixty years of independence, the State acknowledges that injustice has been meted to the adivasis all along. The Draft National Environmental Policy, 2004 states:

“Give legal recognition to the traditional rights of forest dwelling tribes. This would remedy *a serious historical injustice*, secure their livelihoods, and reduce possibilities of conflict with the forest department, and provide long-term incentives to the tribals to conserve the forests.”¹

A recent letter from the Ministry of Tribal Affairs inviting views/suggestions on the Draft Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 states: “The rights of forest dwelling scheduled tribes who are inhabiting the forests for generations and are in occupation of forestland have, however, not been adequately recognised so far resulting in historical injustices to these forest dwelling scheduled tribes.”²

The agency that does greatest injustice to adivasi is the State itself and what is needed is an open confession and immediate corrections by the State. The saga of injustices is not only part of history but continues and gets worse day by day, especially after Indian State has taken neo-liberal direction, espousing the policies of liberalisation, privatisation and globalisation.

The history of enactment and transition of various laws and policies in adivasi areas expresses the conflict between and within different modes of production (MoPs).³ The MoP of adivasis has been especially vulnerable in the face of dominating MoPs like feudalism and capitalism. There has been a long, continuous and organised attack on two essential resources of the adivasis – the land and the forest, firstly by the non-advansi kings, then by the British and lastly by the State and industrial houses of independent India. In the last few years, foreign capital and Bretton Woods Institutions have also entered the list. The most fatal attack began during the British period which continues to date unabated.

Basically the land and the forest are the two contesting sites, where the interests of the adivasis and that of the capitalist development, often given the name of ‘national development’ come into conflict. It can also be viewed as the conflict between different MoPs over the control and use of natural resources. This is at the roots of the exploitative character of the State

power, development and the laws. If adivasis have been able to get some breathing space in the contested field of law and policy-making, it is due to many factors such as changing environmental discourse and needs of the ruling classes, legitimisation crisis of the State, adivasi rebellions and other socio-political movements of the toiling masses.

The character of the law is essentially political. It expresses the hegemony of dominant classes and sections of society. Law on the one hand expresses the materiality of economic, especially property relation and on the other hand, becomes the locus of struggle, where negotiations and contestations over the meaning, norms and values between different social positions take place. The law weaves together the coercive and consensual aspects of power relations and effectively gives the dominant social positions a repressive command over disadvantaged and dominated social classes.

The rights pertaining to the forest land are the ones that have the greatest bearing on adivasi lives. Keeping in view the above-mentioned framework of laws, this paper would focus mainly on the forest rights of the adivasis. The experience of the Northeastern states is different in many respects and hence, this paper is mainly addressed to the issues of adivasis of the peninsular India. In this paper, at first we reflect on the present scenario, namely, the livelihood and food security situation of the adivasi. Secondly, we try to evaluate the reasons behind the grim situation by reflecting on the historical injustices meted to the adivasi during the pre-colonial, colonial and postcolonial periods and the various forms of exploitation in the different historical periods. Lastly, we reflect upon the Forest Rights Bill that is being presented in the Parliament in an effort to undo the previous injustices.

THE GRIM SCENARIO

According to 2001 census the population of scheduled tribes is 8.43 crores. This is 8.2% of the total population of the country. Adivasis are the most vulnerable, disempowered and distressed

section of the country's population. In comparison to other sections of the population adivasis are at the lowest rank of Human Development Index. They face the most brutal form of poverty and many succumb to starvation deaths.

Latest National Sample Survey (1999–2000) reveals a very disturbing picture.⁴ Every one in two adivasis in India lives below the poverty line in rural areas. This means that the percentage of poor adivasis is double the figure of other rural poor. Over 48 per cent adivasis in rural areas and 35.15 percent adivasis in urban areas live below the poverty line. Poverty increased among adivasis by 5% in rural areas and by 30% in urban areas between 1993–94 and 1999–2000. The below poverty line (BPL) per cent for all agricultural labours is 44.64, while a high 60.69 per cent adivasi agricultural labours live below the poverty line. The percent of BPL adivasi casual labours in urban areas is 63.89%.

Scheduled Tribe is the only strata of the Indian society, whose numbers of poor went up during this period. Even the categories of scheduled castes, agricultural labours and urban casual workers, who are the other most vulnerable groups of the society, have shown some decline in poverty, which is also the trend for the category of total population. 48% adivasis and 38% dalits live below the poverty line in comparison to 29% average rural households. Among adivasis, there is a trend of increase in the percent of agricultural labours in the rural areas and of casual workers in the urban areas. This directly points to the *loss of other means of livelihoods*. An analysis of NSSO data says: "Our more disaggregated analysis by MoL [means of livelihood] categories, within each social group, helped us pinpoint the rise in poverty in the assetless (casual) wage-labour dependent households among the scheduled tribe population as the principal factor underlying a clearly worse-than-average performance in terms of poverty reduction."⁵

There is a trend of rapid proletarianisation among the adivasis. In 1993–94 the share of agricultural labour household was 42% in the rural scheduled tribe population. In 1999–2000 this share rose to 52%. In terms of economic group the shift is

from 35% to 41%. Agriculture labour household was the second largest economic group in the rural ST population in 1999–2000. Now it has become single largest economic group.⁶ The number of adivasi cultivators declined from 68% to 45% in 2001.⁷ From British Raj and particularly after independence with the penetration of capital, industries, mines, market, contractors and big administrative set up in adivasi areas, large-scale influx of non-adivasis took place. The process of grabbing of adivasi lands by these outsiders turned them from cultivators to tenant or landless labourers.

The phenomenon of proletarianisation of adivasis is yet to be adequately researched. Now the slogan of 'Jal-Jungle and Jamin' does not suffice. The issue of control over natural resources is still essential to adivasi movements. However, the issue of exploitation of labour has also become equally important. There is a large-scale migration from adivasi areas, because of land alienation, project-induced displacement and forced eviction from forestlands by forest department. Even land-owning adivasi families generally do not grow enough to suffice for more than three months. Most of the adivasi-inhabited regions have hilly or undulating terrains, which are either solely rain-fed or fallow or dry. The average irrigated area of adivasi districts is very low, though ironically, it is the adivasi who pave way for country's irrigation projects and dams at the cost of displacement from their native lands. The productivity of these lands is quite low. Earlier non-timber forest produces such as fruits, berries, corms, honey, wild grain, etc. helped them to survive to some extent. Now with a restriction on their consumption of non-timber forest produce, a large number of adivasis including cultivators are forced to collect *tendu* leaves or work as wage labourers during the rest of the year.

Scores of adivasi migrate every year to agricultural areas, industrial areas and cities seeking means of livelihood. There is both seasonal and permanent migration. Most of them become footloose labourers. There is no national policy or

special rules or regulations for migrant adivasi and they suffer extreme forms of exploitation and indignities. They even lose their legal status and citizen rights in the course of migration. Benefits of education, health care, ration cards are generally denied to them. This situation invokes the proposition that new areas, where a considerable number of migrant adivasis reside, should be declared as scheduled area. The new slogan for adivasi movement can be 'Jal-Jungle-Jamin-Jatan', where Jatan represents 'shram' or labour.⁸

One grim manifestation of destruction of traditional livelihoods of adivasis is starvation deaths and malnutrition. These are accentuated because of administrative failures and corrupt public distribution system. According to a study of Regional Medical Research Centre for Tribals, Jabalpur, 93% of children of Sahriya primitive tribe are undernourished.⁹ CEHATs' one study, which was submitted to Supreme Court in the right to food case by PUCL, tells us that 80% children of Bhil adivasi community in Madhya Pradesh suffer from malnutrition.¹⁰ A study on the political economy of hunger in Adivasi areas of Rajasthan and Jharkhand states: "A quick review of the major "hunger events" hogging the limelight in cosmopolitan media in the last 25 years suggests that almost all the "hungers hot-spots" of India lie in the adivasi areas and almost every starvation victims is an adivasi."¹¹

In this survey, 99.8% households said that they could not secure two square meals even for a single month of the previous year. The survey tells that 10% of sample adivasi households survived only on distressed food for 3 months and 22.6% of them had survived for 4 months only on poor partial meal.¹² The right to food case (PUCL vs. Union of India and Others, Write Petition [Civil] 196 of 2001) in Supreme Court revealed that over 50 million tones of food grains was overflowing and a large part of it rotting in the godowns of Food Corporation of India, while adivasis were starving to death in six states of the country.¹³

The situation of health and education is no different.

According to 2001 census only 47.10% adivasis are literate in comparison with 64.84% overall literacy rate. Female literacy is only 34.7% among adivasis. But a complete picture does not emerge from this statistics, because there is a high dropout rate among adivasi schools and they have a disproportionately low representation in higher education. The health scenario is much worse. Malnutrition and lack of safe drinking water is intrinsically linked to poor health of adivasis. With the degradation of forests and their dispossession from it, traditional herbal system of medicine becomes weak, while modern medicinal system is either absent from remote areas or malfunctioning. Doctors and paramedical staff normally evade attending the primary health centres of remote areas. Infant mortality rate is 84.2 per 1000 among adivasis in comparison with national average rate of 70. Under-5 mortality rate is 126.6 in comparison to national average rate of 94.9.¹⁴ Such abject poverty, state-induced landlessness and illiteracy push many adivasis to the curse of becoming bonded labour. According to the National Commission for Scheduled Castes and Scheduled Tribes, 83% of the total bonded labours are adivasis.¹⁵

HISTORICAL INJUSTICES

There are many factors behind the displacement, migration and food and livelihood insecurities among adivasis. But the most important is the denial to the tenure and access rights over forests. There has been a long historical process of marginalisation and subjugation of adivasis. The massive dispossession of land and forest rights of adivasis began during the British Raj. But the process of injustices had started a long while ago.

Main resources for India's development come from adivasi areas. Country's industrialisation and urbanisation is dependent on the minerals, dams and power projects invariably situated in adivasi areas. Around 90% of coalmines, 72% of forest, 80% of other minerals, more than 3000 hydroelectric dams and various industries are situated in adivasi areas.¹⁶ However, the

adivasis get hardly any share from this national wealth and remains poor.

Is this a mere coincidence that most of the mineral-rich land is situated in the areas inhabited by adivasis? Or are there some historical forces behind this? Adivasi population lives in approximately 15% of India's geographical area - mainly the forested, hilly, mountainous areas and undulating terrain in plateau areas such as Arawali, Satpura, Vindhyaçal, Nimar, Telengana, Vidarbha, Jharkhand, etc. Except for Northeastern states, where adivasi population is evenly distributed, adivasis are concentrated in certain pockets of the country. In plain areas there is hardly any adivasi habitation. This applies not only to the contiguous plains across the Punjab, Haryana, Uttar Pradesh, but also for the not so wide plains of Chhattisgarh, which lies between the mountains of Satpura -Vindhyaçal and hilly tracts of Bastar. Here the major concentration of adivasis is in the northern districts of Surguja and Raigarh and southern district of Bastar.

The land rich in minerals is usually hard, rocky and is generally poor in terms of cultivation. These mineral rich, difficult hilly terrains, uncomfortable for the non-adivasi populations became home of the adivasis in the course of history. On the process of delimiting of adivasi areas, N.C. Saxena writes that "often these virgin forests were concentrated in infertile highlands, where lived India's indigenous communities who were often forced to seek refuge in forests, being driven from fertile lands by the more aggressive warrior communities."¹⁷ But opening of new vistas by industrial production brought first the British and later the Indian State to these remote areas. The process of dispossessing them from their homes began and took several courses.

The adivasis had been driven out to refuge zones for ages. Janardan Rao characterises this as the process of incorporation and encirclement.¹⁸ Penetration of adivasi areas by various kingdoms has a long history. For example, in Andhra Pradesh, the process of incorporation of adivasi communities began in

the 1st to 3rd century A.D. under the Satavahan dynastic kingdom and continued in the eight century by the Rashtrakutas and in fourteenth to fifteenth centuries by the Kakatiya regimes in the Telangana region.¹⁹ Likewise the Bhils till the eleventh century ruled the Malwa region of the Narmada river valley. First the Solanki kings of Gujarat made inroads into their territory and in fifteenth century the Rajput Kings attacked and subjugated them. In 1437 the Rathore King Anand Dev and his kin captured Alirajpur, Phulmal, Sondwa and Jobat. Later these Rajput Kings were themselves subjugated by the Mugals. By the middle of eighteenth century, Maratha dominance was established in this area.²⁰

Despite the continuous onslaught, which forced them to take refuge in deep jungles, mountains and barren terrains, they did not however lose their sovereignty. Peasant society and landlords did not tamper with their right to jungle. The non-adviasis rulers also avoided tempering with the traditional polity of the adviasis at large. For example, in the Bhil regions, the Rajput rulers often appointed certain adviasis chiefs as representatives who then mediated as a link between the King and the Bhil polity. At the same time, their own Panchayats headed by a group of village elders continued to function and hold power.²¹

The sovereignty of adviasis and their control over natural resources received a massive blow under the British rule in the eighteenth century. Till then the jungles belonged to the adviasis and they subsisted on various forest produces. Forest was sustained by the conservation ethics of the adviasis. Various researches have shown that as opposed to settled cultivation shifting cultivation did not bring permanent and total disappearance of forest. But the British arrival in India changed the patterns of land and forest usage forever.

Here, it may be reminded that by 1860, Britain had become a world champion of deforestation. Besides denuding its own forest it had ravaged the jungles of Ireland, South Africa, North Eastern United States and parts of coastal India. The timber

thus obtained was mainly used in shipbuilding, constructing railways, smelting iron, etc. The colonial administrators of India saw forests as a hindrance to the expansion of agriculture and hence indirectly to increase in land revenue.²²

In the meantime, two factors, which devastated the lives of adivasis, emerged: State and Market. Colonial State declared the forests as state property and the process of dispossession of adivasis from the forests began. The forests became 'a strategic raw material crucial for imperial interests such as Railway expansion and the World wars'²³ and a source for revenue. Colonial State granted private property rights only to continuously cultivated lands and kept forests in the category of Crown Lands. The concept of private property was alien to most of the adivasi communities and taking advantage of this the British Government made off with the common resources of adivasis.²⁴

In most of the adivasi areas, there was a tradition of communal tenure. As the idea of private property did not exist, they lagged behind in securing private ownership rights of the lands at a later date as well. British forestry operations including the felling of trees for timber required a large labour force. Therefore denying adivasis rights to common property resources and their large-scale recruitment as forest workers complied well with the British strategy.

Forest department was established in India in 1865 and was 'assigned the role of a revenue generating organ by the colonial State.'²⁵ First forest Act was also enacted in 1865, which declared that all the forestlands belonged to the State. The forest department with its exclusive and arbitrary control over forestland established its own police, courts and laws.²⁶ The next important forest law was the Indian Forest Act, 1927, which is still in force. This act classified the forests into three categories of Reserved, Protected and Village forests. These laws gave arbitrary power to forest officers. Large-scale eviction of adivasis from reserved forest areas was carried out. They became 'encroachers' of their own habitat, the jungle, where

their forefathers lived from time immemorial. This experience of adivasis must have been like someone telling a household that any of their activity inside the house would be a breach of law. The working methods of forest officers in those days in the adivasi districts of central provinces finds mention in Verrier Elwin's writings, where he writes: "At every turn the Forest Laws cut across his life, limiting, frustrating, destroying his self-confidence. During the year 1933-34 there were 27,000 forest offences registered in the Central Provinces and Berar and probably ten times as many unwhipped of justice. It is obvious that so great a number of offences would not occur unless the forest regulations ran counter to the fundamental needs and sentiments of the tribesman. A forest officer once said to me: "Our laws are of such a kind that every villager breaks one forest law every day of his life".²⁷

THE PROCESS OF INTERNAL COLONISATION

The process of 'internal colonialism' is perhaps an apt expression for describing the post-independence experience of marginalisation and subjugation of adivasis. The draconian laws like Land Acquisition Act, 1894 and the Indian Forest Act, 1927 are in force till date. The independent Indian State not only inherited the colonial laws and policies, but also aggravated the plundering of the common property resources of adivasis. On this process of internal colonisation, Kothari and Ahmad writes: "The patterns of industrialisation reinforced processes that had been introduced by British colonialism and while the empire would pillage the world's natural resource systems and labour – for its industrial, textile and transportation needs, *retaining the same system in the post – 1947 period* meant that we had no choice but to colonise internally."²⁸

After independence the conflict between different MoPs became sharper. Different stakeholders viewed the natural resources differently. The capitalist viewed the natural resources simply as commodity, which can be exploited for the creation

of surplus value. The creation of surplus was the new 'national' goal. The forests and other natural resources are tantamount to 'raw material' for industrial lobby, while for the State these constitute a prime 'source of revenue'. The forest revenue for the years 1951-52 to 1953-54 was around 24 crores and it rose to 472 crores 51 lakhs in 1980-81.²⁹ Export earnings from non-timber forest produces was Rs. 95 crores in 1960-61. It increased to Rs. 4198 crores in 1990-91 and amounted to about 13% of country's total earnings from exports.³⁰ In 2000-2001, export earnings from wood and forest produces was Rs. 4,459 crores.³¹ Raw material and revenue, these two factors have resulted in the overexploitation of the forests. In 1854, when the first forest policy was announced, forest constituted 40% of the country's geographical area. But in 1952, it reduced to a 22%. By the 1980s it went down to merely 10% of the country's area.³²

One major change that occurred after 1947 was the rapid expansion of forest based industry.³³ The hegemony of the bourgeois and urban elite cornered other stakeholders of the forests. Forest produces was provided to industrialists at highly subsidised rates. For example, in Karnataka, bamboo was subsidised heavily for the paper mills and given at a cost of Rs. 15 per tonne, whereas the basket weavers had to buy it from the market at a rate of Rs. 1200 per tone.³⁴ Till sixties, mainly using the 'selection' system of cutting trees fulfilled industrial needs. Then began the more brutal phase of commercial forestry. Now clear felling of large tracts of the forests paves way for plantation of commercial species like pine and eucalyptus.³⁵ The timber-centric approach of forest operations has already altered the bio-diversity of the forests. One can see monocultures of Sal (*Shorea robusta*), and Sagaun (*Tectona grandis*), etc. in large tracts of the forests. The plantation of exotic species like pine has proved to be disastrous for the ecology. The failure of World Bank funded Pine project of Bastar is well known. Bad effects of clear felling and lack of proper regeneration are becoming apparent. First is the reduction

in the availability of non-timber forest produces to adivasis and second is soil erosion and siltation of the water bodies.³⁶

Policy change involves coming together of many factors. Most important among them is the changing requirements and interests of ruling classes. The resistance of dominated section, Peoples Movements and the legitimisation crisis of the ruling block also play roles in the reorientation of policies. While National Forest Policy, 1952 saw the forests mainly as the source of revenue and raw materials; the Forest Policy of 1988 introduced the elements of the conservation of the forests and environment. It gave preference to mixed forest over monocultures. This was also the time, when World Bank had started taking more and more interest in the affairs of the forests world over. The major reason for the imperialist nations to take interest in the forests was their hunt for a new supply base of raw materials as these nations had already overconsumed their own forests. Is it mere accident that industrial lobbying for captive plantation was started in eighties in India? The other reason is more revealing. The countries, which became rich and advanced at the cost of destroying natural resources and ecological balance of the world, are now invoking the lofty ideal of a common planet.

Now their motto is that developing countries should conserve the forests so as to save the world from global warming and imminent catastrophe. These forests would absorb carbon emanated from the affluent, wasteful and consumerist life-style of the developed nations. The rich countries are, however, continually evading the question of compensation they owe to the countries, which have suffered and become poorer. There is no dissonance in the apparently contradictory demands of the international players in developing countries' forests. For attaining their goals – seeking new areas for raw materials and conservation – both international and national bourgeoisie rely on a single strategy of denial of rights to the forest dwellers. On the issue of eviction of adivasis from the forest, there is a consensus between the developmentist and the conservationist.

The wildlife (Protection) Act, 1972 and the Forest Conservation Act, 1980 have a history of being employed for the eviction of adivasis from the forests. However, the same reserved forests, sanctuaries and national parks are being blatantly de-notified for the construction of large dams, mines, firing and nuclear ranges, industries and tourist places. Eco-tourism is the new chorus of the international aid agencies, governments, forest corporations, urban wild life and environmental lobbyists and World Wide Fund for nature, etc. As the agenda of capitalist development is pushed forward in the name of development, in the same way the urban elites' agenda of conservation is pushed forward in the name of conservation. Naturally the conservationist goals of ex-Maharajas, ex-Shikaries, tourists and other privileged sections cannot coincide with the ethos of subsistence economy of marginalized adivasis. For urban dwellers, forest is equivalent to the abstract idea of environment. For a typical urban tourist forest is beautiful scenery, a picnic spot, a place to spend weekend and also for honeymoon. Trees provide the idyllic surroundings to be romantic in the fashion of Mumbai masala films. The picture post-card beauty of the forest can be consumed along with Pepsi cola. A National Park devoid of poor adivasi can also become a national symbol of development. But for adivasis the forest is their home, their habitat, and their very core.

Paradoxically, adivasis are being driven out of the forests, their ancestral homeland in the name of conservation of the forests and wildlife, while tourist activities are being promoted. One statement of the Ministry of Environment and Forest in parliament on 16 August 2004 said that 'encroachers' have been evicted from 1.52 lakh hectares of land between 2002 and 2004.³⁷ Recently a report in the magazine *Down to Earth*³⁸ exposed the vested interests of the wildlife lobby of India in shouldering the flag of conservation of forest wildlife. The report informs that till 1990 there were around 10 hotels in the near vicinity of Ranthambore Tiger Reserve, whereas their number

has gone up to 33 now. These include certain hotels, which charge up to 30,000 for spending luxurious nights in the surroundings of wild tigers. Some of these are situated within a 500-metre radius of the park boundary; some others are at zero distance from its boundary; and one is within the forest area. Obviously, a joint approval of government officials is behind all this. The list enumerating the names of the owners of these hotels and guesthouses reveals the battle of power, which goes on between the environmentalism of poor and environmentalism of rich in India. The list includes 'Valmik Thapar, well-known conservationist and member of the Supreme Court's Central Empowered Committee, and his relatives, and Fateh Singh Rathore, former field director of Ranthambore and now vice-chairman of Tiger Watch, a non-governmental organisation (NGO), and his family. These properties are within 500 metres of the forest boundary.'³⁹ The list also includes the names of Jaisal Singh, Thapar's nephew, Govardhan Singh Rathore, son of Fateh Singh and executive director of 'prakritik Society' and Usha Singh, wife of Govardhan Singh. Allotment of some of these hotels and farmhouses was cancelled previously as they were situated in forestland but were re-alloted in the name of 'social forestry.'

Down to Earth raised the question that 'what happens when the owner-proponents of tourism are the same as the manager-proponents of conservation? Does this compromise their position? Does this compromise conservation?'⁴⁰ This whole issue brings out a stark truth that actually 'people who direct conservation policies profit from the regulations that promote tourism and park management.'⁴¹

The dispossession of adivasis from the forests and the commercial-industrial use of the same are often legitimised in the name of 'national interests'. The exclusion of adivasis in the very first Forest Policy (1952) of the independent Indian State from benefiting from the forest management was justified in the name of 'national interests'. For this policy, the presence of local communities close to a forest was a mere 'accident'.⁴²

Often Jawahar Lal Nehru's Panchshil policy for tribals is eulogized for its concern for the cause of adivasis. But when we place this policy together with the process of internal colonization, then we find that Panchshil and other holy pronouncements concerning the rights of adivasis actually fulfilled the legitimizational requirements of the nascent State, which pursued the path of capitalistic development from the outset. On the one hand the State's industrial, revenue, forest and other policies disempower the adivasis from their erstwhile traditional rights and on the other hand the State announces many welfare schemes and special packages for adivasis. However, in the name of national interest opening doors of adivasi regions for capitalist developmental activities has been the cornerstone of State's policy. A report of National Council of Applied Economic Research says: "Fortunately, the tribal areas of the state are rich in industrial and power potential. There is no reason why in the wider interest of the nation and in the long-term interest of the tribals themselves, industries should not be developed and localized in tribal areas."⁴³

Similar concerns for the integration of the adivasis into the mainstream developmental path was exhibited in the report of the first Scheduled Areas and Scheduled Tribes Commission, 1960-61, chaired by U.N. Dhebar. It declared that 'our objective is advancement and integration of tribals'.⁴⁴ The only contribution of the Elwin-Nehru Panchshil policy, it seems, was the introduction of the official discourse of protective integration of adivasis and a more sensitive administration in their areas. However, it remained at the level of discourse only. Earlier the official discourse on adivasis was either protective or integrationist.

The Panchshil policy could not cancel the continuation of colonial laws like Land Acquisition Act, 1894 or Forest Policy of 1927. Post-colonial laws like the Coal Bearing Area Act, 1957 also continue unabashed till date. Regarding displacement, the most commonly heard statement is that somebody has to pay the price for the development. Most of the time, it is adivasi,

who pays the price. There is a famous statement of Nehru concerning the villagers who were to be displaced by the Hirakud dam that “if you are to suffer, you should suffer in the interest of the country.”⁴⁵ Later Indira Gandhi has said in a letter, dated 30 August 1984, to Baba Amte: “I am most unhappy that development projects displace tribal people from their habitat, especially as project authorities do not always take care to properly rehabilitate the affected population. But sometimes there is no alternative and we have to go ahead in the larger interests.”⁴⁶

The ‘larger interests’ and ‘public interests’ are the expressions, which hide class interests. In the first four decades of independence, lakhs of adivasis paid the price for nation’s development, when they were displaced and major source of their subsistence the forests were destructed by hydel projects, dams, industries, mines, firing ranges, nuclear testing ranges and other developmental projects. But eighties onwards the same State and urban elites comes to announce that somebody has to pay the price for conservation of nature and protection of wildlife. So end of the story remain the same, *whether it is development of the nation or conservation of environment*, ‘the somebody, which has to pay the price’ is inevitably the adivasi. The conflict between different stakeholders for the control, access and allocation of the natural resources is also fought at the level of ideological discourses. The State and the ideologues of ruling classes in fact strategically employ both type of arguments – developmental and conservationist to legitimise the expulsion of local communities from the natural resources.⁴⁷

Different researches have given count of the number of persons displaced from the projects like dams, mines, and industries between 2 and 3 crores. Almost half of these displaced persons are adivasis. They are only 8 percent of total population of India, but they constitute 40% of displaced persons. If we add the numbers of displaced persons after 1990, this would go to 50%.⁴⁸

The constructions of large dams and other projects and the destruction of the subsistence economies of adivasis can be

seen as a regular feature of the process of primitive accumulation for the expansion of capitalism. Dams restructure the relations of production in command area as well as in submergence zone. If displacement from the submergence zone of a dam produces cheap labour for the bourgeoisie, the irrigation in the command area advances the patterns of capitalistic agriculture.⁴⁹ This process of primitive accumulation commodifies the environment and dispossess the adivasis and other sections of peasantry from the common property resources such as the land and the forests, thus destroying their independent means of livelihoods and making them available as cheap wage labourers for capitalist agriculture and industries. The process of primitive accumulation is mainly responsible for integrating pre-capitalist socio-economic formations into capitalist economy.⁵⁰

FORESTS RIGHTS BILL, 2005

The proposed Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 has stirred a lot of hopeful discussions and an equal amount of acrimony. This Bill that came after 58 years of independence, will only partially set right the historical injustices incurred to the adivasis, which we have already discussed. However, the final shape in which it will be enacted in the parliament remains to be seen. A strong lobby of urbanites, environmentalists, wildlife advocates, forest officials, neo-liberal gurus and their disciples in government, media and academics have raised a hue and cry against this Bill and will try their level best to dilute it.

This Bill claims to represent a major paradigm shift in the approach towards forest dwelling scheduled tribes (FDSTs) and talks of the necessity of assertion of their legal rights.⁵¹ The Bill accepts that tribals have been living in the forests for generations and also that traditional right of them on forestlands was not adequately recognised earlier. According to the Bill the Forest Conservation Act, 1980 had further worsened the problems of FDSTs. All this led to a situation, where FDSTs

were mistakenly looked upon as encroachers and a threat of eviction from their own land always loomed large on them. The lack of clear land titles also deprived them from the benefits of various governmental schemes. Even the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 including the conferment of ownership rights over minor forest produces cannot be extended to reserved forest area.⁵²

The Forest Right Bill recognizes overall 13 rights of FDSTs. It includes the right to hold and live in the forestland under individual or common occupation for habitation or self cultivation; nistar rights; right of access to the use or disposal of minor forest produce; rights for conversion of a forest village into a revenue village; right of habitat and habitation for primitive tribal groups; community rights to intellectual property, etc.⁵³

But the major shortcoming of the Bill is that it recognizes forest rights of only those FDSTs, who have been occupying the land before 25 October 1980. Such FDST nuclear family would be allotted a maximum of 2.5 hectares of land. This Bill is a positive step towards the rectification of some of the past wrongdoing of the State, however, it does not propose any radical change. Firstly, the bill does not take into account lakhs of adivasis, who had to abandon the jungle because of historical injustices. The secondly, it does not recognize the territorial rights of adivasis over forests, which cannot be vested without a radical framework of autonomy and self-rule.⁵⁴

It only promises to regularize the 'encroached' lands, which according to the Ministry of Environment and Forests is only 1.25-1.34 millions hectares or 1.91% of the total forestland of the country. One fails to understand the angry noises made by anti-Bill lobby, because the Bill only tries to recognize the 'rights of already settled adivasis to this minuscule proportion of forest land in India'.⁵⁵ It is evident that not a single inch of that land will be regularized, which was not occupied before 1980, then how does the question of damage to forest cover arise? As far as the cut-off date for the regularization of so-called encroachment is concerned, provision is already there in the

National Forest policy of 1988, which could not be implemented due to insincere approach. This Bill actually only backtracks the order of Ministry of Environment and Forest (MoEF), which promised to regularize encroachments up to 1993. On the contradictions inherent in this forest Rights Bill, EAS Sarma comments: "The preamble recognizes the adivasi to be the original resident of the forests, whereas the language in the subsequent sections sounds as though the adivasi is, after all, an 'encroacher'. There is a 'cut off'" date prescribed for the application of the law and it clearly negates the core concepts of the adivasi being the original resident."⁵⁶

The misinformation campaign unleashed against this bill is a reminder to the adivasi and other people's movements, and human rights advocates, academics and activists that any undoing of historical injustices would always be fought against by vested interests. The control over natural resources is still the bone of contention. Between 1980 and 2004, 9.81 lakhs hectares of forests was diverted for the 'non-forest' activities, which have benefited 11,282 industrial units and development projects. Ironically this land is just equal to the 73% of the total 'encroachment' area.⁵⁷ Between 1951 and 1981, a total of 40 lakhs 24 thousands hectares of forests was already diverted to industries and projects. A large numbers of adivasis were displaced by these diversions.⁵⁸

There is a difference between an opponent and a critique of the Forests Rights Bill. Critique's point of view is that this is a welcome, but not a radical step. However opponents try to hold adivasis, and not commercial-industrial sectors responsible for the destruction of the forests. But the opponents are unable to address a simple fact that the forests can be saved only in the adivasi areas. There are 593 districts in the country, of which 187 districts have been identified as tribal districts. According to Forest Survey of India Report, 2003, 63% of the forests today are located in these 187 districts, though the area of these districts is only 33.6% of the country's total area. The number of districts having more than 67% of their area under forest cover is 58, out of which 51 are adivasi districts. Moreover,

these 187 adivasi districts have recorded an increase of 3,21,100 hectares in the forest cover from 2001 to 2003.⁵⁹ Forests of India were sustained by the subsistence economy and conservationist ethos of adivasis, and yet it was the adivasis who had to bear the brunt of wildlife (protection) Act, 1972, the forest conservation Act, 1980, etc.

There are many provisions in the constitution of India safeguarding the interests of the Adivasis. Articles 244 (1) and 244(2) provides for the Fifth and Sixth Scheduled Areas respectively. Other articles for the empowerment of adivasis include Article 14, 15(4), 16(4), 16 (4A), 46, 243 (d), 275(i), 330, 332, 335, 338A 339 (1), 340, 342. Apart from it, PESA Act, 1996 has also been enacted. Nehru's Panchshil policy for the adivasi is often referred to. And now comes the Forest Rights Bill, 2005. But despite all these legal provisions, why are the adivasis the most dispossessed, subjugated, marginalized and exploited section of the Indian society? Why has no central government in the country ever made a move to amend those laws and acts, which simply violates the provisions of Fifth and Sixth Schedule of the Constitution and PESA Act 1996? Why the colonial laws like Land Acquisition Act, 1894, which does not have any provisions for rehabilitation⁶⁰ and Indian Forest Act, 1927 are still in force? Between 1951 and 1988, Indian Forest Act, 1927 was employed for the declaration of 26 million hectares of forest as 'national' forests. Forest area under the control of the State increased from 41 million hectares to 67 million hectares, completely overlooking adivasi customary rights.⁶¹ Can the laws like PESA Act, 1996 and Forest Rights Bill, 2005 attain their objectives without the cancellation of colonial laws? The laws aimed at empowering the adivasis can be meaningful only when various other conflicting laws and policies such as The wildlife (Protection) Act, 1972, Forest Conservation Act, 1980, Coal Bearing Areas (Acquisition and Development) Act, 1957, National Mineral Policy, 1993, National Policy for resettlement and rehabilitation, 2003, National Environment Policy, 2006, and state codes and acts concerning minor forest produces, mines and minerals, land

acquisition, irrigation, land revenue, etc. would be amended to harmonise with them.⁶² But under the present condition, when the State is pursuing neo-liberal policies in tune with World Bank and WTO, such change seems impossible. It was only last year, when police shot dead 12 Adivasis in Kalinga Nagar, who were opposing eviction from their Lands. 28 adivasis were killed in Orissa alone. Ironically, during last 5 years, MoEF has regularized the diversion of 1224 hectares of forestlands by 17 mining companies in Orissa, despite the ban on de-reservation of forests by Supreme Court.⁶³

NOTES

1. Emphasis added. See The Draft National Environment Policy, 2004, available at www.envfor.nic.in/nep/nep.pdf.
2. Letter of Rajeev Kumar, Joint Secretary, Ministry of Tribal Affairs, No. 17014/4/2005-S&M (Pt.) date 03.06.2005.
3. See for detail Madhav Gadgil and Ramachandra Guha, *This Fissured Land: An Ecological History of India*, Oxford University Press, 1992, pp. 53–59.
4. See for detail K. Sundaram and Suresh D. Tendulkar, 'Poverty among Social and Economic Groups in India in 1990's', *Economic and Political Weekly*, December 13, 2003, pp. 5263–76.
5. *Ibid.*, p. 5275.
6. *Ibid.*, p. 5268.
7. Draft National Tribal Policy, Ministry of Tribal Affairs, p. 13. Available at <http://tribal.nic.in/finalContent.pdf>
8. This expression is used in a report of the workshop on 'Adivasi Rights and the Law' organised by All India Coordinating Forum of Adivasi/Indigenous Peoples, Kalpavriash and Adivasi Rights Law Network.
9. Available at <http://www.righttofoodindia.org/data/sheopur.pdf>
10. See 'Malnutrition Disaster in Madhya Pradesh: A Report by Right to Food Campaign Madhya Pradesh Support group and Vikas Samvad', available at <http://www.righttofoodindia.org/data/mp-malnutrition-samvad.doc>
11. Centre for Environment and Food Security, *Political Economy of Hunger in Adivasi Areas: A Survey Research on Hunger in Adivasi Areas of Rajasthan and Jharkhand*, CEFS, New Delhi, 2005, p. 1.
12. *Ibid.*, pp. 12–13.
13. 'Food must reach the starving, not rot: SC', *The Hindu*, August 21, 2001, Front Page and <http://www.righttofoodindia.org/data/scordersprimer.doc>
14. Bulletin on Rural Health Statistics in India, 2005, Ministry of Health and Family Welfare.

15. Ratnaker Bhengra, CR Bijoy and Shimreichon Luithui, *The Adivasis of India*, Minority Rights Group International, London, 1998, p. 7.
16. *Ibid.*, p. 7.
17. N.C. Saxena, 'Forests, the State and Forest Dwellers' in Smitu Kothari, Imtiaz Ahmad and Helmut Reifeld (eds.), *The Value of Nature: Ecological Politics in India*, Rainbow Publishers, Noida, 2003, p. 84.
18. B. Janardan Rao, 'Adivasi in India: Characterization of Transition and Development' in T.V. Sathyamurthy (ed.), *Region, Religion, Caste, Gender and Culture in Contemporary India*, Oxford University Press, New Delhi, 1998, pp. 419–422.
19. S.K. Saha, 'Historical Premises of India's Tribal Problems', *Journal of Contemporary Asia*, July–Sept., 1986, pp. 274–319.
20. Amita Baviskar, *In the Belly of the River: Tribal Conflicts over Development in the Narmada Valley*, Oxford University Press, 2004, pp. 54–56.
21. *Ibid.*, pp. 55–56.
22. Ramchandra Guha, 'Fighting for the Forest; State Forestry and Social Change in Tribal India' in Oliver Mendelsohn and Upendra Baxi (eds.), *The Right of Subordinated Peoples*, Oxford University Press, Delhi, 1994, p. 22.
23. Madhav Gadgil and Ramchandra Guha, *This Fissured Land: An Ecological History of India*, p. 193.
24. N.C. Saxena, 'Forests, the State and Forest Dwellers', pp. 84–85.
25. Madhav Gadgil and Ramchandra Guha, *This Fissured Land: An Ecological History of India*, p. 193.
26. Archana Prasad, *Environmentalism and the Left: Contemporary Debates and Future Agendas in Tribal Areas*, Leftword, New Delhi, 2004, p. 31.
27. *The Tribal World of Verrier Elwin: An Autobiography*, Oxford University Press, Delhi, 1989 (1964), p. 115.
28. Emphasis added. Smitu Kothari and Imtiaz Ahmad, 'Nature as Value: Ecological Politics in India' in Smitu Kothari, Imtiaz Ahmad and Helmut Reifeld (eds.), *The Value of Nature: Ecological Politics in India*, Rainbow Publishers, Noida, 2003, p. 11.
29. Peoples Union for Democratic Rights, *Undeclared Civil War: A Critique of the Forest Policy*, PUDR, Delhi, 1982.
30. John Samuel (ed.), *Struggle for Survival: A Resource Book on the Status and Rights of the Adivasi Communities in India*, National Centre for Advocacy Studies, Pune, 2002, p. 272.
31. Ruksan Bose, 'Too cut and Dried', *Down to Earth*, July 31, 2005, p. 26.
32. Virginius Xaxa, 'Tribes in India' in Veena Das (ed.), *The Oxford Companion to Sociology and Social Anthropology*, Oxford University Press, New Delhi, 2003, pp. 388–389.
33. Madhav Gadgil and Ramchandra Guha, *This Fissured Land: An Ecological History of India*, p. 185.
34. Centre for Science and Environment, *The State of India's Environment 1984–85: The Second Citizen's Report*, CSE, New Delhi, 1985, p. 368.

35. Madhav Gadgil and Ramchandra Guha, *This Fissured Land: An Ecological History of India*, pp. 185–188.
36. N.C. Saxena, 'Forests, the State and Forest Dwellers', p. 89.
37. Jean Dreze, 'Tribal evictions from Forestland', March, 2005, available at <http://nac.nic.in/concept.htm>
38. Kushal Pal Singh Yadav, 'Got It!', *Down to Earth*, December 15, 2005, pp. 30–38.
39. *Ibid.*, p. 34.
40. *Ibid.*, p. 30.
41. *Ibid.*, p. 30.
42. Cited in Madhav Gadgil and Ramchandra Guha, *This Fissured Land: An Ecological History of India*, p. 194.
43. National Council of Applied Economic Research, *Socio-economic Conditions of Primitive Tribes in Madhya Pradesh*, NCAER, New Delhi, 1963, p. VI.
44. Cited in Amit Prakash, 'Decolonisation and Tribal Policy in Jharkhand: Continuities with Colonial Discourse', *Social Scientist*, July -August, 1999, p. 135.
45. Cited in Peter Penz, 'Displacement Ethics', available in <http://www.fmreview.org/FMRpdfs/FMR12/fmr12.1.pdf>
46. Cited in Smitu Kothari, 'Whose Nation? : The displaced as Victims of Development', *Economic and Political weekly*, June 15, 1996, p. 1476.
47. N. Peluso, 'Coercing Conservation? : The Politics of State Resource Control', in Stuart Corbridge (ed.), *Development: Critical Concepts in the Social Sciences*, vol. II, Routledge, London, 2000, p. 255.
48. Minority Rights Group International and Centre for Social Knowledge and Action, *Report on a Round table on Development, Equity and Justice: Adivasi Communities in India in the Era of Liberalisation and Globalisation*, MRGI and SETU, Ahmedabad 1999, p. 6.
49. Alph Gunvald Nilsen, *Dispossession and Resistance in the Narmada Valley: a Marxist Perspective*, An Unpublished Manuscript, 2003, p. 12.
50. See Judy Whitehead, 'Space, Place and Primitive Accumulation in Narmada Valley and Beyond', *Economic and Political Weekly*, October 4, 2003, pp. 4224–4230.
51. A Press Information Bureau press release, May 29, 2006.
52. See Note on the 'Scheduled Tribes [Recognition of Forest Rights] Bill, 2005', No. 17014/4/2005-S&M(Pt.) Government of India Ministry of Tribal Affairs, available at <http://tribal.nic.in/bill.pdf>
53. The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, chapter II, section 3, available at <http://tribal.nic.in/bill.pdf>
54. J.J. Roy Burman, 'The Tribal Bill: A Rejoinder', *Economic and Political Weekly*, December 24, 2005, p. 5514.
55. Mihir Shah, 'First Push Them In, Then You Throw Them Out', *Economic and Political weekly*, November 19, 2005, p. 4897.

56. EAS Sarma, 'The Adivasi, the State and the Naxalite: Case of Andhra Pradesh', *Economic and Political Weekly*, April 15, 2006, p. 1436.
57. Suhas Chakma, 'In Defence of Draft Forest Rights Bill: De-constructing Urban View of the Jungle', Available at <http://www.achrweb.org/reports/india/Forest0105.pdf>
58. National Centre for Advocacy studies, *Advocacy Update on Land Rights*, Oct. –Dec. 2005, p. 14.
59. The Draft National Tribal Policy, Ministry of Tribal Affairs, pp. 6–7.
60. Abhijit Guha, 'Resettlement and Rehabilitation: First National Policy', *Economic and Political Weekly*, November 12, 2005, p. 4798.
61. Madhu Sarin, 'Scheduled Tribes Bill, 2005: A comment', *Economic and Political Weekly*, May 21, 2005, p. 2131.
62. See NC Saxena, 'Policies for Tribal Development: Analysis and Suggestions', available at <http://nac.nic.in/communication/tribalannex3.pdf>.
63. National Centre for Advocacy Studies, *Advocacy update on Land Right*, Oct.–Dec. 2005, p. 28.