

## EXPROPRIATION IN THE NAME OF CONSERVATION

Relevant for: Developmental Issues | Topic: Rights & Welfare of STs, SCs, and OBCs - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

“The proposed amendments to the Indian Forest Act seeks to turn communities into the problem.” Kand tribal women in Odisha. Ashish Kothari

The Indian Forest Act, 1927 was a remarkable piece of expropriation in the name of conservation. The British government carried out one of the largest land expropriations in history, where the rights to occupy and use forests were transferred from communities with customary and historical property rights to the colonial Central government. The act offered a fig leaf that those who could establish their rights were excepted from this expropriation (of course, few could establish their rights, given that their rights were not property rights as per the British government’s conception of property). These expropriations were ameliorated in some small measure in the Forest Rights Act of 2006, but they have remained the edifice of the relationship between the government and the Adivasis. It is the forest department that Adivasis must deal with as their primary government agency. That a democratic government almost a century later seeks to expand and strengthen the tools of the Indian Forest Act is remarkable and shocking at the same time.

The ostensible inspiration for the amendments proposed by the Central government is the same as that of the colonial regime: the protection of forests. However, the government goes a step further than the colonial government and seeks to criminalise the communities, primarily the Adivasis, who dwell in these forests. Forest rights activists have expressed concern that forests could turn into a ‘police state’. A better description would be that they would become a more draconian police state.

According to the draft amendments, the forest department will now be able to enforce the property rights of the government to forests at the exclusion of Adivasis dwelling there, through preventive arrest provisions. Certain offences will be made non-bailable. The presumption of innocence is reversed. Alleged encroachers can be arrested without warrant. Forest officials will be given the authority to use arms against tribals for “violation of laws”.

The draft says the ‘forest’ will not be limited to land owned by the government; it will include any flora considered forest, as a 1996 Supreme Court order had expanded the definition of forest. The Central government will be able to change the classification from ‘unprotected’ to ‘reserved’ or ‘protected’, and the erstwhile land owners will be subjected to penal provisions for customary use of their land.

The fears of a draconian police state are not alarmist. The criminal justice system in States such as Chhattisgarh is inundated with cases against Adivasis who exercise their forest rights. Yet, the amendments proposed seek to limit the discretion of officers to withdraw any offences, ensuring a protracted legal process, with prolonged incarceration.

It is an old adage that those who forget history are bound to repeat it. As a young editor in Germany, Karl Marx was radicalised by the use of penal provisions to prosecute people collecting firewood in the forests, an old custom. With increasing industrialisation, feudal property owners could monetise the firewood, and the customary rights of people to collect firewood was curtailed. Marx was incensed at the plight of those jailed for this infraction, which accounted for the majority of penal cases in the prosperous Rhineland.

The Forest Rights Act, a legislation mitigating the Indian Forest Act, already weakened by poor implementation, will be further limited by excluding 'village forests', ironically named, from its purview. In addition, the community's voice will also be excluded from a new category of 'production forest'. 'Production forest' may be handed over to private operators. This will corporatise forest resources. The problems with these provisions are self-evident.

A Section 26 has been proposed, which will allow forest department officers to suspend the right to pasture or collect forest produce from the primarily Adivasi communities residing in the forest. This will take away not only the livelihood of the forest dwellers, but also strike at the very root of their deep relationship with their environment, customs and traditions. The proposed Section 22(A)(2) is another example of gross injustice. It proposes that the government can acquire any right of a person which is "inconsistent with the conservation of the proposed reserved forest". No parameters have been given to decide what is "inconsistent", and the decision to declare the "inconsistent" use rests with the government.

States with large forest tracts with big tribal populations have tried in the past to settle forest land "encroached" by the tribal people and grant them pattas. The Forest Rights Act allows tribals present at the cut-off date, and non-tribals who can show 75 years of possession, a quasi-property right, or patta, to be administered by the Tribal Affairs Ministry rather than the forest department. Activists expected that this proposed amendment would bring in legal provisions for such settlement. This so-called forest land has no trees on the ground, and has been cultivated by the tribals for a long time, but is still designated as forest. People are subjected to harassment year after year because they are treated as encroachers. The Chhattisgarh government had granted pattas to these "encroachers" to give them legal status, but recently the courts have cancelled these pattas, calling them illegal. It was expected that the proposed amendments would legalise these pattas, but the amendments proposed suggest the opposite.

It is not only activists who are voicing their concerns; the Chhattisgarh government has expressed its concern at the taking away of the powers given to gram sabhas through the Provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996.

The amendments will also further centralise the management of forest, as the legislation takes away the State governments' discretion to manage forests even further.

Given the correlation between Adivasi forest areas and the 'Red Corridor', the law is not only undemocratic, but also has implications for internal security. Adivasis are at the front line of the battle against Maoists, and the principal victims of war-waging in their communities. This Act, in seeking to criminalise their very economic existence, will be a boon for Maoist propaganda.

The proposed legislation seeks to turn communities into the problem. To paraphrase Justice Ruth Bader Ginsburg of the U.S. Supreme Court, the Adivasis, at the very least, need the Indian state to take its foot off their neck. In these elections, Adivasis and other communities would do well to ask those seeking their blessings their stance on the proposed amendments.

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