

A Critical Appraisal Of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Also known as

The Forest Rights Act, Forest Dwellers Act, Forest Tribes Act, Tribal Rights Act,
Tribal Land Act

Summary

Passage of The Scheduled Tribes and Other Traditional Forest-Dwellers (Recognition of Forest Rights) Act, 2006 (The Forest Rights Act, 2006) by the parliament was preceded by a year-long high-pitched campaign by rival lobbies of forest conservation and the tribal rights activists. Finally the law came into force on December 31, 2007. The Act aims to undo the "historical injustice" perpetrated on forest dwelling communities by providing a framework which recognizes and vests forest rights in them.

Tribals of India have lived on forest land for generations, cultivating and collecting forest produce. However, their traditional rights have never been adequately recognized or recorded and they have been forced to live "without rights" on their own lands. This happened because of a series of Indian Forest Acts that were passed from 1876 through 1927 by the British with the intention of getting easy access to the country's timber resources. It gave enormous powers to forest authorities — to arrest, to search without warrant, to confiscate property, and so on. Even after independence, the Indian Forest Act 1927 continued and other forest related laws also followed similar lines. Whenever reserved or protected forests were declared, the rights of tribals and forest dwellers were almost never recorded. Thus, they were reduced to the status of "encroachers" on their own lands. This has deprived the native tribes their traditional peaceful lifestyle, besides harming the socio-environmental culture and heritage.

In recent decades, influenced by international accords on right of indigenous and tribal people and their symbiotic role in forest conservation and protection of biodiversity and wildlife, the Indian government in-acted the Forest Rights Act (FRA) of 2006. It was hoped that the Act will lead towards undoing the "historic injustice" and restore the "natural" rights and dignity of the forest dwellers. But as things stand today, the noble intentions spelt out by the Act on paper have failed to materialize on the ground.

The forest department doesn't want to part with its traditional hold on forest resources and tribals – it still wants to retain its control through Van Suraksha Samities under Joint Forest Management (JFM) on forest resources that the FRA wants to give to tribals as community forest rights (CFR). The environmental ministry fails to recognize the spirit of the FRA and part with its traditional mindset of viewing forests dissociated from the natives. The strong wave of economic "development", and the laidback attitude of the nodal agency, the Ministry of Tribal Affairs (MoTA) is yet another reasons why the "historic" Act is failing everywhere.

If India is to undo historical injustice against the tribals and counter the Naxal menace, it must ensure proper implementation of the Forest Rights Act, 2006. Given the scale of the rejection on illegal and frivolous grounds, the only solution is providing adequate human and financial resources to the National Commission for Scheduled Tribes (NCST) which should seriously look into the complaints pertaining to claims under the Forest Rights Act, 2006. The time has come for the NCST to take implementation of the FRA as the priority task.

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Overview

Forests Support Millions of People

Forest biodiversity and resources have supported the livelihoods and lives of forest dependent people in India for thousands of years. Animals and plants have been worshipped and play a central role in various cultures and traditions. Forests, rivers, mountains and lakes have been seen as the abode of gods. Many Indian communities have protected forest patches dedicated to deities and ancestral spirits as sacred groves. Even today many sacred groves still provide a refuge to several endangered and threatened species of flora and fauna.

MFP sustains 275 million people

Of India's 3,000 plant species, 1,500 yield minor forest produce

Seasons	Types of MFP collected	Economy
January - March	Lac (resin), mahua flower and tamarind	Over 75 per cent tribal households in Odisha, Madhya Pradesh and Andhra Pradesh collect mahua flower and earn ₹5,000 a year. Three million people are involved in lac production
April - June	Tendu leaves, sal, seeds, chironji	30 million forest dwellers depend on seeds, leaves and resins from sal trees; tendu leaf collection provides about 90 days of employment to 7.5 million people; a further three million people are employed in bidi processing
July - September	Chironji, mango, mahua fruits, silk cocoons, bamboo	10 million people depend on bamboo for livelihood; 126,000 households are involved in tussar silk cultivation only
October - December	Lac, kullu gum, resins used in incense sticks	300,000 person days of employment from collection of gums

Forests produce such as fuel wood and non-timber forest products (NTFPs) contributes significantly to household subsistence and income for people living in or adjacent to forests. An estimated 147 million villagers live in and around forests and another 275 million villagers depend heavily on forests for their livelihoods.

Additionally,

170,000 villages with a total population of 147 million have forestland within their village boundaries. Livelihood security for this segment of the population is critically linked to both ecological security and the security of access to, and control over, natural resources. The sustainability of such livelihoods requires a sustainable natural resource base, since land, water and biodiversity are their very foundation.

Despite these realities, a lack of tenurial security over forestland and access to forestland for gathering, pasture, shifting cultivation and pastoralism remains a major source of livelihood insecurity. Since independence in 1947 well over 60 million people have been displaced by large development projects (such as hydroelectric dams, mines and other industrial projects) and wildlife protected areas. Some social activists claim that in the past five years, 300,000 families have been evicted from protected areas alone.

Current Reality

At a time when the buzzword is economic liberalization to the near exclusion of every other issue, it is not very surprising that the issue of eco-friendly and sustainable development often takes a backseat. The only time when people talk of such issues is when they see the dark future of the world in the light of global warming. Still, there are people who are becoming increasingly troubled by the current trend of indiscriminate and wasteful

consumption of natural resources and displacing people away from the resource rich surrounding they have lived historically in a symbiotic way.

It is unfortunate even after six decades of independence, millions of people live in and near India's forest lands, but have no legal right to their homes, lands or livelihoods. A few government officials wield all power over forests as well as forest dwellers.

Who is responsible for the suffering of forest tribes?



India's forests have historically been governed by two main laws, the Indian Forest Act, 1927 and the Wild Life (Protection) Act, 1972. The former empowers the government to declare any area to be a reserved forest, protected forest or village forest. The latter allows constitution of any area as a "protected area", namely a national park, wildlife sanctuary, tiger reserve or community conservation area. In fact, what are called "forests" in Indian law often have nothing to do with actual forests.

Under these laws, the rights of people living in or depending on the area to be declared as a forest or protected area are to be "settled" by a "forest settlement officer." This officer was expected to enquire into the claims of people to land, minor forest produce, etc., and, in the case of claims found to be valid, to allow them to continue or to extinguish them by paying compensation. But these "all powerful officers" never bothered to do a fair job, and mostly did "nothing at all."

Thus 83% of the forest blocks in undivided Madhya Pradesh and 40% of Orissa's reserved forests were never surveyed. Similarly 60% of India's national parks have till today not completed their process of enquiry and settlement of rights.

The Commissioner for Scheduled Castes and Scheduled Tribes, in his 29th Report, said: "The criminalization of the entire communities in the tribal areas is the darkest blot on the liberal tradition of our country."

People without recorded rights during the settlement process, are susceptible to eviction at any time. This "legal twilight zone" leads to harassment, evictions, extortion of money and sexual molestation of forest dwellers by forest officials, by declaring them encroachers in their own homes. In the latest eviction drive from 2002 onwards, more than 3 lakh families have been driven into destitution and starvation across states.

How do forests get destroyed?

To destroy a forest today requires nothing more than either a bribe to the local forest officer or an application to a committee in Delhi. The net result has been:

- The loss of more than 90% of India's grasslands to commercial Forest Department plantations.
- The destruction of five lakh hectares of forest in the past five years alone for mines, dams and industrial projects;

- The clearing of millions of hectares of forest for monoculture plantations by the Forest Department;
- Recent proposals to privatize "degraded" forest lands for private companies' timber plantations.

Moreover, the forest laws destroyed all the community management and regulation systems that had existed before, forcing people to choose between either abandoning the forest entirely or living as 'criminals' within or near it. Even today it is a criminal offence to plant a tree in a reserved forest; but it is legal for the forest department to fell the entire forest so long as it has Central government permission.

What is special about the Forest Rights Act?

The Forest Rights Act, 2006 basically does two things:

- Grants legal recognition to the rights of traditional forest dwelling communities, partially correcting the injustice caused by the forest laws.
- Makes a beginning towards giving communities and the public a voice in forest and wildlife conservation.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or simply "the Forest Rights Act"), came into force on the 31 December 2007, with the objective of recognizing and vesting the forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been living in forests for generations but whose rights have only been respected through violation. It has also been called the Forest Rights Act, the Forest Dwellers Act, the Tribal Rights Act, the Tribal Bill, and the Tribal Land Act. The law concerns the rights of forest-dwelling communities to land and other resources, denied to them over decades as a result of the continuance of colonial forest laws in India.

It is expected that the Act will redress the "historical injustice" committed against forest dwellers and at the same time make forest conservation more effective and more transparent.

Brief History and Evolution of Forest Laws in India

Tribals of India have lived on forest land for generations, cultivating and collecting forest produce. However, their traditional rights have never been adequately recognized or recorded and they have been forced to live as "encroachers" on their own lands. This happened because of a series of Indian Forest Acts that were passed from 1876 through 1927 by the British with the intention of making it easier for them to access the country's timber resources for their use. It is erroneously believed that the purpose of the Indian Forest Act was to protect forests. The "protection" concern was limited to ensuring that the British did not lose "their" timber. For this reason, the main concern of the forest laws was preventing "unauthorized" access to forest produce.

It gave enormous powers to forest authorities — to arrest, to search without warrant, to confiscate property, and so on. Whenever reserved or protected forests were declared, the rights of tribals and forest dwellers were almost never recorded. Thus, they were reduced to the status of "encroachers" on their own lands. This deprived the native tribes their traditional peaceful lifestyle, besides harming the socio-environmental fabric. Unfortunately,

the Forest Act of 1927 remained India's central forest law even after independence and the native tribes remained subordinated to the whims and fancy of the forest authorities.

Total Disregard of Forest Communities



In 1976, it was stated by the National Commission on Agriculture that the only reason forests existed was to continue production of wood for industrial purposes, and thus, it is imperative that priority be given to industrial development over individual and community needs. With the 42nd amendment of the Constitution the same year, forests were transferred from the State List under the 7th Schedule to the Concurrent list, bringing them within the purview of the Centre.

When the government of India passed the Forest Conservation Act (FCA) on the mid-night of 25 October 1980, hundreds of thousands of indigenous/ tribal peoples became illegal residents on their own ancestral land on which they have lived for ages. It was amended in 1988 after the Forest Department was transferred from the Ministry of Agriculture to the Ministry of Environment and Forests. It only shifted the focus from earning revenues to conservation, still no consideration of the people dependent on forests. His act view people as enemies of conservation, which can only be done by the government and its departments.

Genesis of the Forest Rights Act

However, the National Forest Policy of 1988 marked a drastic departure from the earlier stand of strict conservation. For the first time, the needs of tribal and rural people, whose lives depended on forests, were taken into consideration and their rights were recognized. The policy's, for the first time, aimed to ensure environmental stability and ecological balance between all life-forms depending upon the carrying capacity of forests.

This historical digression marked an important shift in the government's forest strategy; from a State-centric approach to a people centric one. To this end, the MoEF had issued a set of circulars in 1990 that were designed to help execute the necessary provisions. Unfortunately, these guidelines remained only on paper, and were not translated into implementation. As a result, no action was taken towards recording and recognizing the ancestral rights of tribal communities permitted by the FCA and the subsequent guidelines of the MoEF.

The Problematic Supreme Court Order

In 1995, a PIL filed against the destruction of forests by influential commercial bodies and lobbies brought the Godavarman case before the Supreme Court of India. The court ordered the union government to stop indiscriminate encroachments. The MoEF erroneously interpreted it to mean an eviction notice of the tribals. It unfortunately led to a large scale eviction drive and untold sufferings of the native tribes. As a result, widespread protests followed, but the MoEF stuck to the 1990 guidelines and evictions continued.

The Newly Born Ministry of Tribal Affairs Drafts the Tribal Rights Bill



In order to address this problem, in 2004 the National Advisory Council held discussions with the MoEF officials and tribal rights activists on the issue of 'encroachment'. It was decided to draft legislation for settlement of rights of tribal communities and forest-dwellers, along with verification of eligible encroachments. Thus, the Ministry of Tribal Affairs came into existence in October 1999 and was assigned the task of drafting The Scheduled Tribes (Recognition of Forest Rights) Bill, which was placed before the Parliament in 2005.

It was the time of rapid economic growth, liberalization, and globalization which had allowed the multinationals and corporate houses easy access to and control of natural resources. Their activities have been creating havoc in the lives of the tribals, who were seen as mere hurdles towards country's 'growth and development'. Nonetheless, passage of the Bill marked an historic occasion, because for the first time the rights of forest dwelling people got recognized in the independent India. The debate since the tabling of the initial bill in December 2005 to the passage of the Act in the Lok Sabha brought forward the age-old prejudices against the tribal people.

Opponents of the Bill

The Bill was opposed largely by two quarters. First, some environmentalists advocated management of forest, wildlife and other bio-diversity with complete exclusion of tribal people, local communities or forest dwellers. It was in sharp contrast to International declarations and guidelines: the Rio Declaration, decisions of the Conference of Parties of the Convention on Biological Diversity and recommendations of the United Nations Forum on Forest.

Second, the Ministry of Environment and Forest opposed the Bill on the ground that implementation of the bill will result in the depletion of the country's forest cover (by the actions of forest dwellers). It is a funny logic because over 60% of the country's forest cover exists in 187 tribal districts inhabited by tribals (who make up less than 8% of national population).

Important Features of The Forest Dwellers Act

In brief, the Act offers three important rights to forest dwelling people, which is really humane and historic as well:

- Title rights (ownership) - to land that is being farmed by tribals or forest dwellers as on December 13, 2005, subject to a maximum of 4 hectares. Ownership is only for land that is actually being cultivated by the concerned family as on that date, meaning that no new lands are granted.

No one gets rights to any land that he has not been cultivating prior to December 13, 2005 and that he is not cultivating right now. Those who are cultivating land but don't

have document can claim up to 4 hectares, as long as they are cultivating the land themselves for a livelihood. Those who have a patta or a government lease, but whose land has been illegally taken by the Forest Department or whose land is the subject of a dispute between Forest and Revenue Departments, can claim those lands.

There is no question of granting 4 hectares of land to every family. If I am cultivating half hectare on December 13, 2005, I receive title to that half hectare only; and if I am cultivating nothing, I receive nothing. If I am cultivating more than 4 hectares without documents or a dispute, I receive title to only 4 hectares.

The land cannot be sold or transferred to anyone except by inheritance.

- Use rights - to minor forest produce (also including ownership), to grazing areas, to pastoralist routes, etc.

The law provides the following for rights to use and/or collect:

- a. Minor forest produce things like tendu patta, herbs, medicinal plants etc "that has been traditionally collected. This does not include timber.
 - b. Grazing grounds and water bodies
 - c. Traditional areas of use by nomadic or pastoralist communities i.e. communities that move with their herds, as opposed to practicing settled agriculture.
- Forest management rights - to protect forests and wildlife

Though the forest is supposed to belong to all of us, till date no one except the Forest Department had a right to protect it. If the Forest Department should decide to destroy it, or to hand it over to someone who would, stopping them was a criminal offence.

For the first time, this law also gives the community the right to protect and manage the forest. Section 3(1) (i) provide a right and a power to conserve community forest resources, while section 5 gives the community a general power to protect wildlife, forests, etc. This is vital for the thousands of village communities who are protecting their forests and wildlife against threats from forest mafias, industries and land grabbers, most of whom operate in connivance with the Forest Department.

Thus, the Act seeks to recognize and confer forest rights to forest dwelling Scheduled Tribes (FDSTs) and other traditional forest dwellers. Such rights include rights to hold, occupy, and live in forest land, ie, rights of access to forest produce, rights to collect and use it, and any other traditional right that have been enjoyed by forest dwellers. The government will still have access to forest land for developmental activities like schools, hospitals, anganwadis, drinking water, water pipelines, roads, electric and telecommunication lines, etc through the consent of the relevant Gram Sabha.

Supremacy of Gram Sabha



Making Gram Sabha the supreme authority is an important feature will allow grass-root democracy and free of decisions to the historically neglected tribals. It is perfectly in line with another important piece of legislation for tribals, namely the PESA Act of 1996. If implemented honestly, this would allow the local tribals communities manage their natural resources using their traditional knowledge. As per the Act, the Gram Sabha has been designated as the competent authority for initiating the

process of determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling Scheduled Tribes and other traditional forest dwellers.

Vesting rights in the village community is a very healthy trend in the long run for protection, conservation and regeneration of wild life, forests and biodiversity.

A Gram Sabha is a village assembly consisting of all people registered in the electoral roll of that village or group of villages, and forms a strong base for decentralization of power. The Gram Sabha also has the final word on whether the State can take away forest land for the purposes mentioned in the Act, and determine the nature and extent of individual or community rights in area of its jurisdiction.

How are the rights recognized?

Section 6 of the Act provides a transparent three step procedure for deciding on who gets rights. First, the Gram Sabha (full village assembly, NOT the Gram Panchayat) makes a recommendation - ie who has been cultivating land for how long, which minor forest produce is collected, etc. The gram Sabha plays this role because it is a public body where all people participate, and hence is fully democratic and transparent. The Gram Sabha's recommendation goes through two stages of screening committees at the taluka and district levels. The district level committee makes the final decision. The Committees have six members - three government officers and three elected persons. At both the taluka and the district levels, any person who believes a claim is false can appeal to the Committees, and if they prove their case the right is denied. Finally, land recognized under this Act cannot be sold or transferred.

Critics have been vocal on this empowerment of Gram Sabhas. They feel the rights and duties of the Gram Sabha have been left rather vague and unclear, especially with regard to their jurisdiction. The Act is silent about remedial actions in case of conflict of interests or opinions when more than one Gram Sabhas is involved.

Who is a forest dweller under this law?

There are two stages to be eligible under this Act. First, everyone has to satisfy two conditions:

1. Primarily residing in forests or forest lands;
2. Depends on forests and forest land for a livelihood (namely "bona fide livelihood needs")

Second, you have to prove:

- That the above conditions have been true for 75 years, in which case you are an Other Traditional Forest Dweller (s. 2(o));

OR

- That you are a member of a Scheduled Tribe (s. 2(c)); and
- That you are residing in the area where they are Scheduled (s. 4(1)). In this case you are a Forest Dwelling Scheduled Tribe.

Some Conspicuous Features of FRA

Some Conspicuous Features of the FRA

- Inclusion of "Other Traditional Forest Dwellers" diluted the law by taking the focus away from the "Scheduled Tribes" who have a symbiotic relationship of the tribals with forest, which was the original intent of the 2005 Bill. Tribals have emotional, psychological and cultural attachments with the forest and they always lived in the forest and cannot be separated from forests. The same is not to be said of the "other traditional forest dwellers" i.e. non tribals, for whom turn to forests for livelihood related activities when no other options exist.
- The draft Bill prescribed 25 October 1980 as the cut-off date to qualify for holding of rights. It was changed to 13 December 2005. Tribal activists feel that it was meant to benefit the other traditional forest dwellers that are required to prove that they have been occupying the forestland for three generations as laid down in the Act. By extending the date from 25 October 1980 to 13 December 2005, one generation has already been covered!
- The land entitlement of actual occupation, with the cap of 4 hectares. This provision hurts those Scheduled Tribe families who have ancestral land in excess of 4 hectares. There is no provision of compensation for surrendering extra land.
- Another vital area the Forest Act overlooked is the thousands of pending cases against the forest dwelling scheduled tribes for minor offences related to forest produce. Although the Act confers them the right over minor forest produce, it does nothing about past cases under the Forest Conservation Act of 1980 and Indian Forest Act of 1927. It has no provision for dropping the cases against the poor tribals.

Expected Impact of the Forest Dwellers Act

A. Eliminate Historical Injustice

Tribals have been living in forest land for generations, cultivating and collecting forest produce. There exists an intrinsic relationship between the forest dwelling people and the surrounding resources in India. They are inseparable from each other and integral to the very survival and sustainability of the forest eco-systems. Taking them as mere enemies or plunderers of resources is nothing but betrayal of the historic tradition of peaceful coexistence between the forests and the tribes.

They became illegal occupants in their own land because they never had the tradition of having paper titles (and the government never gave them). Constant displacement of these people due to 'development projects' left them cut off from their traditional way of living and fighting for survival. The FRA offers legal safety against their exploitation and evictions.

B. Environmental Protection

Branding native forest tribes as threat to forest and natural environment is no more than a ploy to drive them away and take control of forest resources for industrial and commercial exploitation. If forests and the natural resources in them exist today, it is because of the poor tribals lead a symbiotic (and non-exploitative) lifestyle. The only motive that brings the outsiders (particularly the corporate houses and big businesses) to the forests is the greed for minerals and natural resources. They will also be the first to run away once they have exhausted all the money making natural resources.

On the contrary, tribals' simple lifestyle offers the best protection to the forests; they are the "most effective conservationists" of forests without having that label. The Forest Rights Act recognizes this historical fact and rightly wants to put their traditional knowledge to stop destruction of forests.

C. Stop Organized Land Grabbing

The local opposition to the plans of Vedanta and Sterlite Industries reflects how the interests of the poor and simple people can be brushed aside by governments, in favor of large scale industrial projects. In all such cases of large projects causing wide spread environmental damage, the victims of forced eviction are weakened due to lack of land rights. The Forest Act will, hopefully, go some way towards addressing this situation.

While there is always a chance of misuse of any law by the rich and powerful, the Gram Sabhas constituted under this Act are far less prone to misuse than a handful of State officials who have enjoyed discretionary powers under the previous acts.

First Community Rights Under FRA

In 2009, two Tribal villages – Mendha-Lekha near Dhanora and Marda near Potegaon – in the Gadchiroli district of Maharashtra won the first community rights in the country under the Forest Rights Act, 2006. It provides virtual ownership of the forest surrounding a village to the village community. Mendha-Lekha and Marda villages got legal rights to manage and utilize about 1800 and 880 hectares of forests respectively.

In the mid nineties, Mendha-Lekha had also hit the headlines with its Mawa Nate Mawa Raj (We Govern Ourselves) slogan, declaring itself as a self-determining village implementing its own development programs with least governmental intervention, drawing strength from provisions of the Panchayati Raj Act. It was also the first village to come out with a bio-diversity register (record of the bio-diversity in the forest around the village) under the Biodiversity Act.

"It is the tribals and traditional forest-dwellers who have protected the forest while outsiders have destroyed it. That's why the Act seeks to empower them to manage their own forests."
– Atul Patne

Relationship with Existing Laws

The provisions of the Forest Rights Act are in addition to and not in derogation of other laws that are in force, such as the Forest Act, the Forest Conservation Act etc. As a result, while the forest dwelling schedule tribes (FDSTs) and/ or other traditional forest dwellers may be vested with certain forest rights under the Act, they may be unable to exercise them because they may be subject to the provisions of the other applicable laws. Problems also arise regarding the jurisdiction of the various authorities under these separate but overlapping laws.

Unless the FRA provisions supersede all other existing laws, the tribals are unlikely to gain any meaningful benefit from this act. This has parallels with the PESA Act, 1996 which has been made meaningless due to other applicable laws in those areas. State governments, forest officials and district authorities will always find ways excuses under provisions of other laws and circumvent what the FRA offers to the tribals.

How Indian Forest Laws Displace People?

Most people associate displacement with land acquisition, but that is only one way of displacing people. The Environment Ministry's control over forest land gives it enormous power over people's homes, livelihoods and lives – and lakhs are facing harassment, impoverishment and injustice as a result. Here is how:

- Under the Forest (Conservation) Act of 1980, the Environment Ministry has the final say over the use of 23% of India's land area – areas recorded as forest land in government records. Even after the passage of the Forest Rights Act, 2006 it has handed over thousands of hectares of land [in MP and Chhattisgarh alone, the Ministry has given away (through "in principle" and "final" clearances) 15,411 hectares of forest land to various projects]. The Ministry did not consult or even inform the people who lived on, used and depended on this huge area of land. On August 3rd, 2009, the Ministry admitted this was illegal and issued a circular ostensibly to stop it, but went on ignoring its own decision in the same fashion since.
- But the land grab doesn't stop with forest land diversion: Under the FC Act, 1980, for every hectare diverted, one hectare of revenue land or two hectares of degraded forest land has to be planted with trees. While this looks good on paper, it makes no environmental sense – a tree plantation is no replacement for a natural forest and often results in loss of biodiversity and damage to water tables. However, these plantations allow scope for yet more land grabbing – this time by the Forest Department rather than by projects. The plantations take place on lands that often actually belong to individual forest dwellers or that are village common lands. Thus people lose their lands at both ends – to the projects at the diversion site and to plantations at the afforestation site.

The roundabout methodology has been made clear by a 2003 circular of the Ministry, which explicitly recommends types of community forest lands to be used for compensatory afforestation. It then requires them to be notified as reserved or protected forests and transferred to the Forest Department – meaning people lose all rights to cultivate, collect firewood or forest produce, or graze their livestock in lands that were in fact their own.

Between 1980 and 2009, such "compensatory" plantations took place on 11,83,472 hectares of land – of which 5,54,635 hectares was revenue land which was now brought under Forest Department control.

- More land grabbing through plantation programs and "Joint Forest Management" (JFM): JFM has become a way for the Forest Department to extend its control over more lands and fragment villages in the process. The village committees set up under JFM are controlled by the forest guard, who is their member secretary / joint account holder. Their "participatory" plans for forest protection have to fit entirely within existing Forest Department plans. They are not given any rights but instead promised a share in timber and other revenues in exchange for free labor. As a result, JFM Committees often consist entirely of contractors, traders, elites and others close to the Forest Department, and function as proxies for the Department, to the extent of attacking and evicting other members of villages on the Department's instructions.

Enormous sums of money are then pumped into these “participatory” committees by the National Afforestation Program (Rs. 1057 crore was given between 2008 and 2010). The money is routed through Forest Development Agencies, which once again have forest officials in all key positions. In 2008, the Standing Committee on Environment and Forests condemned the current form of afforestation policies as “afforestation ... deprives forest dwellers and tribals / adivasis of some or all of their lands and adversely impact their livelihoods and basic needs – for which they are neither informed, nor consulted, nor compensated.”

In 2009, state governments took Rs 5,000 crore international loan for JFM schemes. Since 2009, despite an explicit recommendation from the Parliamentary Standing Committee to overhaul the entire structure, more than Rs 11,000 crore is being gradually released for “compensatory afforestation”. Internationally, the government is seeking assistance under the REDD mechanism of the climate change agreement – REDD means Reducing Emissions from Degradation and Deforestation – once again in the name of plantations and JFM. Private companies may also get involved in such plantation activities. India has plans for afforestation of a staggering 10 million hectares of land under the Green India Mission.

All these programs will support forest dependent people or leave them displaced for sake of “conservation” is a question that is better left unanswered in the present scenario.

Proposed Amendment to FRA – Efforts to Dilute it?

As with any bureaucracy, the forest bureaucracy does not want to give up its power; and forest dwellers continue to have cases filed against them for doing things that are now their legal right under the FRA. In March 2012 the Ministry of Environment and Forests tabled an amendment to the Forest Rights Act in the Rajya Sabha. The new amendment deceptively appears people-friendly.

The amendment supposedly aims to reduce false cases against forest dwellers. The proposal increases the fine amount (up to Rs 10,000) for which “compounding” (closing the case when the fine is paid, without a court trial) is possible. This looks like a good idea, until one recognizes that it will simply mean that even more cases will be filed in order to extract bribes in exchange for compounding (release).

The amendment proposal also makes a mockery of the powers of the Gram Sabha. It proposes that when a forest official decides to compound an offence, he or she will consult the Gram Sabha. He doesn’t have to consult the Gram Sabha while booking someone for an offence, but only when deciding whether to fine the person. Either way, the Gram Sabha has no power to do anything about the case itself. What is the purpose of such a sham “consultation”?

Under the Forest Rights Act and the Panchayats (Extension to Scheduled Areas) Act, Gram Sabhas in forest and Scheduled Areas have powers to manage and protect forests. Apart from streamlining the set procedures and removing bureaucratic hurdles of forest department, the most important the FRA and PESA act require is do declare them above all other existing laws applicable in their domain.

Status of Implementation

The Forest Rights Act may have all the best intentions for protecting the interests of forest dwelling tribes, but in reality its implementation is as superficial, if not worst, as the PESA Act, 1996. Forest officials still behave as if these acts don't exist and consulting Gram Sabhas is a ritual state authorities rarely bother to perform and clear large so-called "developmental projects" as a matter of routine.

A status report of 2010 said that all of the key features of this legislation have been undermined by a combination of apathy and sabotage. In the current situation the rights of the majority of tribals and other traditional forest dwellers are being denied and the purpose of the legislation is being defeated. This is not merely a result of bureaucratic failure; both the Central and the State governments have actively pursued policies that are in direct violation of the spirit and letter of the Act.

High Rejection rate of Claims Under the FRA

The latest data from the MoTA point out a very high rate of rejection of claims submitted under the Forest Rights Act, as shown in the table below, reflects the perpetuation of the historical injustices on the beneficiaries.

State-wise data showing distribution and rejection of claims under FRA as on 31.01.2012
(Table source: Ministry of Tribal Affairs)

State	# Claims Received	# Claims Disposed off / % of received Claims	#Titles Distributed	#Claims Rejected	% Claims Rejected w.r.t. Claims Disposed off
Andhra Pradesh	3,30,479 (3,23,765 Individual, 6,714 community)	3,21,235 (97.20%)	1,67,797 (1,65,691 Individual, 2,106 community)	1,53,438	47.76
Assam	1,31,911 (1,26,718 Individual, 5,193 community)	73,936 (56.04%)	36,267 (35,407 Individual, 860 community)	37,669	50.94
Bihar	2,343	1,173 (50.06%)	22	1,151	98.12
Chhattisgarh	4,92,068 (4,87,332 Individual, 4,736 Community)	4,88,107 (99.19%)	2,15,443 (2,14,668 Individual, 775 Community)	2,72,664	55.86
Gujarat	1,91,592 (1,82,869 Individual, 8,723 Community)	57,624 (30.07%)	39,784 (38,176 Individual, 1,608 Community)	17,840	30.95
Himachal Pradesh	5,635	1,876 (33.30%)	7	1,869	99.62
Jharkhand	34,936	28,500 (81.57%)	13,357	15,143	53.13
Karnataka	1,63,090 (1,60,305 Individual, 2,785 Community)	1,50,348 (92.18%)	6,523 (6,522 Individual, 1 Community)	1,43,825	95.66
Kerala	37,509 (36,140 Individual, 1,369 Community)	25,073 (66.84%)	20,821	4,252	16.95
Madhya Pradesh	4,49,561 (4,40,644 Individual, 8,917 Community)	4,24,102 (94.33%)	1,55,542	2,68,560	63.32
Maharashtra	3,39,689	3,26,652	1,04,767	2,21,795	67.91

	(3,35,701 Individual, 3,988 Community)	(96.13%)	(1,04,344 Individual, 423 Community)	(2,20,523 Ind. 1,272 Com)	
Orissa	4,93,522 (4,91,203 Individual, 2,319 Community)	4,25,454 (86.20%)	2,94,623 (2,93,825 Individual, 798 Community)	1,30,831 (1,30,222 Ind 609 Com)	30.75
Rajasthan	64,844 (64,510 Individual, 334 Community)	60,475 (93.26%)	30,325 30,280 Individual, 45 Community)	30,150	49.85
Tamil Nadu	21,781 (18,420 Individual, 3,361 Community)		Could not Distribute due to order of HC, 3,723 titles ready		
Uttar Pradesh	92,406 (91,271 Individual, 1,135 Community)	90,706 (98.16%)	17,705 (16,891 Individual, 814 Community)	73,028	80.51
Uttarakhand	182	1 (0.54%)	NIL	1	100

States with high disposal rates also have high rejection rates. The rejection rate of as many as 11 states is above 50 per cent. If we leave aside Uttarakhand and HP that have rejection close to 100 percent and Karnataka (95.66%), the high percentage from Naxal infected states such Bihar (98.12%), Uttar Pradesh (80.48%), West Bengal (73.12%), Maharashtra (67.91%), Madhya Pradesh (63.32%), Chhattisgarh (55.86%), Jharkhand (53.13%) don't paint a good picture. Even the low percentage rejection of Orissa (30.75%) does not tell the real story of implementation.

A principal reason for high rate of rejection of claims has been the obstruction caused by the forest department officials and other government officials. The National Committee on Forest Rights Act expressed concerns over the "predominance to forest officials and obstructions caused by them" during the process of verification and decision making at various level across India. The National Committee pointed out that "Though the FRA provides for multi-stakeholder verification and decision-making at various levels, in many places the opinions of forest staff/officers appear to have over-ridden all else. Examples of this include decisions often left by SDLC or DLC to forest staff/officers, reflecting a lack of confidence in the full committee decision-making process, and lack of interest and capacity in Tribal Department officers to handle matters of forest rights."

The claims are often rejected on frivolous grounds. There are number of frivolous reasons for rejection of claims under the FRA.

1. The Forest Rights Committees have not been constituted at the Gram Sabha level in several states as provided in the Act which seriously hampers verification of the claims.
2. The "predominance to forest officials and obstructions caused by them" hampers the process of verification and decision making at various level across India.
3. The claimants are denied proper hearing of their cases which is one of the reasons for the high rate of rejections.
4. The claimants are being denied reasonable opportunity to file appeal against the rejections before the higher authorities.
5. In an overwhelming number of cases, the rejections are not being communicated to the claimants thereby denying them the right to appeal.

Further, there are number of claims which are not being addressed by the State governments. First, the Community Forest Rights (CFRs) are not being recognized and in many States even the forms are not supplied. Second, claims under the FRA are not being recognized in the protected areas such as National Parks, Wildlife sanctuaries etc thereby putting the Scheduled Tribes (STs) and Other Traditional Forest Dwellers (OTFDs) at risk of forcible evictions. Third, the OTFDs are being denied rights under the FRA.

The so-called success of issuing land titles must also be taken with a pinch of salt. Land titles issued are vaguely worded and often without clear maps or demarcation of any boundaries, area etc. As a result, more than one person/family has been granted title over the same plot of land.

Status Summary

Summarizing, the status across all states, there are three common broad issues that repeatedly come up in most the States.

1. Which Gram Sabha (Village Assembly)

Rarely the Gram Sabhas are allowed to function as envisaged in the FRA. They are bypassed, not consulted, or not informed – in short, the Gram Sabhas are taken for granted. State government officials find it more convenient to call Gram Sabhas at the Panchayat level, if at all they are forced to.

In the final form of the law, in Scheduled Areas, hamlet level Gram Sabhas are required, while in other areas the law permits revenue village Gram Sabhas. The "Gram Sabha" (village assembly) is the first tier of decision-making in the Act. In reality Gram Sabhas can be called at three levels: (a) At the level of the actual settlements - the hamlets, (b) At the level of revenue village, which include multiple hamlets, or (c) At the administrative level of the gram panchayat which includes many revenue villages.

2. The Forest Rights Committees

Officials are reluctant to constitute the FRCs as per the prescribed procedure and want to go ahead with the verification process as per their whims arbitrarily. Again, they would be happy to bypass the procedure laid for constituting the FRCs.

Each village is to elect a committee of 10 - 15 people from its own residents as a "Forest Rights Committee", which will do the initial verification of rights and place its recommendations before the Gram Sabha (which makes the decision).

3. Community Rights

Officials, particularly from the forest department play all tricks to deny this right by every means – spread of misinformation, not providing proper forms in the local languages, by trying to give community rights only to the Van Suraksha Samities formed under Joint Forest Management. Obviously, the forest department does not want to give up its powers in favor of the Gram Sabhas through which the community rights are to be exercised.

The FRA is not about individual land claims; it is all about empowering the communities by giving forest rights. Many rights, such as the right to minor forest produce, are to be

exercised as a community. The most powerful sections (sections 3(1)(i) and 5) of the Act concern the community right to manage, protect and conserve forests. The community forest rights (CFRs) should have been the focus of implementation.

However, the State governments and forest department officials treat the Act as if it is purely about individual land rights or a land distribution program.

Poor Recognition of Community Forest Rights Claims

The FRA is not a land distribution program for forest dependent people, although it allows that. It is more about empowering the forest villages through community rights on minor forest produce (MFP) and management as well as protection of forests. Protection of forest dwellers community culture and strengthening their symbiotic relation with surroundings is the spirit behind FRA. Section 3(1) of the FRA provides several kinds of rights to communities.

Nature of the Community Rights (Adopted from <http://www.fra.org.in/>)

- a) Collection and use of small timbers, fuel wood for household purposes as per the section 3 (1) (b) of the Act.
- b) Right of ownership, access to collect, use and dispose of Minor Forest Produces under section 3(1)(c) of the Act and as defined under 2(i) of the Act and Rule 2 (d) of the Rules;
- c) Right over products of water bodies (Pond, Nala, Stream, River and Reservoir) such as fish, crab etc. and use of water for livelihood purposes and also for domestic animals under Section 3(1) (d) of the Act.
- d) Right to graze domestic animals under Section 3(1) (d) of the Act.
- e) Community Right to seasonal access and use of pasture resources in all categories of
 1. forestlands [as defined under Section 2 (d) of the Act] traditionally used by them under Section 3 (1) (d) of the Act and management as per customary law under Section 3 (1) (e) and 3 (1) (j) of the Act.
- f) Right to collect & use small timbers for construction of temporary huts for shelter during seasonal halts under Section 3 (1) (l) of the Act.
- g) Right to protect, regenerate, conserve and manage the community forest resource for sustainable use.
- h) Right of access to biodiversity, intellectual property and traditional knowledge related to biodiversity and cultural diversity as per Section 3 (1) (h) of the Act
- i) Any other traditional right such as Right to use forest roads/paths (Traditionally used by the local communities), collection of soils for household purposes, places of worship/sacred areas, observing rituals/festivals & etc. under section 3 (1) (l) of the Act.

Conditions for Community Rights

- a) These rights are heritable but not transferable.
- b) Seasonal Access and use rights of Nomadic and Pastoralist communities within the Community Forest Resource area shall be respected by the Gram Sabha under Section 3 (1) (d) and (l) of the Act. The Gram Sabha & such user communities shall jointly decide rules for regulating access for sustainable use of the area under section 5 of the Act
- c) Traditional rights do not include traditional right of hunting or trapping or extracting a part of body of any species of the wild animal. All community members shall comply with Gram Sabha

decisions for regulating access to community forest resources and preventing activities adversely affecting wild animals, forest and biodiversity under Section 5 the Act.

Section 5 empowers and enjoins upon communities the duty to protect forests, wildlife and biodiversity, safeguard their habitat and cultural heritage from destructive practices, regulate access to forest resources, and ensure that adjoining catchment areas and water sources are protected.

One of the sorry facts these statistics hide, is the abysmal status of community forest rights (CFR) claims. The vast majority of the claims processed so far have been for individual plots of land. The joint committee of MoEF and MoTA on Forest Rights Act has also clearly indicated that the progress of implementation of the Community Forest Rights (CFRs) is abysmally low. The actual situation is worse than the CFR numbers indicated in the table below: most claims are for development projects that the FRA allows (roads, transmission lines, health and educational centers, etc) and not for use and management of forest resources.

As per the latest (for the period ending on 29-02- 2012) progress report on MoTA website, the status of CFRs is given in the following table

State	Claims for CFRs Filed	CFR Titles Given
Andhra Pradesh	6714	2106
Assam	5193	860
Chhattisgarh	4736	775
Gujarat	8723	1608
Karnataka	2785	1
Kerala	1369	-
Madhya Pradesh	8917	-
Maharashtra	3988	423
Orissa	2321	798
Rajasthan	334	45
Tripura	277	55
Uttar Pradesh	1135	814
West Bengal	7824	108

There is little information on the extent of area under these claims. However, compared to the number of villages (about 170,000) having forests with total of about 32 million hectares, it appears that a vast majority of forest dependent villages and communities have not been able to claim or get their CFR claims recognized.

A widespread bit of misinformation is that CFRs do not provide anything more than what communities already enjoy under the Indian Forest Act, or under JFM. Yet another wrong impression that has spread is that CFRs (or FRA in general) cannot be claimed in wildlife protected areas, especially tiger reserves. MoTA and MoEF in fact had to issue a clarification circular informing states that the FRA does apply in such areas. There however remains widespread resistance from the forest bureaucracy, which either feels threatened by the community empowerment that would ensue, or fears that communities will not be able to ensure the protection of forests. In Mt. Abu area, CFR claims were reportedly rejected as the area is an Eco-sensitive Area.

In many states considerable initiative has been taken by communities, civil society organizations and officials in taking the process forward. It resulted in successful recognition of the claims, though the CFR claim numbers are pathetically low.

Key Violations

The key violations in the implementation of the FRA are as follows:

- In several major States, implementation of the Act has hardly taken place.
- All States have largely failed to respect the Act's historic provisions regarding the role of the Gram Sabhas:
 - Gram Sabhas have been constituted at the wrong level and thereby rendered dysfunctional and ineffective.
 - Gram Sabhas are generally bypassed and officials, Forest Department and JFM committees supersede them. Such violations include deliberate efforts to use Joint Forest Management to divide villages and substitute Forest Department-controlled JFM committees for community bodies.
- There has been large-scale interference by the Forest Department in the rights recognition process. This takes the following forms:
 - Demands are made that claimants produce fine receipts or primary offence reports (PORs) from prior to 1980 (or from prior to the Act's cutoff date of 2005).
 - Demands are made that claimants should be on Forest Department "encroacher lists".
 - Taking undue control on decisions on claims by subverting the roles of the Gram Sabha, the Sub Divisional and District Level Committees.
 - Forest officials have occupied key implementation posts in state and central Tribal Welfare Departments and are imposing the Forest Department's perspective and interests on the process.
 - Imposition of conditions not required by law on both claims and on exercise of final rights.
 - Continued evictions of adivasis and forest dwellers in total violation of the law.
 - Continued application of contrary forestry legislations and efforts to subvert the law by passing new legislations that violate rights (such as in Madhya Pradesh).
- All non-land rights in the Act – most of which are community rights – have largely been ignored in implementation. The Central and State governments have treated the Act as if it is a land title distribution scheme.
- Sub-divisional level committees have arbitrarily rejected claims on the basis of non-pragmatic criteria, failed to inform claimants of the rejection and the reasons thereof, and failed to respect the democratic process mandated under the Act.
- District level committees have been the source of a number of serious violations:
 - Rejections without intimation or communication to the claimants.
 - Abdication of responsibility by other departments in favor of the Forest Department, which has been given effective veto powers in most areas.

- Unilateral reductions in the size of land titles granted to the claimants without any reason being given and without informing them. It is understood that this too is based on the Forest Department's interference.
- Abuse of GPS technology to manipulate maps and areas of land for which titles are being given.
- In most States the Act has been implemented in haste without proper preparation and training of the concerned staff.
- Eligible claimants have been denied rights, particularly in the case of other traditional forest dwellers, whose claims have been overwhelmingly rejected in all States. All States seem to be assuming that all OTFDs are ineligible unless they can produce documentary evidence of 75 years of continuous residence, when such evidence is not required under the Rules (besides, most State governments do not have records of that period).
- Protected areas have largely been excluded from the implementation of the Act.
- The Central government, and in particular the Environment Ministry, has continued policies that are in direct violation of the spirit and letter of the Forest Rights Act. These include afforestation and plantation programs that result in violations of rights; Joint Forest Management; and relocation from tiger reserves and diversion of forest land in favor of large projects, in total disregard for the rights of forest dwellers under the Forest Rights Act or for the procedures and safeguards provided in law.
- The Ministry of Tribal Affairs has shown no seriousness or commitment to addressing any of these issues and has largely failed to even monitor the Act properly. Instead it has only gathered statistics on numbers of claims processed and made this the basis of a number of "awards" and proclamations that have no relation to the ground reality.

The nodal Ministry i.e. Ministry of Tribal Affairs (MoTA) and nodal agencies appointed at the State and Union Territory level have taken the role of mute spectators. In 2010, the Ministry of Tribal Affairs had claimed that "Though the Act was passed by the Central Government, the primary responsibility of implementing this Act lies with the State Governments" and that its role is limited to only "facilitating and monitoring the implementation" of the Forest Rights Act. The nodal departments at the State level do not understand the provisions of the FRA and have been reduced to performing a 'post office' job of collecting statistical information and forwarding it to the higher levels".

The Forest Rights Rules, 2007 notified on 1 January 2008 actually overrules the Act to deny rights to the beneficiaries. In clear violation of the FRA, Rule 14(3) of the Forest Rights Rule 2007 empowers the Sub-Divisional Level Committee to reject the claims without any explanation.

Some Good News on CFR

Notwithstanding the overall dismal performance, the potential of CFRs is beginning to be felt wherever there have been pro-active organizations or officials. For instance:

- Several villages that have got rights are planning CFR initiatives. Mendha-Lekha and Marda villages in Maharashtra, amongst the first, have discussed possible management strategies, and what kind of role they want outside agencies like the Forest Department to play.

- Dozens of villages in Dangs and Narmada districts of Gujarat have formed committees for protection even before they have got CFR rights, and some have already caught truckloads of stolen wood or stopped bamboo felling by the Central Paper Mill. Villagers in Gadchiroli district of Maharashtra have removed encroachments by outsiders on their claimed CFR areas, and moved to take control over several wetlands forcing the government to withdraw fish contracts to outsiders.
- The potential conflicts that could arise by several villages claiming the same patch of forest have been resolved in several states by gram sabha representatives coming together for collective mapping, or coordinating their respective claims. At several sites such as villages in Dediapada (Gujarat) and in Ahmednagar (Maharashtra), they have also made room for the use of the CFRs by nomadic or seasonal users, who would otherwise have been left out of the process.
- CFRs are being claimed in several protected areas; in places like Badrama and Karlapat Sanctuaries (Orissa), Biligiri Rangaswamy Temple Sanctuary (Karnataka), Shoolpaneshwar Sanctuary (Gujarat), and Mudumalai Sanctuary (Tamil Nadu), communities are discussing possibilities of doing wildlife conservation, on their own or in collaboration with the Forest Department.

The Way Forward

The Forest Rights Act, 2006 has the potential to reestablish the symbiotic relationship between the forests and forest communities. However, based on the experience of last 3-4 years, there is an urgent need to remove the prime hurdle coming from the mindset of forest department. An education campaign needs to be launched especially for them so that they learn to accept the "new paradigm" in which they are no longer rulers of the Indian jungles; they must now learn to become facilitators of community forest governance.

Another important step that would make the implementation smoother is to bring all forest related laws in harmony with the FRA so that they aid, not hinder the FRA. It would be better to legally make the FRA supreme over other overlapping laws in applicable areas.

Finally, the most important step would be to strengthen lower Gram Sabhas and empower them to take responsibility of their surroundings by claiming their rights. That is the only way to promote grass-root democracy in the true spirit of Panchayati Raj Act. Powerless Gram Sabhas are also negating the benefit of another important act for forest tribes in the Schedule V areas, the PESA Act, 1996. In fact, strengthening FRA and PESA is the best way to defeat the menace of Naxal violence, which has been labeled as the biggest internal threat to the country by the current Prime Minister.

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