

A Critical Study Of The Forest Rights Act, 2006: Issues And Challenges

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ABSTRACT

The Forest Rights Act, 2006 has been lauded as one the most progressive enactment of the 21st century which aims to undo the historical injustices committed upon traditional forest dwellers in the pre-colonial and post-colonial era by restoring their traditional forest rights. However even after more than one and half decade later, the act could not make progress in terms of its implementation. This research article comprehensively analyzes the forest policies during the pre-colonial and post-colonial era and how it led to the enactment of the Forest Right Act, 2006 followed by the analysis of critical issues relating to the recognition of forest rights, functioning of gram sabha and role of forest bureaucracy in granting such rights. Thereafter, it delves into the concerns relating to the implementation of the Act and judicial concerns relating to the Forest Rights Act, 2006.

Keywords - Forest Rights, Gram Sabha, Forest Bureaucracy, Implementation, Judicial Approach

INTRODUCTION

Since the times immemorial, tribal & forest-dwellers and forests had an integral relationship which was based on the principles of coexistence, survival and sustainability of the ecological system. And these principles of the integration between communities and forest had achieved the status of customary law.¹ But with enactments of the modern forest legislation, including both pre-independence and post-independence, these customary rights relating to forests were not duly recognized till the enactment of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 which in common parlance is known as Forest Rights Act, 2006 (hereinafter referred as FRA).

The FRA has been enacted by the Indian Parliament to 'undo the historical injustices' which tribal communities and other forest dwelling communities suffered throughout the 17th, 18th, 19th and 20th century², during the transitional period of modernization and industrialization. This enactment attempted to undo the historical injustices suffered by tribal communities and other forest dwelling communities by explicitly recognizing the rights of the forest dwelling communities, under Chapter III of FRA, and by encouraging the participation of communities in the conservation and management of forest and wildlife, under Chapter II of FRA. It provided the recognition of rights of two classes of persons who are eligible to claim rights under it i.e., Forest Dwelling Scheduled Tribes and Other Traditional Forest Dwellers (OTFDs) – communities who have been dependent on forests for a minimum of 75 years. On 31stFebruary, 2007 this act came into force with the publication of the Rules, giving the flesh to the FRA.

¹Bhullar L, "The Indian Forest Rights Act 2006: A Critical Appraisal" (2008) 4 Law, Environment and Development Journal 20 available at: <http://www.lead-journal.org/content/08020.pdf> .

²Shrinidhi V and Rashmi S, "Tribes and Forest: An Essential Assessment of the Forest ..." (*Researchgate*) available at: https://www.researchgate.net/profile/Shrinidhi-V-S/publication/335319789_Tribes_and_Forest_An_Essential_Assessment_of_the_Forest_Rights_in_India/links/5d5e294292851c3763714f9a/Tribes-and-Forest-An-Essential-Assessment-of-the-Forest-Rights-in-India.pdf accessed February 5, 2024.

But even after the 17 years of the enactment of the FRA, tribal and forest dwelling communities still suffers to claim their genuine forest dwelling rights because of the improper implementation³ of FRA by the State. This improper implementation can further be attributed to the complicated procedures⁴, which poor and illiterate forest dwellers are unable to understand & claim under FRA. Addition to this, the poor quality of forest rights recognition⁵and failing to provide the forest dwellers with substantive access and ownership rights to land and forests⁶, further accentuated their struggle in claiming their ancestral rights and legal rights w.r.t. forests and its resources.

This research article aims to comprehensively study the Forest Rights Act, 2006 by encompassing all the pertinent issues related with the enactment. The research paper will analyze the provisions of the FRA, wherein it will provide the critique on the implementation of the rights of the Tribal forest dwellers and OTFDs; recognition and protection of their rights. It will also delve into the issues of interpretation and implementation of the Act by analyzing recent data, role of Gram Sabhas, bureaucracy and judiciary.

BACKGROUND OF THE FOREST LAWS AND POLICIES IN INDIA

PRE-COLONIAL ERA – Before the advent of Colonialism in India, forest lands were mostly under the access and use of the local communities⁷. Tribals and forest dwellers considered forest land as sacred and associated themselves with the forest land. Their usage of the forest land and resources was based on the principle of ecological prudence i.e., exercising the restraint in the exploitation of natural resources⁸, which led to the maintenance of the equilibrium of resources in the pre-colonial times.⁹

COLONIAL ERA – In the 17th century, Colonial powers took India under its grasp of power. This led to the initiation of land control and commercialization of forests¹⁰ under the colonial regime. For instance, between 12th -16th century, western Himalayas were untouched and were considered as inexhaustible but in 1847 when the British administration was introduced in the region, forest cover in this Himalayan region began facing the brunt of commercial exploitation.¹¹ Instances like this point that this commercial exploitation of forest resources was legitimized by introducing the policy of forest control under the State ownership. And in furtherance of this, initial forest policies and legislation were framed by the Britishers under the leadership of Mr. Dietrich Brandis.¹² Thus, Indian Forest Act 1865 was legislated which indicated the greater control over the forest resources that had earlier, up till then, been open for the public use.

Shortly thereafter, the Act of 1865 was replaced by the Indian Forest Act 1878. This Act of 1878 provided for the present day categorization of forest i.e., Reserved, Protected and Village Forest. This Act was an extension of the government policy of establishing control over the forests. Under this Act of 1878, provisions for imposing duties over timber were also introduced.¹³ In 1894, Forest Policy was introduced which stressed on the management of the forest which was penultimately aimed at maximizing the revenue generation for the British government. Following these previous enactments, Indian Forest Act 1927 was legislated. This Act of 1927 contained all the major provisions of previous acts. Additionally, provision was made to create village forest within the Reserve Forest.

POST-COLONIAL ERA

³Bhaduri A, “Poor Implementation of Forest Rights Act Hurts Tribals” (*India Water Portal* October 2, 2018) available at: <https://www.indiawaterportal.org/articles/poor-implementation-forest-rights-act-hurts-tribals#:~:text=Forest policies led to centralisation,an overall increase in deforestation,> accessed February 6, 2024.

⁴Uphadhyay S, “Forest Rights Act Is Quite Clear on Genuine Forest Dwellers, but States Are Letting It Down” *The Print* (February 24, 2019) available at :<https://theprint.in/opinion/forest-rights-act-is-quite-clear-on-genuine-forest-dwellers-but-states-are-letting-it-down/197193/>, accessed February 15, 2024.

⁵“Four Reasons Why the Forest Rights Act Fails to Empower Forest-Dwelling Communities” *Oxfam India* (July 27, 2018) available at:<https://www.oxfamindia.org/blog/forest-rights-act>, accessed February 6, 2024

⁶Jose KD and Shanmugaratnam N, “Social Sciences | Free Full-Text | The Persistent ... - MDPI” (*MDPI*) available at: <https://www.mdpi.com/2076-0760/10/5/158> accessed February 6, 2024.

⁷“History of Forest Control and Forest Policies” (*History of Forest Control And Forest Policies*) available at: <https://www.fao.org/3/w7712e/w7712e04.htm#3.1> pre colonial times,accessed February 6, 2024.

⁸Gadgil M, “Towards an Ecological History of India” (1985) 20 *Economic and Political Weekly* available at: <http://repository.ias.ac.in/64225/1/41-pub-ocr.pdf>, accessed February 6, 2024.

⁹Saravanan V, “Colonial Commercial Forest Policy and Tribal Private Forests in Madras Presidency: 1792-1881” (2003) available at: <http://ier.sagepub.com/cgi/content/abstract/40/4/403> accessed February 7, 2024.

¹⁰*Ibid* 9

¹¹“A Himalayan Plunder ”(*India Environment Portal Knowledge for change*) available at: <http://www.indiaenvironmentportal.org.in/content/3168/a-himalayan-plunder> accessed February 16, 2021

¹²Umashankar S, “Evolution of Environmental Policy and Law in India” [2014] *SSRN Electronic Journal*.

¹³http://lib.icimod.org/record/23461/files/c_attachment_234_2518.pdf.

EXTENSION OF COLONIAL POLICY- In 1952, the First Forest Policy after independence was announced which prescribed that the claims of the communities near forests cannot override the national interest i.e., tribals and forest dwellers were restricted to use the forest wealth at the cost of wider national interests.¹⁴ Thus, the argument of 'National Interest' was primarily applied to augment the revenue of the government and it took precedence over other considerations and whenever the interest of local people came in the way of the raising of revenue from forest, they were set aside by the forest department.¹⁵

As per Jewitt, post-colonial policy of 1952 was an extension of British policy¹⁶, which further accentuated the commercial exploitation and degradation of India's forest in the post-independence period.¹⁷ After the 1952 policy, through the 42nd constitutional amendment act 1976, 'forests' were transferred to the Concurrent list from the State list of the Constitution. This amendment led to no change in status of the conservation of the forest and forest continued to be exploited and degraded indiscriminately.

CHANGE IN APPROACH – Initial policies for Forest, after independence, were in essence the extension of the earlier British policies. With the view to regulate the unabated diversion of forest land to non-forestry purposes, Forest Conservation Act, 1980 was enacted.¹⁸ Under this Act, the approval of the Central Government was made compulsory before forest land could be diverted to non-forestry purposes, thus this Act helped in reducing the diversion of forest land.¹⁹

SHIFTING OF FOCUS – The New Forest Policy was announced in 1988. The 1988 Policy was game changer in the sense that this policy stated that the forests were not to be commercially exploited for the industries, but were to be conserved, thereby giving higher priority to the environmental stability and ecological balance than to earning revenue.²⁰ Further this policy called for safeguarding the customary rights of the tribal and forest dwelling communities over the forest and near forest land.

This policy led to the recognition of the rights of the communities, as the first claim, over the forest produce.²¹ This policy for first time recognized that local community should have participation in decision making in the preparing, implementing and monitoring the site specific plan²², thereby paving the way for the forest management strategy which is called Joint Forest Management (hereinafter as JFM). Under JFM, village communities were entrusted with the protection and management of nearby forests, which were usually degraded land.

OVERVIEW OF FOREST RIGHTS ACT, 2006

The FRA, 2006 has been hailed as the landmark legislation as it accepts the symbiotic relationship²³ between the forest dwellers and forest. It recognizes that the Scheduled Tribes and other forest dwelling communities, who are dwelling in the forest for generations, were deprived from their forest rights and occupation in forest land on the basis of their inability to provide any recorded evidence. FRA also recognizes the responsibility and authority of the forest dwellers in the sustainable use of natural resources and in the conservation of biodiversity and maintenance of the ecological balance.

Further, it acknowledges the 'historical injustice' committed on the forest dwellers, both during the colonial times and in the independent India, by not adequately recognizing their forest rights on their ancestral lands and habitat. It further stresses on the necessity to address the long standing issues relating to the insecurity of tenure and access rights to forest. In addition, it further recognizes the rights of forest dwelling communities who were forced to relocate their dwelling due to State development interventions. Through FRA, forest dwellers have recognized rights which include right to hold and live in forest lands, right to ownership and access to collect, use and dispose of the Minor forest produce (MFP) which has been traditionally collected within or outside the village boundaries.²⁴

¹⁴Joshi G, "Forest Policy and Tribal Development" (*Cultural Survival* June 1, 1989) available at: <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/forest-policy-and-tribal-development> accessed February 8, 2024.

¹⁵Pratap D, "Community Participation and Forest Policies in India: An ..." available at: <https://journals.sagepub.com/doi/10.1177/004908571004000301> accessed February 9, 2024.

¹⁶Jewitt, S., "Europe's 'Others'? Forestry Policy and Practices in Colonial and Postcolonial India" (1995) 13 *Environment and Planning D: Society and Space*.

¹⁷*Ibid* 15

¹⁸Singh CD, "Obtaining Forest Clearances under the Forest (Conservation) Act, 1980" (*Environment Portal*) available at : <http://www.environmentportal.in/files/IIR2009.pdf#page=86> accessed February 7, 2024.

¹⁹ *Ibid* 15

²⁰Saxena NC, *The Saga of Participatory Forest Management in India* (CIFOR 1997) available at: <https://www.cifor.org/knowledge/publication/90/> accessed February 9, 2024.

²¹*Supra* 15

²²Indian Institute for Forest Management (IIFM), National Forest Review Policy Review, Bhopal

²³(*Ministry of Tribal Affairs*) available at: <https://tribal.nic.in/FRA.aspx> accessed February 9, 2024.

²⁴*Supra* 15

By enacting FRA, Indian Parliament has finally overturned the colonial framework of the forest bureaucracy's exclusive territorial control and management of the enclosed forested landscapes.²⁵ And replaced it with the community management and participation, whereby strengthening the conservation framework of the forests by laying down the foundations for the democratic-decentralization of forest governance²⁶.

FOREST RIGHTS UNDER FRA, 2006

FRA is divided into VI Chapters, containing *in toto* 14 sections. Section 3 of Chapter II of Act, provides for the Forest Rights to the Scheduled tribes and Other traditional forest dwellers (OTFDs) on all the forest land.

This right includes both the individual and community rights which are briefly:

1. Right to hold and live in the forest land under individual or common occupation for habitation or for self-cultivation for livelihood.²⁷
2. Community rights such as *nistar* (could be understood as the usufruct rights for meeting the domestic needs), including those used in erstwhile Princely States, Zamindari or such intermediary regimes.²⁸
3. Right of ownership, access to collect use and dispose of Minor Forest Produce²⁹
4. Other community rights to use or entitlements like fish or other products of water bodies, grazing and traditional seasonal resource access of nomadic or pastoralist communities³⁰
5. Rights of habitat and habitation for primitive tribal groups and pre-agricultural communities³¹
6. Rights over disputed lands in any States where claims are disputed³²
7. Rights of conversion of leases or grants issued by the local authority or State government on forest lands to titles³³
8. Rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages or other villages in forest into revenue villages³⁴
9. Right to protect, regenerate, conserve and manage community forest resources which were traditionally protected and conserved for sustainable use³⁵
10. Right to be recognized under any State law or laws of Autonomous Regional Council as rights of tribal under traditional or customary law of the concerned tribes of any State³⁶
11. Right to access biodiversity and community rights to intellectual property and traditional knowledge related to biodiversity and cultural diversity³⁷
12. Any other traditional rights customarily enjoyed by forest dwellers, which shall not include right of hunting or trapping or extracting any part of body of the wild animal³⁸
13. Right to *in situ* rehabilitation including alternative land in cases where Scheduled Tribes or other traditional dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th February, 2005³⁹

Under the provisions of the FRA, two eligibility conditions are needed to be fulfilled for being governed under this Act. Firstly, claimants should primarily reside in the forest and secondly, he should be dependent on the forest land for his bonafide livelihood needs. According to this Act, the land rights are conferred to the claimants who are in the possession of the land upto 13th February 2005 and to OTFDs who are in the possession of the forest land for the three generation which is of 75, wherein it is assumed that one generation is of 25 years.⁴⁰

Further, it is also provided under the Act that to be a Forest Dwelling Scheduled Tribe, one has to be a member of Scheduled Tribes and the forest must fall under the Scheduled Areas which are governed under Schedule V or Schedule VI of the Indian Constitution⁴¹.

²⁵Sarin MS and Baginski OS, vol 45 (2010) working paper available at: www.ippg.org.uk, accessed February 9, 2024.

²⁶*Ibid* 25

²⁷Section 3(1) (a) FRA, 2006

²⁸Section 3(1) (b) FRA, 2006

²⁹Section 3 (1) (c) FRA, 2006

³⁰Section 3(1) (d) FRA, 2006

³¹Section 3(1) (e) FRA, 2006

³²Section 3(1) (f) FRA, 2006

³³Section 3(1) (g) FRA, 2006

³⁴Section 3(1) (h) FRA, 2006

³⁵Section 3(1) (i) FRA, 2006

³⁶Section 3(1) (j) FRA, 2006

³⁷Section 3(1) (k) FRA, 2006

³⁸Section 3(1) (l) FRA, 2006

³⁹Section 3(1) (m) FRA, 2006

⁴⁰Gochhayat SA, "Project on FRA ACT 2006: The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006" [2011] SSRN Electronic Journal.

⁴¹*Supra* 40

ANALYSIS OF FOREST RIGHTS UNDER SECTION 3 OF CHAPTER II OF FRA, 2006

Rights provided under Chapter II of the Act clearly indicates that the FRA *in verbatim* has been successful in restoring the democratic rights of the Scheduled Tribes and other forest dwellers over the resources of the forest, as an individual rights as well as community rights, which they had been enjoying as customarily, over the time immemorial. After delving into section 3 it is quite evident that the FRA has no implication in the land distribution, rather it deals exclusively with the recognition of pre-existing rights of the Scheduled Tribes and Other Forest Dwellers.

In other words, objectively, FRA has linked⁴² the forest tribal dwellers rights with the authority for the conservation and sustainable use of forest land resources, whereby it has radically shifted the approach of the State from centralization of access to the forest land and forest resources to the decentralization of the forest resources. And the decentralization of the forest land and resources has helped the forest tribal dwellers by restoring the democratic control over the forest governance to statutorily empowered village assemblies⁴³.

It provides individuals rights like right of self-cultivation and habitation and community rights like grazing, fishing, habitat rights for Particularly Vulnerable Tribal Groups (PVTGs), access to biodiversity, Community rights to intellectual property and traditional knowledge etc.⁴⁴

ISSUES STILL UNRESOLVED

Broadly, rights conferred under section 3 of FRA, 2006 are wide in scope. But, still there are certain issues, from the viewpoint of the implementation of the Act, which are vague in nature and, thus create certain ambiguity in the effective enforcement of these rights.

Firstly, section 3 (1)(b) which talks about the nistari rights over the adjoining forest which were often legally recognized prior to the independence. But after the independence and merging of Princely States with the Union of India, these customary usufructuary rights were, in many cases, arbitrarily extinguished or diluted⁴⁵. The Act does not set out any recourse or compensation for the forest dwellers which were dispossessed and evicted from these extinguished or diluted nistari land, during the merging of Princely States with Union, on which they had customary right of habitation and occupation.

Secondly, under section 3(1)(h) which deals with the right of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages into revenue villages, in practice, it is a very tedious task. To understand the complexity, firstly section 2(f) has to be referred to which defines 'Forest villages'. Forest villages are defined as 'the settlements which have been established inside the forests by the forest department of any State Government.....' From the reading of section 2(f), it becomes clear that the forest department is responsible for the development work in village forest settlements as provided under section 3(1)(h). As village forest are regulated by the forest department, these settlement remains outside the scope of local government, the residents of these village forest cannot have even domicile certificate, as it is issued by the revenue department and the revenue department does not have jurisdiction over the forest land⁴⁶. Because of this reason the residents of the village forest settlement lack any legal rights over the land and are treated like 'non-citizens'.

Thirdly, the right to access biodiversity, community intellectual property and traditional knowledge has been provided under section 3 (1)(k). But no clear or distinct mechanism has been provided in the Act as well as in the FRA Rules, as to how these rights could be claimed or protected.

Lastly, section 3(1)(m) provides for the right to *in situ* rehabilitation, but it does not clarify whether the right involves restitution of the lost land or being compensated with alternative land. Furthermore, FRA rules also do not clarify which agency will be responsible for alternative land where restitution is not feasible due to the land being submerged or brought under other use.⁴⁷

RECOGNITION, RESTORATION AND VESTING OF FOREST RIGHTS AND RELATED MATTERS

FRA has been lauded for ensuring the constitutional rights to tenurial, livelihood and ecological security⁴⁸ of the traditional rights of the Tribal forest dwellers in India. The subject matter relating to recognition, restoration and vesting of forest rights is provided under Chapter III of the FRA, 2006. It provides for the recognition of the Community Right, provided under section 3(1) and Community Forest Rights, provided under section 3(1)(i) of the Act.

⁴²*Supra* 25

⁴³*Supra* 25

⁴⁴*Supra* 15

⁴⁵*Supra* 26

⁴⁶*Supra* 26

⁴⁷*Supra* 26

⁴⁸Deo B and others, "Recognition of Community Forest Rights under the Forest Right Act: Experiences from Similipal Tiger Reserve" (FRA2016) available at: [https://www.fra.org.in/document/Recognition of CFR under FRA_Similipal Process document_web.pdf](https://www.fra.org.in/document/Recognition%20of%20CFR%20under%20FRA_Similipal%20Process%20document_web.pdf), accessed February 8, 2024.

The provision for recognition of the forest rights is deliberated under section 4 of the Act which explicitly says that the Central Government has recognized and vested all the forest rights, as enumerated under section 3, to all the forest dwelling Scheduled Tribes [Section 4 (1) (a)] and Other Traditional Forest Dwellers [Section 4 (1) (b)]. Further, under section 4(2) of the Act, it also provides that no forest rights holders shall be resettled or have their rights affected in any manner, except the conditions which are mentioned therein like irreversible damages and threatening to the species and their habitat, co-existence of humans and wild species is not possible etc. Apart from the recognition of the forest rights, Chapter III of the Act also confers, under section 5(4), that the rights recognized under this Act shall be heritable and non-alienable or non-transferable and shall be jointly in the name of both the spouses, in case of married couple and in the name of single head, in case of a household headed by the single person. And further, if there is no direct heir, the heritable right shall pass on to the next-of-kin. This prohibition on the transfer of the rights also exists despite any customary practice of the Scheduled Tribes, to the contrary, which is clearly permissible under Article 19 (5) of the Indian Constitution as it is meant for protecting the interest of the Scheduled Tribes.⁴⁹ Thus, FRA in its widest sense has attempted to restore and protect forest dwelling of the Tribal forest dwellers by making their rights heritable and non-alienable.

Further, more protection to the forest dwellers is provided, under section 4(5), by laying down that no member of the forest dwelling Scheduled Tribes or OTFDs will be removed or evicted from the forest land which is under his occupation till the recognition and verification regarding his claiming of forest right is completed. This provision indicates that the intention of the Act is to maintain the status quo till the verification is completed. But, it seems that this intention of the Legislators is not abided by the executive and forest officials because there are number of reports which suggest that section 4(2) which talks about the modification or resettlement of forest rights of the tribal forest dwellers in the Critical Wildlife Habitats (CWH) encompassing the National Parks and Sanctuaries, has been activated, effectively to evict summarily and unilaterally the tribal population from the areas they deemed critical to the sustenance of any form of wildlife.⁵⁰ This instance of misusing the legal provision by the executive by depriving forest dwellers from their traditional rights over the forest land is completely against the spirit and essence of FRA.

Apart from recognition and vesting of Forest Rights under Chapter III, it also provides for the duties of the holders of Forest Rights under section 5 of the Act. It provides that, in addition to, the holders of forest rights, Gram Sabha and Village level institutions where they are holders of any forest rights will have the following duties:

1. to protect the wildlife, biodiversity and forest
2. to ensure that adjoining catchment area, water sources and other ecological sensitive areas are adequately protected
3. to ensure that the habitat of the Tribal and other forest dwellers is preserved from destructive practices which might affect their cultural and natural heritage
4. to ensure that the decisions of the Gram Sabha are complied with to regulate the access to community forest resources and to stop any activity which adversely affects the wild animals, forest and biodiversity.

The duties provided under Section 5 are inclusive in nature as it attempts to include all the relevant stakeholders like Forest rights holders, Gram Sabha and Village level institutions to protect the forest and its biodiversity. But among these lists of stakeholders, the forest department or the State government has not been mentioned, although it can be argued that the word '*forest rights holders*' also include forest department or State Government under its purview, which have major stake in the management and conservation of Forests. It would have been better, if the forest department and State Government were explicitly written, to invoke the sense of inclusive responsibility which this legislation aims to achieve.

GRAM SABHA AND FRA, 2006: ISSUES AND CONCERNS

Gram Sabha is characterized as the lowest unit of Panchayati Raj Institution (PRI), essentially signifying the democratization and decentralization of governance through the collective participation of the people in the decision-making process. In FRA, 2006 the Gram Sabha has been conferred with the very important responsibility of implementing the provisions of FRA on the ground level. Gram Sabha has been designated as the key authority in the rights recognition process.⁵¹

Chapter IV of the FRA deals with the authorities and procedure for the vesting of Forest Rights. Under Section 6 of the Act, Gram Sabha has been designated as the authority for initiating the process for determining the extent of rights, either individual forest rights or community forest rights or both. Therefore, Gram Sabha is to

⁴⁹Rao KM, "Human Rights of the Forest Dwellers with Special Reference to Forest Rights Act, 2006" (2013) 5 Indian Law Review 21.

⁵⁰Ramakrishnan V, "Hope and Fear" [2009] *Frontline*, available at: <https://frontline.thehindu.com/cover-story/article30194588.ece>, accessed February 10, 2024.

⁵¹CFR-LA, "Promise and Performance : 10 Years of the Forest Rights Act in India" (HRLN2016) available at: https://hrln.org/publication/maharashtra_promise-and-performance-10-years-of-the-forest-rights-act-in-india-2017--5ec7b5c02fc91 accessed February 11, 2024.

constitute a Forest Rights Committee (FRC) and all the relevant records and documents are to be provided to the Gram Sabha.⁵² The composition of FRC should include 10 to 15 members and among these members, 2/3 of them should belong to the Scheduled Tribes and 1/3 members should be the women.⁵³ Under Section 6 (1) of the Act, it is provided that Gram Sabha will receive claims, consolidate and verify them and thereafter, prepare the map. The prepared map delineates the area of each recommended claim.

Following this, Gram Sabha passes the resolution for the recommended claim and thereafter, forwards the copy of such recommended claim to the Sub-Divisional Level Committee (SDLC). For passing the resolution for the recommended claim, at least 50 percent of the total Gram Sabha members and FRC members should be present, and in this 50 percent, at least third of the members should be women. If Gram Sabha passes any resolution by which any person is aggrieved, then the recourse is provided under section 6 (2) of the Act, which provides for the petition before the SDLC and the time limit for filing the petition is 60 days from the date of passing the resolution. SDLC is constituted by the State Government, under section 6 (3) with the objective of examining the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it to the District Level Committee (DLC) which shall be the final authority to approve the record of forest rights, under section 6 (5), through the Sub-divisional Officer for the final decision. Under Section 6(6), the decision of the DLC shall be final and binding.

Apart from constituting Gram Sabha, SDLC and DLC, another body has to be constituted under section 6 (7) which is known as State Level Monitoring Committee (SLMC). The function of SLMC is to monitor the process of recognition and vesting of forest rights and to submit such returns and reports to the nodal agency. The Ministry of Tribal Affairs (MoTA) has been designated as the nodal central ministry, under section 11, for implementing the Act. Thereby, transferring all the powers related to the tribal rights in forest area from the Ministry of Environment and Forest (MoEF) to MoTA, thereby disempowering MoEF from interfering with the recognition and exercise of forest dwellers rights.⁵⁴

Basically in practice, when the forest dweller files a claim for the land title, or lease deed/patta, it passes through three levels of checks-the Gram Sabha, the Sub-divisional level Committee (SDLC) and the District level Committee (DLC). The claimant has the option to provide one of the 14 proofs which is listed under the FRA amended rules 2012, for proving his occupancy over the forest land before 13 February 2005.⁵⁵

Although, Gram Sabha has been designated as the powerhouse for determining the nature and extent of rights, but in reality the legal authority of the Gram Sabha is often undermined by the bureaucracy,⁵⁶ or by the connivance of the Sarpanch and by not placing the significant agenda or by bypassing or ignoring the controversial issues which affect the local communities and their collective and individual rights.⁵⁷ Further, the caste issues and the gender issues along with the misuse of procedure like frequent use of no-confidence motions to systematically undermine the power and effective functioning of Gram Sabha.⁵⁸

Apart from these subjective concerns, issues of absence of Gram Sabha at the village/hamlet levels, as mandated by the FRA and lack of support from the State agencies with respect to capacity building of Gram Sabha and Forest Right Committees on FRA⁵⁹, further dilutes the effective functioning of Gram Sabha in respect with the proper implementation of FRA. In addition to these issues, lack of cooperation including absenteeism in meeting of SDLC and DLC, refusal to help Gram Sabha with the records and evidence, recalcitrant attitude towards the admissibility of evidence affects the proper implementation of the act.⁶⁰ Also, the FRA has not provided any provision for funding from the Central Government but has simply passed the onus on the State Government⁶¹. Addition to this, other issues like village level inequalities and hierarchical relations⁶² also affects the effective implementation of FRA, 2006.

⁵²Bijoy CR, "Forest Rights Struggle: the Making of the Law and the Decade after "(2017) 13 Law, Environment and Development Journal 73 available at: <http://lead-journal.org/content/17073.pdf> accessed February 12, 2024

⁵³FRA Amended Rule 2012

⁵⁴Supra 26

⁵⁵Kukreti I and Sahu PR, "Forest Rights Act: Are State Govts the Real Land Mafias?" (*Down To Earth* March 20, 2019) available at: <https://www.downtoearth.org.in/news/forests/forest-rights-act-are-state-govts-the-real-land-mafias--63664>, accessed February 13, 2024.

⁵⁶Supra 53

⁵⁷Lele MK, "Local Government: Conflict of Interests and Issues of Legitimation" (2001) 36 *Economic and Political Weekly* 4702 available at: <https://www.epw.in/journal/2001/51/commentary/local-governmentconflict-interests-and-issues-legitimation.html>, accessed February 13, 2024.

⁵⁸Ibid 57

⁵⁹Supra 52

⁶⁰2010 (Minutes of First Meeting of National FRA Committee) available at: <https://fracommittee.icfre.org/minutes/Minutes%20of%201st%20meeting%20of%20FRA%20Committee-Final.pdf>, accessed February 12, 2024.

⁶¹Baginski OS and others (2020) available at: <https://hrln.org/uploads/2020/05-May/22-Fri/ippg-historical-injustice.pdf>, accessed February 12, 2024.

⁶²Ibid 61

IMPLEMENTATION OF FRA, 2006

According to the latest monthly data⁶³, till June 2023, released by the MoTA, total of 45,54,603 claims were received out of which 43,68,025 were Individual Forest Rights (IFRs) and 186,578 were Community Forest Rights (CFRs). Till June 2023, 41,13,602 claims were disposed of. And among these total claims, 23,12,041 titles have been distributed out of which 22,01,842 were IFRs and 1,10,199 CFRs. The total area vested under individual rights is 47,56,040.40 Acres and area vested under Community forest rights is 1,30,34,016 acres. Prima facie data suggests that claims settlement process is mainly oriented⁶⁴ towards granting private land rights, i.e., IFRs and complex issues of common land rights and management structure i.e., CFRs are not duly given proper attention. According to the study conducted by the Sahu⁶⁵, the major concerns in the implementation of FRA are:

1. *Poor Quality of Recognized Claims*
2. *Misinterpretation and Violation of FRA provisions*
3. *Lack of coordination between the nodal departments*
4. *Lack of institutional support in Post Claim recognition process* – In the study conducted in the States of Jharkhand, Odisha and Chattisgarh by the Sahu et al.⁶⁶, it was revealed that the institutional support in the post-recognition phase has been almost non-existent.
5. *Lack of Political Will*

ISSUES IN IMPLEMENTATION OF FRA, 2006

Forests are considered as the source of the livelihood, identity, customs and traditions of many Tribals and Forest Dwellers but even after the passing of almost 15 years of FRA, 2006 forest dwellers have not been adequately conferred with the rights on their ancestral lands and their habitats which is integral to the very survival and sustainability of the forest system.⁶⁷ Traditional forest dwellers are constantly facing the threat of losing their lands, livelihoods and forest to the development projects which are initiated without the proper consent of the gram sabha.⁶⁸

Apart from this, there are many instances like in Kerala wherein the efforts of the Government of Kerala were stalemated because to organized resistance from the settled farmers and non-activist workers and even where nominal possession rights were granted to the dwellers of the small tribal communities, the FRA has failed miserably in providing them with the substantive access and ownership rights to land and forests.⁶⁹ Also there have been issues of reluctance in implementing the FRA in letter and spirit on the part of the State Governments like in the case Himachal Pradesh, which has one of the highest percentages of total geographic area termed as forestland but it has the worst record in implementation of FRA, with mere 164 titles issued till February 2021.⁷⁰ Similarly, issues like clear lack of administrative empathy and concern because of the miniscule vote bank percentage of tribal communities in the Scheduled areas doesn't impress the Governments to stress on proper implementation the FRA⁷¹. Further, the lack of technical prowess in the Gram Sabha which is required for the preparation of roadmaps for claiming IFRs and CFRs, provides the Government authorities and Forest

⁶³2023 (Ministry of Tribal Affairs) available

at: [https://tribal.nic.in/downloads/FRA/MPR/2023/\(A\)%20MPR%20Aug%202023.pdf](https://tribal.nic.in/downloads/FRA/MPR/2023/(A)%20MPR%20Aug%202023.pdf), accessed February 12, 2024

⁶⁴*Ibid* 61

⁶⁵Sahu G, "The Genesis, Process, and Implications of the Forest Rights Act, 2006" (2020) 10 *Review of Agrarian Studies* available at: http://ras.org.in/the_genesis_process_and_implications_of_the_forest_rights_act_2006#n4 accessed February 13, 2024.

⁶⁶Sahu G, Toppo A and Ganguly A (TISS and Oxfam India 2018) rep available at: https://www.oxfamindia.org/sites/default/files/2020-07/Promise_and_Performance_report_on_FRA_in_Jharkhand_2018.pdf accessed February 14, 2024

⁶⁷Nandi J, "Review Implementation of Forest Rights: Union Ministries to State Govts" *Hindustan Times* (July 7, 2021) available at: <https://www.hindustantimes.com/environment/review-implementation-of-forest-rights-union-ministries-to-state-govts-101625562374847.html>, accessed February 14, 2024.

⁶⁸Bhaduri A, "Poor Implementation of Forest Rights Act Hurts Tribals" (*India Water Portal* October 2, 2020) available at: <https://www.indiawaterportal.org/articles/poor-implementation-forest-rights-act-hurts-tribals> accessed February 14, 2024.

⁶⁹Kjosavik DJ and Shanmugaratnam N, "The Persistent Adivasi Demand for Land Rights and the Forest Rights Act 2006 in Kerala, India" (2021) 10 *Social Sciences* 158 available at: <https://www.mdpi.com/2076-0760/10/5/158>, accessed February 14, 2024.

⁷⁰"Expedite Implementation of Forest Rights Act: Lahaul and Spiti Tribals" *Hindustan Times* (February 14, 2021) available at: <https://www.hindustantimes.com/cities/chandigarh-news/expedite-implementation-of-forest-rights-act-lahaul-and-spiti-tribals-101639430232017.html>, accessed February 13, 2024.

⁷¹Jyotiranjan S, Patnaik S and Banerjee, H, "Right Political Will Needed to Implement FRA in Letter and Spirit" *Daily Pioneer* (February 14, 2024) available at: <https://www.dailypioneer.com/2021/state-editions/right-political-will-needed-to-implement-fra-in-letter-and-spirit.html>, accessed February 13, 2024.

bureaucracy to take advantage of it and encroach upon the decisions of the Gram Sabha and helping mining industries to extract minerals by sabotaging the rights of traditional forest dwellers, as specifically noted in the State of Odisha.⁷² Similarly, the issue of granting permit for coal mining in the forests of Hasdeo Aranya, Chattisgarh by the Central and State Government wherein, the permission is granted to mine coal in the areas which forms the part of dense forest track⁷³.

Further, as per the provisions of FRA, written consent of Gram Sabha is mandatory and all the claims of villagers relating to the forestland should be processed before the forest clearance to any project is granted. But there are many instances, like in the case of villages Hariharpur and Salhi (Chattisgarh) wherein, it was observed that the forest rights of the village were still pending but mining permits were granted by the Government. Also the issues of fake consent by the Gram Sabha are frequently reported.⁷⁴

As mentioned above, since very miniscule percentage of total forest rights claims are granted even more miniscule is the application for CFRs, which is only 3.52% of the total application received and out this 3.52% CFRs application, only 77,274 applications i.e., 1.8% application has been successfully processed for granting title to the CFRs⁷⁵. The analysis of this data indicates that the whole focus is on the recognition of IFRs. This dilutes the objective of FRA, as it stresses on the recognition of IFRs and CFRs, equally. It can further be inferred that the present approach of granting title to IFRs is more tilted towards the recognition of fragmented forest land which can be used by the individual forest dwellers, more or less, for the agricultural purpose.⁷⁶ This approach does not help in the conservation and management of forest resources rather it turns into the agrarian patches of land. And it can be surmised that in the absence of the proper ecological approach to FRA, the concept of recognition of rights of forest dwellers might actually get converted into recognition of agricultural rights.⁷⁷

Moreover, the vision of democratic utilization of forest resources which is outlined by the FRA is progressively diluted by the enactment of CAF (Compensatory Afforestation) Act, by creating the land banks for the development projects and commercial investments and by diverting the forest land without the consent of Gram Sabhas.

JUDICIAL INTERPRETATION OF FRA, 2006

To decide the constitutionality of the Forest Rights Act, 2006, ongoing petition was filed in 2008 by the *Wildlife First v. Ministry of Forest and Environment*⁷⁸ wherein the petitioners i.e., 'conservation' groups and few relics of the forest bureaucracy, argued that the enactment of the FRA has led to the deforestation and encroachment upon the forest land. In this petition, Supreme Court has been entrusted with the three issues to be decided:

1. Constitutional validity of the FRA
2. Validity of the process of filing the claims under the Recognition of Forest Rights
3. Whether the States have followed the due process in rejecting the claims of forest dwellers.

Further, Petitioner also prayed before the court for eviction of the tribals whose claims had been rejected under the Act. During the hearing of the, Supreme Court passed an interlocutory order on 13th February 2019, wherein the court ordered the States to evict all the individuals by 24 July 2019 who had their claims rejected under the FRA. Further in this order, the Supreme Court also directed the Forest Survey of India to conduct a satellite survey and place on record the encroachment positions before and after evictions. It also directed the Chief Secretaries of various States to submit affidavits explaining why they had up until now failed to evict individuals, who has their claims rejected.⁷⁹ But this interlocutory order of the Supreme Court was criticized as the order neglected the Rule 13 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 which provides for the kinds of evidence that may be validly considered by the FRCs while adjudicating the claims of the forest rights. This list is inclusive one which means that it does not intend to exhaustively convey all the options explicitly⁸⁰ but rather relies on the framework which includes all the

⁷²*Ibid* 72.

⁷³Pal S, "Hasdeo Aranya Mining Clearance: 'Centre Trampling on Tribal Rights,' Say Activists" *The Wire* (October 23, 2021) available at: <https://thewire.in/uncategorised/hasdeo-aranya-mining-clearance-centre-trampling-on-tribal-rights-say-activists>, accessed February 13, 2024.

⁷⁴*Ibid* 73

⁷⁵*Supra* 65

⁷⁶M. L (Society for the Promotion of Wastelands Development 2009) rep available at: <http://www.spwd.org/wp-content/uploads/2019/12/Implication-of-FRA-Sustainability-of-FR-and-RC-by-Dr-leena.pdf>, accessed February 13, 2024.

⁷⁷ *Ibid* 76

⁷⁸Writ Petition(Civil) 109/2008

⁷⁹"Eviction of Forest Dwellers" (*Supreme Court Observer* February 15, 2021) available at: <https://www.scobserver.in/cases/wildlife-first-v-ministry-of-forest-and-environment-eviction-of-forest-dwellers-background/> accessed February 1, 2024 .

⁸⁰Srivastava R, "What's Worrying about the SC Order on FRA?" (*Down To Earth* February 22, 2019) available at: <https://www.downtoearth.org.in/news/forests/what-s-worrying-about-the-sc-order-on-fra--63330>, accessed February 16, 2024.

reasonable evidence. It implies that Rule 13 also includes oral statements, which are reduced to writing, as valid evidence for proving the claims of forest dwelling Scheduled Tribes and OTFDs. But in practice, the bureaucracy and forest departments necessarily insist on evidence like satellite imagery or caste certificates, which are often not issued to the claimants.⁸¹

Following this, on 28th February 2019, Supreme Court placed a stay on its order of eviction of the forest dwellers wherein it directed the States to submit whether due process has been followed in rejecting the claims⁸². The Central Government through their Counsel pleaded that the eviction orders resulted in a grave threat to the rights of the tribals and inhabitants of the forests and their liberties were being sacrificed⁸³. The impugned eviction order passed by the Supreme Court on the grounds of incompetence to produce the proof is against the very object of FRA. This is because large portions of rejection of FRA claims were due to the lack of sufficient evidence. For instance, in Orissa till April 2017, almost 35% of the total claims were rejected on the ground of 'insufficient evidence'.

The High Court of Gujarat in the case of *Community Health and Development v. State of Gujarat*⁸⁴ has also held that if the class of citizens, i.e. Forest Dwellers, Scheduled Tribes and OTFDs, were demanded with the strict proof as regard to their rights, then this would frustrate the very objective of the Act for which the Act has been enacted. For deciding the claims, the High Court observed that the '*authorities should not decide the entire claims based on the satellite image....*'. The right course of interpretation which should be followed by the courts, while the interpreting the provisions of the FRA, will be the adherence of '*constructive interpretation*' of the provision of the FRA, wherein the court would be guided by the sensitivity and reasonableness, when deciding the provisions of the Act.

CONCLUSION

The enactment of FRA has been lauded as the landmark legislation wherein the State has attempted to rectify the historical injustices committed during colonial and post-colonial times. Through FRA, the individual and community rights of the traditional forest dwellers has been recognized and crystallized, in theory. But in reality, only the individual rights are, to an extent, properly recognized and the community rights are majorly neglected. Also, it is observed that implementation of this Act has been a major impediment in the success of FRA, wherein, the recognition of claims under FRA is affected by the lack of coordination between the nodal departments and misrepresentation of the FRA provisions and rules to the disadvantage of forest dwellers. Moreover, the authoritative and lack of sensitivity & compassion of bureaucracy towards traditional forest dwellers has also been an issue in the proper and effective implementation of FRA, 2006. Thus, it becomes pertinent for the concerned departments and bureaucracy to aim for the effective implementation of FRA, so as to fulfill the aims and objectives of the statute in letter and spirit.

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⁸¹*Ibid* 81

⁸²*Ibid* 81

⁸³"Arguments on February 28th 2019" (*Supreme Court Observer* October 20, 2021) available at: <https://www.scobserver.in/reports/arguments-on-february-28th-2019/> accessed February 16, 2024.

⁸⁴ Writ Petition (PIL) No. 100 of 2011 available at: <https://www.casemine.com/judgement/in/5ac5e45b4a93261aa7923e69>

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