

## **RIGHT TO FOREST: WHERE ARE THE TRIBAL COMMUNITIES WITH THE AMENDED FOREST ACT**

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### **Abstract**

Millions of people live in and near forest domains, but have no officially permitted right to their homes, lands or livelihoods. FRA, 2006 recognises forest dwellers' rights and makes conservation more accountable. According to 2011 census report, Tribal population is 104.3 millions and constitutes 8.6% of total population, which is 8.2% in 2001. There were 2, 57,226 forest cases pending against tribals between 1953 to 2004 under Sections 26, 33 and 41 of the Indian Forest Act 1927 pertaining primarily to illegal felling of trees for domestic use and ferrying of wood by bullock carts. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, are a major opportunity to strengthen economic, political empowerment and social security of tribes and other forest dwellers. The present paper is an attempt to examine the status of forest Act, 2006 in India with reference to tribal problems. The attempt has also been made to assess the major challenges which are coming during the implementation of this Act and the preservation of sustainable livelihoods of the tribes and other traditional forest dwellers. The paper also highlighted the relevance and validity of forest act, 2006. The findings suggest that Indian policies are well designed but worst implemented. FRA, 2006 is a very good effort to serve the marginalized tribal communities. But, in order to make this Act a boon, more efforts are needed. It requires strengthening of the forest dwellers' rights, makes conservation more accountable and more transparent.

### **INTRODUCTION**

No country in the world can grow without the fulfilment of basic human needs. Ever since the FRA was enacted, the state governments and Government of India have been claiming it as a major victory for tribal peoples' rights in India. But this law was not able to resolve tribal peoples' human rights and livelihood issues such as political autonomy land acquisition, and development-induced displacement. This Act makes forest dwellers' rights and makes conservation more accountable. FRA, 2006 recognises and vests the forest rights and occupation in 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; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

According to 2011 census report, Tribal population is 104.3 millions and constitute 8.6% of total population, which is 8.2% in 2001. There were 2, 57,226 forest cases pending against tribals between 1953 to 2004 under Sections 26, 33 and 41 of the Indian Forest Act 1927 pertaining primarily to illegal felling of trees for domestic use and ferrying of wood by bullock carts. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, are a major opportunity to strengthen economic, political empowerment and social security of tribes and other forest dwellers. Awareness of their rights make sure that they do not remain mere afterthoughts and that they suppose visibility after decades of shadowed existence. The act objects at restoring customary rights of forest dwellers and maintaining ecological balance so crucial to the forest areas. In the FRA, the government of India, for the first time lawfully acknowledges the historical injustices faced by adivasis and other traditional forest dwellers whose rights were improperly recognised, throughout the colonial period as well as in independent India in the form of land acquisition, displacement, wildlife sanctuaries and establishment of biosphere reserves. It as well acknowledges that these communities are central to the very survival and sustainability of the forest ecosystems. The Act basically does two things: Grants legal recognition to the rights of traditional forest home communities, in part correcting the inequality caused by the forest laws and makes a beginning towards giving communities and the public a voice in forest and wildlife conservation.

### **OBJECTIVE OF THE STUDY**

1. To study in brief, the historical background of Forest Right Act
2. To examine the status of FRA, 2006 in India with reference to tribal problems.
3. To conclude with suitable recommendations.

## HISTORICAL BACKGROUND

In the colonial era, the British diverted abundant forest wealth of the nation to meet their economic needs. While procedure for settlement of rights was provided under statutes such as the Indian Forest Act, 1927, these were hardly followed. As a result, tribal and forest-dwelling communities, who had been living within the **forests** in harmony with the environment and the ecosystem, continued to live inside the forests in tenurial insecurity, a situation which continued even after independence as they were marginalised. The symbiotic relationship between forests and forest-dwelling communities found recognition in the National Forest Policy, 1988. The policy called for the need to associate tribal people in the protection, regeneration and development of forests. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, was enacted to protect the marginalised socio-economic class of citizens and balance the right to environment with their right to life and livelihood.

## PREAMBLE OF FRA, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) was enacted to recognize and vest the forest rights and occupation in 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, to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

## FOREST RIGHTS UNDER FRA, 2006

- Right to hold and live in the forest land under or common occupation for habitation or for self-cultivation for livelihood.
- Right of possession, access to collect, use and dispose of minor forest produce.
- Community rights to use fish and other products of grazing, water bodies, and traditional seasonal resource.
- Rights in or over disputed land under any nomenclature in any state where claims are disputed.
- Rights for conversion of *Pattas* or leases or grants issued by any local authority or any state government on forest lands.
- Right of conversion and settlement of all forest villages.
- Right to protect, regenerate or conserve or manage ant community forest resource.
- Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.

## PROVISIONS UNDER FOREST ACT, 2006

Various provisions of FRA can be discussed in the following way:-

- **Constitution of Forest Right Committee (FRC)s:** In many states, the configuration of FRCs have taken place at the Panchayat level (covering several villages) and not at the village/community level and the FRCs have been formed in a hurried manner without making sure representation of forest dependents tribals, and women.
- **Verification and mapping:** There is lack of clarity in the process of verification and mapping of FRA in lots of areas. There is a extensive delay in recognition and verification of FRA and in some cases claims are pending even after two years of being filed.
- **Institutional barriers to determination and recognition:** In many states claims are limited by presence and interference of existing institutions mainly the JFMCs and Eco-Development Committees (EDCs). In some states the governments have been insistent that these institutions be used as CFR management institutions, and the region allocated to them be recognized as the CFR.
- **Overlapping claims:** In some cases there have been claims on common forests by several villages, without coordination, which could lead to disputes. It appeared that in many areas resources are shared by a number of villages. This cannot be resolved at the level of the rules and Act, and needs to be set on at the local level.
- The technical support and knowledge for claims is lacking, as is awareness building and training. Both formal and informal structural support is found wanting in facilitation of claims.
- **Exercise of rights:** In many areas gram sabhas and communities are facing problems and legal hurdles in exercise of rights under FRA, 2006 particularly sale of minor or non- timber forest produce like bamboo, Kendu, leaf, leasing out of bamboo to paper mills by the state government.
- **Forest Department's role and that of other departments:** The role of FD needs to change in accordance with the changing context of shift in forest governance and management under FRA.
- **Allocation of funds to gram sabhas/committees formed under FRA:** As gram sabhas begin to take over

- governance and management, they may require funds; will the funds departing to the FD thus far, for such forests, now walk off to the gram sabha? How does one stay away from the problems that appear when large amounts of money discharged into villages?
- **Conflicting laws, policies and plans:** There is no effort from the government to discuss and identify the legal and administrative barriers to the realization of rights under FRA and to remove such barriers or to assimilate CFR and other rights into their systems and plans.
  - **threats from development projects:** Forest land distractions, which are taking place for development projects under the Forest Conservation Act (FCA), are mostly not complying to the FRA and Ministry of Environment and Forests (MoEF) guidelines of July 2009 stating that FRA provisions need to be met with before project proponents can apply for forest authorization. The FAC (Forest Advisory Committee) does not seem to be insisting on such agreement, and there is no detailed system at the MoEF or state government level to ensure it.
  - The FRA is still not implemented in most of the forest and unsurveyed villages in the states.
  - Violation of FRA continues in many protected areas particularly in tiger reserves where the FRA process is being stalled, or relocations have either taken place or are in progression. Most replacement is in disobedience of the provisions of the FRA and Wild Life Protection Act (WLPA), e.g. taking place without rights first having been launched, or without establishing irretrievable dent and lack of co-existed alternative. Cases of violations are reported from Sariska in Rajasthan, Achanakmar in Chhattisgarh, Simlipal in Odisha, Melghat in Maharashtra, and so on.
  - Critical Wildlife Habitats process has not gone very far and in many places is taking place without the other provisions of the FRA having been implemented.

### CURRENT SCENARIO

On February 13, 2019, the Supreme Court ordered the eviction of lakhs belonging to the Scheduled Tribes (STs) and Other Traditional Forest Dwellers (OTFDs) categories across 16 States, whose claim as forest-dwellers has been rejected under the Forest Rights Act. A Bench of Justices Arun Mishra, Navin Sinha and Indira Banerjee ordered the Chief Secretaries of many of these States to evict those whose claims were finally rejected. The court directed that the eviction be carried out by July 24, 2019.

The Bench, in a 19-page order, cautioned the States that if the evictions were not carried out within the stipulated time, “the matter would be viewed seriously.” The Chief Secretaries of the States were asked to file affidavits by July 12, explaining why the rejected claimants had not been evicted. It ordered the Forest Survey of India (FSI) to make a satellite survey and place on record the “encroachment positions.”

The February 13 order is based on affidavits filed by the States. The affidavits, however, do not make clear whether the due process of law was observed before the claims were rejected. The Centre argues that the rejection of claims is particularly high in the States hit by Left-Wing Extremism, where tribal population is high. The forest land claims of these tribes and forest-dwellers are mostly rejected by the States. Being poor and illiterate, living in remote areas, they do not know the appropriate procedure for filing claims. The gram sabhas, which initiate the verification of their claims, are low on awareness of how to deal with them. The rejection orders are not even communicated to these communities.

Thereafter, on February 28, the court stayed its order, though it said “the mighty and the undeserving” who have encroached on forest land would be shown no mercy. It has decided to examine whether due process was followed by the gram sabhas and the States under the Forest Rights Act before the claims were rejected.

### CONCLUSION

It can be concluded that Indian policies are well designed but worst implemented. FRA, 2006 is a very good effort to serve the marginalized tribal communities. But, in order to make this Act a boon, more efforts are needed. It requires strengthening of the forest dwellers' rights, makes conservation more transparent and more accountable. Another main step that would make the execution smoother is to bring all forest related laws in harmony with 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. Hence, need is to change this mindset and reconstruct our policies in such a way that it matches with the needs of individuals in particular and nation in general.

## RECOMMENDATIONS

- ❖ A protocol is needed to ensure that the FRA processes are fully followed in any proposal for relocation of claimants and rights-holders.
- ❖ The implementation should either be through existing institutions or by creating new ones.
- ❖ Clarity of procedure need to be developed at the community and official level to deal with overlapping or conflicting claims on community forest assets, incorporating facilitation of joint meetings of pertinent FRCs / gram sabhas by the SDLC. These types of conflicts are best determined at the local level taking into account the local context.
- ❖ Wandering and migratory pastoralists, who have the traditional access in areas, need to be identified and facilitated to get their rights.
- ❖ State governments should appoint or facilitate support teams in all areas to provide information and technical inputs to people and gram sabhas.
- ❖ It is important to make a compilation of all clarifications, guidelines and circulars regarding provisions of FRA, 2006 and circulate it in local languages.
- ❖ Gram sabhas should be the authority for determination of rights under FRA and should also be the decision making body for any development plan or as the local institution for any other Act (e.g. Biological Diversity Act).
- ❖ Gram sabha needs to seek capacity building inputs from available supply, and want to be sustain through provision of funds, training and information other inputs where required and requested.
- ❖ Processes of sustainable extraction, conservation, economic uses, research, development and monitoring should all be carried out or decided at the level.
- ❖ Effective systems of accounting and transparency need to be established at each level of implementation.
- ❖ In the post-rights scenario forest related offences should be dealt with in public hearing at the gram sabha level.
- ❖ State and District and level forest councils, with membership of community representatives, civil society organizations, and relevant government departments, need to be established to provide technical guidance when needed and to monitor the compliance of responsibilities of conservation and equity.
- ❖ Laws in all states need to be reviewed and modified or repealed in light of FRA.
- ❖ A review needs to be conceded out for all relevant laws (including the Indian Forest Act, Forest Conservation Act, Wild Life Act, Biological Diversity Act and Panchayat Acts) in light of FRA.
- ❖ Clarity is needed on what 'habitat' rights.
- ❖ Once the habitats are identified, they should be given protection under FRA and no destructive development projects or processes unfavourable to the survival should be allowed in such areas.
- ❖ There should be capacity building and training programmes for government officials and others involved in the process of implementation to understand the special needs of the groups.
- ❖ Management and governance of protected area, including formulation of management plans, implementation of activities, monitoring, and so on.

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