

Harmonizing the co-existence of ‘man and the tiger’ in the wild: Interplay of various forest and wildlife conservation laws

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“The Indian tiger (Panthera tigris tigris Linn. 1758) has been the centre of attraction in the Indian jungles, as a big fame, during the last two centuries. Apart from Maharajas and Nawabs who had interest in hunting of tigers, the British officers, soldiers and civil officers were all keen on bagging at least one tiger before they retired....Some even repeated the performance as many as 10 times, thus massacring over a thousand tigers in their life times....Some of the States had launched tiger eradication campaigns and pushed the tiger to the wall. But nothing had been so serious as the large scale destruction of the tiger habitat due to urbanisation, industrialisation and population pressure, as well as the market in tiger skins for export....The cumulative result of all these adverse factors is that the tiger is now in danger of extinction, and the latest census has revealed less than 1,900 of these magnificent animals in the entire country.”¹

India is leaving no stone unturned to protect its national animal, the majestic Tiger, which is shamefully on the verge of extinction. Tigers have long been a symbol of passion, indeed even for the virility of a nation. It seems also that their conservation increasingly raises pulses.² Tiger, being at the apex of the food chain, can be considered as the indicator of the stability of the eco-system. For a viable tiger population, a habitat should possess a good prey base, which in turn depends on forest vegetation, undisturbed by human intervention.³ To our dismay, the tiger-inhabited landscapes in India have been peopled by forest dwellers and traditional communities for generations.

¹ Task Force, Indian Board for Wild Life. 1972. *Project Tiger: A Proposal for Preservation of the Tiger (Panthera*

tigris tigris Linn.) in India. Ministry of Agriculture, Government of India. p 4.

² Daniel Taghioff, Ajit Menon, ‘Can a Tiger Change Its Stripes? The Politics of Conservation as Translated in Mudumalai’. XIV 28 Economic & Political Weekly (10 July 2010)

³ Varun Khandelwal, ‘Tiger Conservation in India’. Centre for Civil Society. Available at <http://ccs.in/internship_papers/2005/2.%20Tiger%20Conservation.pdf> Accessed on 28 September 2014.

After the coming up of the Wildlife Protection Act in 1972, a 'Task Force' was set up to formulate a project for tiger conservation with an ecological approach. The project was launched in 1973, and various tiger reserves were created in the country on a 'core-buffer' strategy. The core areas were freed from all sorts of human activities. Management plans were drawn up for each tiger reserve, based on the principles outlined below:⁴

- (i) Elimination of all forms of human exploitation and biotic disturbance from the core area and rationalization of activities in the buffer zone.
- (ii) Restricting the habitat management only to repair the damages done to the eco-system by human and other interferences, so as to facilitate recovery of the eco-system to its natural state.

In the 'Five Year Plans' that followed, the main thrust was to enlarge the core and buffer zones in certain reserves.

As per 'Joining the Dots', the report of the Tiger Task Force submitted to Prime Minister, Manmohan Singh on 5th August 2005, the biggest threat to the tiger today is not just the poachers' guns but also, and more so, the growing anger of people who live in and around tiger habitats. The tiger is under siege from the people who co-inhabit its land, who instead of benefitting from conservation continue to face daily harassment.⁵

In a country where a large portion of the population has already been displaced due to various Government acquisitions such as construction of dams and other infrastructure projects etc⁶ there is a new entry to the list. The clash unfortunately now is between the protection of the national animal and the rights of the scheduled tribes and forest dwellers inhabiting that particular area reserved for the conservation of tigers.

An order of the Supreme Court in August 2013 which spoke of making "core areas" of tiger reserves inviolate spaces, free of human beings, in the interests of tiger conservation, has its downsides since there have been enough examples to show that clearing forests of those who have always lived there, is not really the best option for the people concerned. The resulting insecurity of tenure and the threat of eviction lead to the alienation of tribal communities from their ancestral forest lands. For example, in December 2009, the people of old Jalda located inside the tiger reserve in Mungeli and Bilaspur districts found themselves unceremoniously uprooted and brought to a place, near Kathmuda in Lormi *tehsil*. For

⁴ <<http://projecttiger.nic.in/past.htm>> Accessed in September 2014

⁵ <<http://projecttiger.nic.in/TTF2005/index.html>> Accessed in September 2014

⁶ UNHCR, Global Overview 2011 'People internally displaced by conflict and violence'. Available at <<http://www.unhcr.org/IDMC/IDMC-report.pdf>> Accessed in September 2014.

months they lived in makeshift housing, under hastily assembled sticks of wood and plastic sheets.⁷ Thus, the communities that are widely affected by these efforts taken by the government in saving the big wild cat have been the Scheduled Tribes and Other Traditional Forest Dwellers, living in and around India's forest lands.

The history of conservation of forests in India highlights that the first Indian Forest Act that was passed way back in 1865, was principally drafted to bring forest land under state control according to the convenience of the colonial rulers, and so it is hardly astonishing that no provisions were included recognising the rights of those living in and dependent on the forests for survival. This law was further amended in 1879 by which the nature of equitable interests of the common people in property was transformed to an idea of strict legal proprietorship under state control. This amendment categorised forests into reserve, protected and village forests, which in turn allowed the colonial government to tax the forest produce and generate revenue through the same. Peoples' rights were treated as concessions which could very well be withdrawn at will.⁸ In 1976, forests were transferred from the state list to the concurrent list, by the 42nd amendment of the constitution, which brought them within the purview of the central government.⁹

This historical injustice was perpetuated by the Wildlife (Protection) Act, 1972 [Hereinafter 'WPA'] and the Forest Conservation Act, 1980 [Hereinafter 'FCA'], which identified environmental protection and recognition of the rights of tribal communities as mutually irreconcilable objectives. Other legislative and executive measures in the post independence era continue to perpetuate these differences.¹⁰ After the amendment of the Forest Conservation Act in 1988, the Forest Department was transferred to the Ministry of Environment and Forests [Hereinafter 'MoEF']. Although this Act aimed at conservation of forests and wildlife, it continued the British trend of state control over forests, especially in Reserved Forests, and imposed strict penalties for the contravention of any of its provisions.¹¹

It was the National Forest Policy of 1988 that for the first time considered the rural and tribal rights with respect to forests, and here a shift was seen from the earlier stricter emphasis on

⁷ <<http://www.thehindu.com/opinion/op-ed/relocation-plan-to-nowhere-land>> Accessed on 17 September 2014

⁸ Buchy, 'The British Colonial Forest Policy in South India, A Maladapted Policy', [1996], 33 Les Sciences Hors D'occident Au 20me Siecle

⁹ The Constitution (Forty-Second Amendment) Act, 1976, Section 57.

¹⁰ Ministry of Tribal Affairs, 'Note on the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005'. Available at <<http://tribal.nic.in/bill.pdf>> Accessed on 29 August 2014.

¹¹ The Forest Conservation Act, 1980 (69 of 1980)

conservation. Not only was it agreed that the rights of the tribal people and others whose life depends on forests should be fully protected but, the principal aim went as far as to ensure environmental stability and ecological balance between all life-forms.¹² It must be pointed out that the rights and concessions were limited by the clause that they should always remain related to the carrying capacity of forests.¹³

Moreover, in response to the persisting tribal agitations and unrest, the Ministry of Rural Development, Government of India constituted a committee headed by Mr. Dileep Singh Bhuria, a tribal Member of the Parliament, to make recommendations on the salient features of the law for extending provisions of Part IXA of the Constitution of India ('Panchayats') to Scheduled Areas (which are primarily tribal areas identified for special protection in the Fifth Schedule of the Constitution).¹⁴ The report of the Bhuria Committee (1995), recommended that the *long-standing demand of tribal control over forest land and productive demand should be conceded to*, and for the effective implementation of the same, administrative interference in their activities should be minimised; legal recognition of the *Gram Sabha*¹⁵ as the primary centre of tribal governance must be implemented.¹⁶ The report was followed and the Panchayats (Extension to Scheduled Areas) Act 1996 (PESA), was passed, a legislation that recognised the tribals' rights to self governance. Thereafter, the PESA was criticised for its poor implementation and a shift in approach from conservation to balance of rights and ecology was witnessed, which paved the way for the Parliament to enact the much celebrated legislation, the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 commonly known as the Forest Rights Act, 2006 [Hereinafter 'FRA'], to undo the historical injustices suffered by tribal communities claiming ownership over forest lands where they lived.

This Act, before the passing of which a few government bureaucrats had all the power over forests and forest dwellers, was hailed as a historic step towards recognising the rights of such forest dwellers and compensating them for the gross injustice done. The preamble to the

¹² Government of India, Ministry of Environment and Forests, *National Forest Policy* (1988). Available at <<http://envfor.nic.in/divisions/fp/nfp.pdf>> Accessed on 21 September 2014.

¹³ *Buchy*, 'The British Colonial Forest Policy in South India, A Maladapted Policy', [1996], 33 *Les Sciences Hors D'occident Au 20me Siecle*

¹⁴ Report of MPs and Experts, '*To Make Recommendations on the Salient Features of the Law for Extending Provisions of the Constitution (73rd) Amendment Act, 1992 to Scheduled Areas*'. Available at <<http://www.odi.org.uk/livelihoodoptions/forum/schedareas/about/bhuriareport.htm>> Accessed on 15 September 2014.

¹⁵ The village council comprised of the assembly of all adult residents of a village.

¹⁶ *Dr. Smito Kothari*, 'To be Governed or to Self Govern' *The Hindu* (16 July 2000). Available at <<http://www.hindu.com/fo0007/00070180.htm>> Accessed on 24 September 2014.

Forest Rights Act, 2006 enshrines the recognition and vesting of the forest rights and occupation of forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded.¹⁷

Forest dwellers don't just mean people residing in the forests but also include those living in the vicinity who are dependent upon the forest produce for *bona fide* livelihood needs. In the absence of clearly defined property rights, millions of such people living in or around forest lands have been labelled as encroachers or illegal occupants.

The Forest Rights Act recognises the rights of these communities to both their individual landholdings on forest land and to their community rights over minor forest produce, grazing areas, water bodies etc. Such forest rights are defined in Section 3, and include rights to hold, occupy, and live in forest land, that is, rights of access to forest produce, rights to collect and use it, and any other traditional right customarily enjoyed by forest dwellers.¹⁸

It also recognises the legal authority and power of communities to protect, conserve and manage all forests, particularly their traditional community forests.¹⁹ It also talks about the duties of holders of forest rights, like protecting wildlife and diversity and other ecologically sensitive areas. Finally, it bars the removal of any forest dweller from forest lands until recognition of rights under the Act is complete.²⁰ Moreover, even after it is complete, those rights have to be respected - including community rights to traditional habitats and to community forest resources.

Thus, the FRA aims at reversing the alienation of tribes from their own habitat that was caused by past policies and laws. Clashing with its interests, are the Wildlife Protection Act 1972 (that provides for the protection of wild animals, birds and plants) and the Forest Conservation Act 1980 (that aims at conservation of forests and wildlife). In the backdrop of these legislations catering to different subjects, the question that still remains unanswered is, '*How can harmony be attained between man and the tiger sharing the same forest habitat?*'.

When considering wildlife conservation versus people's economic and political rights (rather than "tigers vs. locals", as this often becomes reduced to), it is worth taking a step back to

¹⁷ The Forest Rights Act, 2006, Preamble

¹⁸ The Forest Rights Act, 2006, Section 3

¹⁹ The Forest Rights Act, 2006, Section 3(i)

²⁰ The Forest Rights Act, 2006, Section 4(5) - No member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete.

examine how tiger conservation fits into landscape management within a crowded democracy like India.”²¹

The Interface between Forest Rights Act, 2006 and Tiger Reserves: Clash between the entitlements of forest dwellers and the natural habitat of the tiger

Tribals in India are inseparable from, and integral to the very survival and sustainability of the forest ecosystem.²² Neither can survive in isolation from the other. Tribal people, who dwell in the forest and depend for their subsistence largely on forest produce, are actually the "most effective conservationists" of forests.²³ This was heavily opposed by wildlife conservationists, such as Valmik Thapar, who believe that the Forest Rights Act does not include any safeguards for wildlife and fear that the extension of its mandate would lead to further incursions into inviolate forest spaces.²⁴ He had expressed his concerns over the FRA even before its enactment in a most vehement fashion in the following words:

“Humans will assert their rights on forests, national parks and sanctuaries which are home to leopards, tigers and lions, and some of these animals take a toll on humans by eating their livestock. We don't know what the extent of other devastation will be due to cutting down forests and wiping out the habitats of millions of birds and migratory species...Everyone says the tribals and forest-dwellers will live in harmony with wildlife. I believe this will be the biggest disaster to hit the country. This is an Act without safeguards for wildlife....All national parks will be invaded by people claiming the land as theirs to graze and live on. Although the draft Tribal Bill referred to only the scheduled tribes, the Joint Parliamentary Committee (which was overseeing the process) decided to include forest-dwellers as well. Instead of cutting back on the amount of land, national parks and sanctuaries were also included. It's no longer only about preserving wildlife; these forests are vital for human life. With the present Bill, we have opened up our forests to the public. My fear is that besides genuine forest-dwellers, a lot of timber mafia, land mafia and others will turn up with fake documentation and claim forest land. We've opened a Pandora's Box. It will be impossible to control the activities of, say, 50 million people.”²⁵

²¹ Daniel Taghioff, Ajit Menon, 'Can a Tiger Change Its Stripes? The Politics of Conservation as Translated in Mudumalai' XIV 28 Economic & Political Weekly (10 July 2010)

²² The Forest Rights Act, 2006, Statement of Objects and Reasons

²³ Forest Rights Bill, uncorrected Parliament Debate (Dec 15, 2006). Available at <http://www.vanashakti.in/images/act/forestrights_billparliamentdebate.doc> Accessed 17 September 2014.

²⁴ Geetanjal Jhala, 'Conflict will go Up by 10000 Percent' (23 December 2007) *Daily News and Analysis*. Available at <<http://www.dnaindia.com/mumbai/special-conflict-will-go-up-by-10000-per-cent-1140969>> Accessed on 21 September 2014.

²⁵ *Ibid.*

The current state of affairs is dismal. The tiger-inhabited landscapes have been peopled by forest dwellers and traditional communities for generations having entitlements and rights here. Forest dwellers in protected areas, particularly tiger reserves, live with draconian precincts and are among the most destitute and besieged. The threat of relocation, like a weapon in the hands of the bureaucrats, is used to deny them their rights and facilities.

Although FRA 2006 was enacted with the objective of remedying the gross injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers of the country, even after lapse of more than eight years of its implementation, the Ministry of Environment and Forests has observed that the flow of intended benefits of this welfare legislation to the eligible forest dwellers remains constrained. Despite the efforts made by the Ministry of Tribal Affairs (the nodal agency for implementing the provisions of the Forest Rights Act), the FRA seems to be a legislation which is blatantly disregarded. Unless immediate remedial measures are taken, instead of undoing the historical injustice to these communities, the statute will have the contrary outcome of making them even more susceptible to eviction and denial of their customary access to forests.

When the sordid state of affairs came to light, the government took a few steps to remedy the situation by amending the Wild Life (Protection) Act in 2006. The new law gave tiger reserves a legal standing and tried to provide a rational and transparent basis for their administration.²⁶

First, the new law mandated the demarcation of both parts of a tiger reserve - the "critical tiger habitats" (or core areas) and the "buffer zones" - based on scientific studies and in consultation with local communities.²⁷ In contrast to the traditional view, which envisaged an absolute severance of any human relationship with the protected areas, the identification of 'critical wildlife habitats' could lead to a more site-specific, species-based approach. Section 38V(1)²⁸ of the Wild Life (Protection) Amendment Act, 2006 allows state governments to notify a tiger reserve on the recommendation of the National Tiger Conservation Authority. Section 38V(4)²⁹ states that a tiger reserve includes a Critical Tiger Habitat that should

26 'Tiger Reserves: The Realities Behind a Controversy'. Available at <<http://www.foresightsact.com/statements-and-news/125-tiger-reserves-the-realities-behind-a-controversy>> Accessed on 27 September 2014.

²⁷ *Ibid.*

²⁸ The Wild Life (Protection) Amendment Act, 2006, Section 38V.(1) - The State Government shall, on the recommendation of the Tiger Conservation Authority, notify an area as a tiger reserve.

²⁹ The Wild Life (Protection) Amendment Act, 2006, Section 38V.(4) - Subject to the provisions contained in this Act, the State Government shall while preparing a Tiger Conservation Plan, ensure the agricultural, livelihood, developmental and other interests of the people living in tiger bearing forests or a tiger reserve.

remain inviolate and a buffer zone where a “lesser degree of habitat protection is required”. Section 38V(5)³⁰ of the amended WPA and Section 4(2) of the Forest Rights Act contain safeguards requiring scientific proof, public consultation and village consent before relocation.

Second, the government recognised that the legal rights of people are not to be interfered with; in the buffer zones, co-existence between livelihoods and conservation has to be ensured; and relocation of people out of core areas should happen only voluntarily, on the basis of scientific evidence, and after ensuring them secure livelihoods.³¹

Thirdly, the preparation of a "Tiger Conservation Plan" providing for tiger protection, local livelihoods, and the interests of the local communities was suggested.³²

This approach of the MoEF, which interprets 'inviolate' as being completely free of human use and thereby requires compulsory relocation of people, completely discounts small-scale human activities that may potentially be compatible with conservation.³³ The FRA was

Explanation - For the purposes of this Section, the expression “tiger reserve” includes—

(i) core or critical tiger habitat areas of National Parks and sanctuaries, where it has been established, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of tiger conservation, without affecting the rights of the Scheduled Tribes or such other forest dwellers, and notified as such by the State Government in consultation with an Expert Committee constituted for the purpose; (ii) buffer or peripheral area consisting of the area peripheral to critical tiger habitat or core area, identified and established in accordance with the provisions contained in Explanation (i) above, where a lesser degree of habitat protection is required to ensure the integrity of the critical tiger habitat with adequate dispersal for tiger species, and which aim at promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people, wherein the limits of such areas are determined on the basis of scientific and objective criteria in consultation with the concerned Gram Sabha and an Expert Committee constituted for the purpose.

³⁰ The Wild Life (Protection) Amendment Act, 2006, Section 38V.(5) - Save as for voluntary relocation on mutually agreed terms and conditions, provided that such terms and conditions satisfy the requirements laid down in this sub-section, no Scheduled Tribes or other forest dwellers shall be resettled or have their rights adversely affected for the purpose of creating inviolate areas for tiger conservation unless—

(i) the process of recognition and determination of rights and acquisition of land or forest rights of the Scheduled Tribes and such other forest dwelling persons is complete; (ii) the concerned agencies of the State Government, in exercise of their powers under this Act, establishes with the consent of the Scheduled Tribes and such other forest dwellers in the area, and in consultation with an ecological and social scientist familiar with the area, that the activities of the Scheduled Tribes and other forest dwellers or the impact of their presence upon wild animals is sufficient to cause irreversible damage and shall threaten the existence of tigers and their habitat; (iii) the State Government, after obtaining the consent of the Scheduled Tribes and other forest dwellers inhabiting the area, and in consultation with an independent ecological and social scientist familiar with the area, has come to a conclusion that other reasonable options of co-existence, are not available; (iv) resettlement or alternative package has been prepared providing for livelihood for the affected individuals and communities and fulfils the requirements given in the National Relief and Rehabilitation Policy; (v) the informed consent of the Gram Sabha concerned, and of the persons affected, to the resettlement programme has been obtained; and (vi) the facilities and land allocation at the resettlement location are provided under the said programme, otherwise their existing rights shall not be interfered with.

³¹ *Supra* n. 26

³² *Supra* n. 26

³³ *Arshiya Bose and Ashish Kothari, 'Sensitive Zones', Fronthine (29 February 2008) 20*

clearly a legislation aimed at bringing about a landscape mosaic with differing levels of human disturbance with near-inviolate zones in core areas and coexistence in buffer areas, with the possibility of using buffer areas to create corridors between core areas, and to go about this via a democratic process that acknowledges local people's partial sovereignty over natural resources.

Appallingly, the reality remains that none of these steps have actually been carried out.

All rights in most protected areas (national parks and wildlife sanctuaries) across India, are being systematically denied to these communities, particularly so in areas hastily notified as Critical Tiger Habitats (CTHs), without following the process laid down under Section 38V (4) of the 2006 amendment to the Wildlife Protection Act, 1972 (which itself recognises the rights under the FRA) and blatantly disregarding science and transparency. What's dismally surprising is that all such notifications were issued in a period of ten days after a letter from the National Tiger Conservation Authority (NCTA) in November 2007, just prior to the bringing into force of the Forest Rights Act, clearly aiming at forestalling the implementation of the law in these areas. Declaration of cores was done in a rush in order to insulate our tiger areas against the Forest Rights Act, which came into being before the end of 2007. So the Core/ CTH concept had to be completed before the birth of the FRA. The core was meant to deal with the threat of the FRA and issues like mining, timber-felling, road-building and so much more that can undermine the sanctity of the tiger's home.³⁴

The bigger problem now is that notifications under Project Tiger and Section 38V WPA have been used to declare forest lands as 'tiger reserve' in order to defeat the claims of the tribals under FRA and villages have been displaced overnight.³⁵ This has resulted in relocation of these indigent and powerless people from all major tiger reserves to barren lands and tin sheds outside the reserves, in violation of the legal safeguards, including *Panna*, *Ranthambore* and *Sariska* on the basis of these "critical tiger habitats." After seeing their homes destroyed and being torn from their lands, a handful of those displaced are either offered a pittance of compensation, or employment as daily wage workers in the name of rehabilitation.

Indeed, in most tiger reserves, villagers living within such wrongly notified CTHs are being pressurized to relocate themselves elsewhere with offers of Rs 10 lakh per family, as

³⁴ Valmik Thapar, 'Tourism did not kill the tiger', The Indian Express (29 August 2012). Available at <<http://www.indianexpress.com/news/tourism-did-not-kill-the-tiger/994472/>> Accessed on 29 August 2014

³⁵ *Supra* n. 2

sanctioned by Ministry of Environment and Forests, without any recognition of rights. The relocation is also being done in violation of the statutory requirements of obtaining informed consent from the affected communities, and of ensuring improved and secure livelihoods at the relocation site. This is therefore in direct violation of both the FRA and the amended Wildlife Protection Act. Such relocations have either already taken place or are being attempted from tiger reserves in Maharashtra, Tamil Nadu, Orissa, Chhattisgarh, Rajasthan, Arunachal Pradesh, Andhra Pradesh, and West Bengal, to name a few.³⁶

The denial of rights has also had a particularly deleterious effect on the 'de-notified tribes' living in and near protected areas, which by being branded as 'hunting tribes', face the brutality of forest officers and wildlife officials on the basis of casteist stereotypes of them as hunters and poachers. Their rights under the FRA have reportedly not been recognised in most areas, and they continue to be victimized by forest officials and the police.³⁷

Blameless forest dwellers are today becoming the victims of crimes they never even committed. When tigers are poached, it is far easier to blame innocent tribals instead of tracking the actual poacher. Harassment and physical and sexual assault are commonplace.

The key problem is that these tiger reserves are not being managed in any rational, accountable or even legal way. The system that controls our tiger reserves is so broken that it has resisted every effort to fix it. The boundaries of critical tiger habitats and buffer zones are decided unscientifically, arbitrarily and without public input, in direct violation of law. The government has not published any scientific parameters for this till date.³⁸

The Way forward: Suggestions

It is high time the Central Government and particularly the MoEF change all such policies and measures that are in direct or implicit violation of the FRA. The government, and the NTCA in particular, has succeeded in converting the tiger bearing areas across the nation into conflict zones of competing interests, livelihood versus profits. Both tigers and tribals are the victims of authoritarian decision making and disregard of laws. Forest dwelling communities have no doubt suffered grave injustices that need to be redressed urgently. It is time to deal with the fundamentals and ensure respect for rights, law and accountability in tiger reserves. Only when tiger reserves are managed in a democratic and accountable manner will wildlife,

³⁶ "Summary Report on Implementation of the Forest Rights Act" prepared by the Council for Social Development, New Delhi.

³⁷ *Ibid.*

³⁸ *Supra* n. 26

forests and people flourish. Tourism too can be run by and for local communities.³⁹ But for any solutions to work, they must be firmly rooted in ground realities rather than our utopian dreams or atavistic yearnings.

The solution? First and foremost, all notifications of ‘critical tiger habitats’ that were hastily issued under Section 38V(4) of the Wild Life (Protection) Act in total violation of the law, leading to intensified harassment of communities and intense pressure on them to accept relocation, should be withdrawn and reissued after observing the prescribed legal process. No relocation of settlements should be attempted except in accordance with the requirements of the Forest Rights Act and the Wild Life (Protection) Act. Directives should be issued stating that no funds allocated for relocation of settlements should be spent until the legal requirements are met. Furthermore, the decisions relating to relocation should be under the transparent control of the *gram sabha* and not under the Forest Department.

One of the effective solutions to the perennial conflict between forest dwellers and wildlife is voluntary resettlement outside Protected Areas. In the Rajiv Gandhi National Park (Nagarahole) and the Bhadra Tiger Reserve in Karnataka, voluntary resettlement has shown great promise, due to close co-operation between human rights NGOs, conservationists and Government Departments. In both cases the resettlement package offered was excellent, procedures were transparent and the relocation devoid of any coercion. Both people and wildlife benefited from the move.⁴⁰

There has been a woeful lack of information and awareness of the key provisions of the Act. In an effort to redress this issue, the MoEF should constitute an Expert Committee, including experts working in the field, to centrally prepare publicity materials, outlining all the various rights and their nature, the process for their recognition and the fact that violations of the Act are a punishable criminal offence. These should be made available in the public domain, including on the Ministry's website. The state authorities should also be directed to translate these materials into local languages of the concerned areas and to ensure their distribution to all hamlets, villages and panchayats.⁴¹

³⁹ *Supra* n. 26

⁴⁰ *Shekar Dattatri*, ‘The Myth of Harmonious Co-existence’. Available at <<http://www.conservationindia.org/articles/the-tribal-bill-the-myth-of-harmonious-co-existence-2>>. Accessed on 29 September 2014.

⁴¹ ‘Summary Recommendations on Issues of Forest Rights’ included in ‘Summary Report on Implementation of the Forest Rights Act’ prepared by the Council for Social Development, New Delhi.

The government of India should sign the Convention Concerning Indigenous and Tribal Peoples in Independent Countries and must adopt the UN Principles and Guidelines for the protection of Heritage of Indigenous People. The draft statement of United Nations Draft Declaration on Rights of Indigenous People, expressly states that traditional lands of the indigenous people should be returned, if not they should be equally compensated. The United Nation Forum on Forest in the fifth session expressly stated that sustainable development and management of forests would not be possible without the participation of indigenous community residing there. India, though a signatory of many such conventions, has failed to implement the provisions stated in them through relevant legislation. The executive should instantly be held accountable for non-execution of such provisions and should take prompt action ensuring that such provisions are not flouted.

Jairam Ramesh, who was then the Indian Minister of State (Independent Charge) at the Ministry of Environment and Forests, has tried to set the record straight by issuing a notification⁴² that clarifies that the 2006 amendment made to section 38V of the WPA, in fact makes it compatible with FRA. He explains under the notification that there is no tension between the two legislations after the amendment as displacement is not possible even if an area is declared as a 'core tiger habitat' without the consent of the ST. He further emphasizes in the notification that the fact that co-existence between tigers and humans is not possible will be determined by conclusive scientific and expert advice. The informed consent of the gram sabha and affected person is another requirement before pursuing the rehabilitation programme. The above provisions incorporated under the WPA, argues Jairam Ramesh are more stringent than the provisions of FRA. A monetary compensation option is also provided for people who are not interested in rehabilitation and the relocation is voluntary.

Nevertheless, the resettlement provisions of the Act certainly represent a way forward. The safeguards, which are included in section 4(2) of the Act⁴³, are in sharp contrast to the

⁴² Ministry of Environment and Forests, Notification in relation to Tiger Reserves, Critical Wildlife Areas and Forest Rights Act, 2006, issued on 14th February 2011. Available at <<http://www.indiaenvironmentportal.org.in/files/tiger%20reserves%20wildlife%20habitat.pdf>> Accessed on 26 September 2014.

⁴³ The pre-conditions for modification or resettlement of forest rights recognised under the Act in 'critical wildlife habitats' are as follows:

- (a) the process of recognition and vesting of forest rights is complete in all the areas under consideration;
- (b) it has been established by the concerned agencies of the State Government, in exercise of their powers under the WPA that the activities or impact of the presence of holders of rights upon wild animals is sufficient to cause irreversible damage and threaten the existence of said species and their habitat;
- (c) the State Government has concluded that other reasonable options, such as coexistence are not available;

government's approach to wildlife conservation in the past, which involved relocation of local communities from protected areas without considering the impact of relocation and what can be done to manage or mitigate it.⁴⁴

Conclusion

As per the “*Summary Report on Implementation of the Forest Rights Act*” prepared by the Council for Social Development, New Delhi in September 2010⁴⁵, all of the key features of the Forest Rights Act have been diluted by a combination of apathy and sabotage during the process of implementation. The Tiger Task Force of the Government of India has aptly highlighted the reality, in the following words - "in the name of conservation, what has been carried out is a completely illegal and unconstitutional land acquisition programme."

The forest management in India has largely remained insensitive to social, economic, ecological and cultural realities. Around the globe, land and forest rights of indigenous communities are being restored as an integral part of the conservation initiatives. Yet in India, there has been total refusal to acknowledge such claims. Such attitude has led to the harassment and eviction of local communities due to their customary land being declared as state forests.

In the opinion of the author, the dream of having a peaceful and harmonious co-existence between man and the wild is far from being achieved. Living in flimsy, leaky shelters in the midst of elephants, tigers and other large mammals is neither amusing nor romantic. Quite naturally, the only way of earning a living is by indiscriminately and unsustainably collecting forest produce or by poaching animals. What springs up is perpetual poverty, since the actual profits from forest products are all made higher up the chain by various exploitative middlemen and corporations. Rather than ‘harmonious co-existence’ there is a ‘constant conflict’ between humans and wildlife when both try to share the same habitat.

(d) resettlement or alternatives package has been prepared and communicated that provides a secure livelihood for the affected individuals and communities and fulfils the requirements of such affected individuals and communities given in the relevant laws and policies of the Central Government;

(e) the free informed consent of the Gram Sabhas in the areas concerned to the proposed resettlement and to the package has been obtained in writing;

(f) no resettlement shall take place until facilities and land allocation at the resettlement location are completed as per the promised package.

⁴⁴ *Asmita Kabra*, 'Wildlife Protection: Introduction and Relocation', 41(14) *Economic and Political Weekly* (2006) 1309. Tiger Task Force, 'Joining the Dots', Report to Ministry of Environment and Forests, Government of India, New Delhi 88 (2005)

⁴⁵ Available at <www.forestrightsact.com/component/k2/item/download/52>

Opponents of FRA have also argued that animals living in the wild need extensive stretches of undistributed habitat, and that any scheme which adopts the erroneous premise that these animals can ‘co-exist peacefully’ with people, in effect must be considered as mal-conceived.⁴⁶ The Tiger Task Force Report⁴⁷ made no such presumption that wildlife would be required to cohabit at the same space as humans. But the misunderstanding in the Act seems to stem from the land distribution scheme under which tribals have been given the right to dwell in forest premises which might very well include ‘tiger reserves’, which raise possibilities of a negative impact on wildlife reserves, if the forest resources are not monitored carefully.⁴⁸

It is time to bury the myth of ‘harmonious co-existence between people and wildlife’. If such co-existence were indeed possible, there wouldn’t be a tiger crisis, and we would all be living in an eternal Garden of Eden. All humans were once tribals, but most now live outside forests. We humans can, and do, thrive outside forests, but the wildlife cannot. If we are truly serious about preserving what’s left of our natural heritage, we need to ensure that certain areas are kept inviolate. Voluntary resettlement is a win-win solution to a chronic problem and is the only permanent way to resolve conflict between people and wildlife within our tiny Protected Areas.⁴⁹

In this rather dismal scenario, it is tempting to wish for a unified or centralized decision-making authority where different stakeholders can be gathered and the right conservation decisions taken. In a country as diverse as India, this seems rather thorny. And in this fractured policymaking landscape, the future of our forests and wildlife is undeniably very bleak. However cliché it may sound, the time to act is now!

⁴⁶ Vanashakti, ‘Response to the Campaign for Survival & Dignity response’. Available at <<http://www.vanashakti.in/csd-response.htm>> Accessed on 28 September 2014.

⁴⁷ Government of India, Tiger Task Force, *Report: Joining the Dots* (2005). Available at <<http://envfor.nic.in/pt/TTF2005/pdf/fullreport.pdf>> Accessed on 28 September 2014.

⁴⁸ Mihir Shah, ‘First You Push Them In. Then You Throw Them Out’ XL 47 *Economic and Political Weekly* (19 November 2005) 4896

⁴⁹ *Supra* n. 40