

Sprouting Up...

Tribal rights (f)or wrongs in India

GRAIN

The rights of traditional tribal communities have been at the centre of many a struggle with the State. But it's another story when within the State machinery itself there are disagreements on if and how communities ought to control forest resources. So it has been in India. The Government of India's Ministry of Tribal Affairs (MoTA) mooted a draft Scheduled Tribes (Recognition of Forest Rights) Bill 2005¹ that was cleared by the Law Ministry in April 2005. The bill has been stalled by opposition from the Ministry of Environment and Forests (MoEF) on the grounds that it will be detrimental to safeguarding the forests and wildlife that thrives in them.

The aim of the Bill is to undo the legacy of discounting the time-honoured use and preservation of forest resources by tribals that has pervaded since colonial times. By recognising the rights of the forest-dwelling tribals, the bill seeks to protect them from being branded as "encroachers" and safeguard them against forced evictions. The Bill acknowledges 12 specific heritable but not alienable non-transferable "forest rights" of tribals in forest villages for "bonafide livelihood needs". The conditions for vesting such rights include a limit of up to 2.5 hectares of land per family which must have been in occupation prior to 25 October, 1980 (the date on which the Forest [Conservation] Act came into force).

The list of rights include the:

- Right to live in the forest under the individual or common occupation for habitation or for self-cultivation for livelihood
- Right to access, use or dispose of minor forest produce
- Rights of entitlement such as grazing and traditional seasonal resource access
- Rights for conversion of leases or grants issued by any local authority or any state government on forest lands to titles
- Right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving.

Parliamentarians supporting the bill are being accused by some as pursuing vote-bank politics to appease tribals. Questions are also being asked as to why only "scheduled" tribes are to be granted forest rights? The simple answer is that MoTA was established as an independent ministry in 1999 to deal specifically with scheduled tribes. The criteria for designating a tribe as "scheduled" include having 'primitive' traits, dwelling in geographical isolation, having a distinct culture, being shy of contact with the outside world and being economically

'backward'. There are more than 600 officially listed scheduled tribes in the country, comprising less than 10% of the country's total population and with little over 2% believed to be dwelling in forests.

There is a view that once the Bill is passed, this itself would provide the basis for the extension of the rights to other forest dwellers.

The issue has turned into a battle for control between the MoTA and MoEF. There are also deep divisions between conservationists and tribal activists. The pro-tribals lobby argues that it is large developmental projects – such as large dams, power plants and mining activities – that need to be checked, rather than the forceful eviction of traditional forest-dependent communities to save the forests. Several groups contend that it is not tribals who are bringing in commercial activities into forests, but external commercial pressures that are degrading the forest resources and thereby eroding the traditional lifestyles of tribal communities. Meanwhile the more radical green groups warn against the land mafia misusing the provisions of the proposed law into conning unsuspecting tribals vested with land rights to part with their land in prime forest areas. They also fear that the proposed legal provision allowing for the "sale of forest-based products for their household needs", would translate into large-scale commercialisation of forest resources.

Apart from the practical problems in implementing the Bill and working out its relationship with other conservation laws, there are certain problems within the text that would need to be addressed. There are several measures built into the Bill for conservation, but there remains a lack of clarity on what prevails in the event of such "rights" causing loss of wildlife, forest or biodiversity. For instance, if the collection of a medicinal plant becomes threatened, would the law restrict it? There is a penalty for unsustainable use, but who and how determines what is "unsustainable"? And would such collections be permitted in national parks or sanctuaries?

The neglected issue of traditional knowledge warrants more attention. Amongst the "forest rights" that the Tribal Bill seeks to grant is the right to access to biodiversity, and community rights to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity. The approach to these rights appears to be in harmony with the Government of India's official pro-IPR policy, and is supported rather than contested by the various Ministries involved. The pro-IPR approach is clear in the draft National Tribal Policy² which is currently being revised. It states that the preservation and promotion of traditional wisdom is recommended through documentation of such traditional knowledge and its "transfer" to non-tribal areas. In the context of health, the National Policy mandates:



- Strengthening the allopathic system of medicine in tribal areas.
- Validating identified tribal remedies (folk claims) used in different tribal areas
- Encouraging, documenting and patenting tribals' traditional medicines

Biodiversity-based traditional knowledge can not exist without the resources on which it is based. Such systems of knowledge would not grow from a document but by a symbiosis of people and plants. What needs to be protected is the collective intellectual heritage of communities. This is different from advocating for a community to be made a legal entity for grant of a patent or other IPR, which implies the commodification of their knowledge. Conservation by the people can be made possible only if communities are given a stake in conserving. But in the context of traditional knowledge, IPR is not a helpful incentive to conserve knowledge.

There is doubt about the Bill being cleared in its present form. The Prime Minister's Office has asked the MoTA to reword its original Bill to reflect conservation concerns, while asking the MoEF not to push its rival "alternative draft". Hopefully in the end the tribals in the forest who are largely oblivious to these ongoing discussions will be more righted than wronged.

The government in making such a law would be fulfilling its electoral promise only if it facilitates the control of people rather than effecting controls. Self-governance is a critical issue for indigenous peoples whose systems of self-rule pre-date the modern state. The state must recognise this, and rights must not be dependent on the mere efficacy of a law drawn up today, often without the very people it proposes to right.

Footnotes

¹ <http://tribal.nic.in/bill.pdf>

² <http://tribal.nic.in/index1.html>

Biosafety laws: co-opted by corporations

Across the world processes to draw-up national biosafety laws are increasingly disconnected from the people they are supposed to serve. Drafting typically takes place behind closed doors, between local elites and foreign "experts" of the GM lobby, with corporations close at hand to steer the discussion. Meanwhile, those with the most at stake from any introduction of GM crops, the rural communities, are completely marginalised from the processes.

In our latest *Against the grain*, GRAIN provides a global overview of how biosafety laws are being all-too-easily co-opted into tools for corporations hell-bent on imposing GM crops on the planet. In Africa, relentless pressure from the US Agency for International Development is breaking down the common commitment to precaution, as several governments, foolishly vying to become the continent's GM showcases, try to impress the GM industry with regulatory frameworks that open their countries up to GM crops. Ditto for Asia, where, despite strong public opposition to the introduction of GM crops, governments are caving-in to external pressure and opting for weak biosafety laws. In Latin America, people are so appalled that they've started calling them "Monsanto Laws".

Yet if governmental biosafety processes are generally doom and gloom these days, there is plenty of reason for optimism at the grassroots. Not only is resistance to GMOs increasing, but social movements are becoming more sophisticated in their efforts to oppose GM crops. Where national governments refuse to listen, people are localising their struggles where they can exert more democratic control, such as GM-free zones. Communities are also taking "risk assessment" into their own hands, conducting research, organising peoples' tribunals, and challenging the "experts". For example, had it not been for the documentation of the failure of Bt cotton in the Indian state of Andhra Pradesh by grassroots organisations, the state authorities would never have withdrawn the approval for Monsanto's Bt cotton varieties.

This GRAIN report argues that the fundamental problem is that biosafety laws are being created behind closed doors, far from grassroots realities.

GRAIN (2005), "Whither Biosafety? In these days of Monsanto Laws, hope for real biosafety lies at the grassroots", *Against the grain*, www.grain.org/articles/?id=9

