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# Ancestral Forest Lands of Tribes and Their Rights in India

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## ABSTRACT

*The inhabitants of the woodland Scheduled Tribes and other traditional forest residents are critical to the forest ecosystem's existence and sustenance . The failure to recognise their rights over their ancestral forest lands and habitats during the colonial period and in independent India has resulted in grave injustice. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (No.2 of 2007), or simply Forest Right Acts, was enacted to correct the injustice . The Forest Rights Act envisages, recognising, documenting, and vesting forest rights and occupation on forest land with Scheduled Tribes and other traditional forest residents. It establishes a framework for recording the forest rights that have been vested, as well as the nature of the evidence required for such recognition and vesting in respect of forest land, and strengthening the forest conservation regime. It also ensures the livelihood and food security of forest dwellers such as Scheduled Tribes and other traditional forest residents.*

*However, nothing has changed even after six years of implementation. This paper will discuss the Forest Rights Act and its implications among the scheduled tribes of west Bengal and Chhattisgarh, India. Moreover, this paper will highlight on the issues faced by the Scheduled in terms of forest dwellings and other factors that are covered under this act.*

## I. INTRODUCTION

In order to make up for prior wrongs done to the tribal population, the minister of tribal affairs ordered the construction of holistic law in 2005. As a result, the Forest Rights Bill was introduced to Parliament. The law was subject to examination by the Joint Parliamentary Committee (JPC) due to criticism from environmentalists and organizations that support animals. As many tribal forest dwellers were served eviction notices in May 2002 for being outsiders and were incapable to provide residence evidence in the forest, the JPC suggested that a caught-up deadline for the settlement of rights be broadened to December 13, 2005. It also recommended incorporating "traditional" forest dwellers (OTFDs) from one scheduled tribe who have resided there for three generations. The 2.5-hectare land limit for property rights was

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also decreased, and it made several suggestions for relocating producers. JPC suggested the Gram Sabha to guarantee a minimum support price (MSP) for minor forest products (MFP) and to be the final adjudicator of rights. It was suggested that the Gram Sabha take center stage, using PESA as a point of reference. However, the advantage of PESA over Gram Sabha was ignored when the Bill was presented to Parliament<sup>3</sup>.

Additionally, it reduced the 2.5-hectare land restriction for property rights and offered various proposals for moving producers. JPC proposed that the Gram Sabha act as the final arbiter of rights and ensure a minimum support price (MSP) for minor forest products (MFP). The Gram Sabha should take the lead, with PESA as a guide, it was stated. When the Bill was introduced in Parliament, though, it was forgotten that PESA was superior to Gram Sabha. It allows for the restoration of historic forest rights to forest dwellers across India, including individual rights to cultivate land in wooded areas and communal rights to control, manage, and use forests and their resources as common property. It also specifies the conditions for relocating forest inhabitants from "critical wildlife habitations" with their "free and prior informed consent" and for their rehabilitation on different property<sup>4</sup>.

## **II. SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006**

The Forest Rights Act (FRA), passed in 2006, acknowledges the rights of traditional forest dwellers and tribal communities to the forest resources that were necessary for them to be able to meet a variety of needs, such as subsistence, habitation, and other sociocultural requirements. The STs' symbiotic relationship with the forests, which is reflected in their reliance on the forest as well as in their traditional knowledge regarding forest conservation, was not acknowledged by the Acts, Rules, or Forest Policies of Participatory Forest Management in colonial or post-colonial India prior to the passage of this Act<sup>5</sup>.

The Act covers rights to self-cultivation and habitat, which are typically viewed as individual rights, as well as community rights such as grazing, fishing, and access to water bodies in forests, rights to habitat for PVTGs, access to traditional seasonal resources for nomadic and pastoral communities, access to biodiversity, community rights to intellectual property and traditional knowledge, recognition of traditional customary rights, and rights to protect,

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<sup>3</sup> Mohanty H and Singh S, 'Recognition of Forest Rights of Scheduled Tribes: In Context of Community Forest Rights' [2020] SSRN Electronic Journal

<sup>4</sup> Mohanty H and Singh S, 'Recognition of Forest Rights of Scheduled Tribes: In Context of Community Forest Rights' [2020] SSRN Electronic Journal

<sup>5</sup> Samvaad D, 'Ministry of Tribal Affairs, Government of India' (Ministry of Tribal Affairs - Government of India) <https://tribal.nic.in/FRA.aspx> accessed 1 August 2023

regenerate, or conserve or manage. Furthermore, it grants the community the right to the allotment of forest land for construction of essential infrastructure. Together with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Settlement Act, the 2013 FRA protects the indigenous community from eviction without rehabilitation and settlement.

The Act also requires the Gram Sabha and other rights holders to stop any detrimental activities that would endanger these resources or the indigenous people's cultural and natural heritage. The preservation and protection of biodiversity, wildlife, forests, nearby catchment areas, water supplies, and other ecologically sensitive areas are among these tasks. Additionally, the Act grants the Gram Sabha enormous power, enabling the tribal population to have a large role in the creation of regional policies and programs that directly affect them.

The Act thus grants forest dwellers the authority to access and utilize forest resources in the way they were accustomed to doing so traditionally, to protect, conserve, and manage forests, to protect forest dwellers from forcible evictions, and to also provide for basic development facilities so that the community of forest dwellers can access amenities like those for education, health, nutrition, infrastructure, etc.

### **III. TYPES OF FOREST RESOURCES USED BY THE COMMUNITY**

Some of the important community resources and which could potentially be claimed as Community Forest Resources are listed below<sup>6</sup>:

- Houses of worship: There are a number of houses of worship in the neighborhood that are frequently visited and used, particularly for the year-round organization of seasonal celebrations.
- Forests for Usufruct (Nistar) Rights: The community relies on forests for wood for cooking and for building huts with wooden beams, pillars, and rafters.
- The forests are also left open for the animals to graze.
- Gathering MFPs: Tribes and other forest inhabitants gather a variety of MFPs from woods, including gond (gum), khair, sal seeds, harra, baheda, chota phool, bilaiyahana, arjun, nokha, and murli, among others. Two essential MFPs are mahua, which they harvest for personal use, and kendu patta, which they gather in huge quantities to generate an income.

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<sup>6</sup> Sen A and Pattanaik S, 'The Political Agenda of Implementing Forest Rights Act 2006: Evidences from Indian Sundarban' (2018) 21 *Environment, Development and Sustainability* 2355

- **Waterbodies:** The community regularly accesses a number of waterbodies in forests, such as big and small ponds, rivulets, and seasonal rivers, for water, fisheries, and other water-based resources.
- **Quarries:** The community additionally relies on small quarries in the woodlands to obtain the sand and sandstone needed to build their homes. These quarries are utilized for personal consumption only; they are not used for trade.
- **Cremation/burial grounds:** The community uses forest property primarily for cremation/burial needs. There are specific cremation/burial areas for many tribes in the forest.
- **Approach and connection roads:** There are numerous approach and connecting roads that connect villages to the motorway. Pathways are frequently utilized to enter public amenities including ponds, cemeteries, and temples.
- **Community halls and other government infrastructure:** To provide services to the populace, the government has built a number of community assets, including PDS shops, schools, PHCs, anganwadis, Panchayat bhawans, etc. Many of these facilities are located on forest land, and local populations frequently use them.

#### **IV. PROCESS & PROCEDURE FOR IMPLEMENTATION OF FRA**

1. According to Subsection (1) of Section 6 of the FRA, the Gram Sabha is identified as having the authority to start the process of determining the nature and extent of individual and collective rights to be provided to STs and other traditional forest inhabitants within the boundaries of its jurisdiction. It will gather claims, merge and validate them, and then produce a map with the areas that each suggested claim should be used in. A resolution in favor of this will then be put to a vote by the Gram Sabha, and a copy will be sent to SDLC. For the benefit of the Gram Sabha, the Forest Rights Committee (FRC) shall create a list of requests for community rights in accordance with Rule 11(4) of the Rules<sup>7</sup>.

The evidence to be furnished to back up the claims includes:

1. Details of community rights such as usufruct (nistar) or by whatever name it may be called
2. Details of traditional grazing grounds; areas for collecting roots and tubers, fodder, wild edible fruits and other MFPs; fishing grounds; irrigation systems; water sources for

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<sup>7</sup> Sen A and Pattanaik S, 'The Political Agenda of Implementing Forest Rights Act 2006: Evidences from Indian Sundarban' (2018) 21 *Environment, Development and Sustainability* 2355

human or livestock use; territories for herbal practitioners to collect medicinal plants<sup>13</sup>

3. Details of structures or their remnants built by the local community, sacred trees, groves and ponds or river areas, burial or cremation grounds
  - The FRC will confirm the assertions of pastoral and nomadic tribes to ascertain their rights, either individually or through their community or traditional community institution. The FRC will also confirm the claims of primitive tribal groups or pre-agricultural communities to ascertain their rights to habitat, either through their community or traditional community institution, in the presence of these communities or their agents.
  - The FRCs of the Gram Sabhas of the concerned villages will meet to discuss the actual status of the assertions and submit their outcomes to the corresponding Gram Sabhas in writing if there are conflicting claims from another village regarding conventional or customary boundaries or if a forest area will be utilized by more than one Gram Sabha.
  - The Gram Sabhas will refer the issue to the SDLC for decision if they are unable to settle the opposing claims.
  - After receiving the FRC's findings under clause (v) of rule (2), the Gram Sabha will convene as soon as possible to discuss the findings, adopt any necessary resolutions, and forward these resolutions to the SDLC.
  - The SDLC's determination regarding requests for user rights to forest resources shall be conclusive and enforceable.
  - In order to ensure that forest rights are recognized and to keep track of the implementation of the FRA's Rules (2008), the state government will establish a state-level monitoring body.

## **V. ISSUES CONCERNED TO SCHEDULED TRIBE'S FOREST RIGHTS**

Tribal who constitute 8.6 percentage of the Indian population, and live in around 15% of the country area are one of the most unprivileged sections of Indian society. Studies by Mohapatra (1994) showed that Tribal groups are affected by development and pay a hefty price for it<sup>8</sup>. Around 40–50% of the tribal people is affected by the issue of relocation brought on by development initiatives. One ongoing issue is the inclusion of tribal people in the development

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<sup>8</sup> Raju VP, 'Financing Tribal Education in India' [2020] Tribal Development in India: Challenges and Prospects in Tribal Education 301

process<sup>9</sup>. By recognizing that communities that live in forests are essential to the very life and sustainability of the forest environment, the legislation makes an attempt to address the problem. However, a lot of the discussion has been distorted due to a lack of understanding of the act's motivation. The most prevalent notion that the law's goal is to transfer forest land to native tribes or forest residents. However, the act is not meant to confer title to any additional lands; rather, it is meant to recognize rights over property that were already under cultivation as of December 13, 2005<sup>10</sup>. As a result, the FRA neither legalizes nor converts previously illegal land into legal land.

It only acknowledges the rights that the tribal members already possess. Instead of respecting pre-existing rights, states are overly focused on Individual Forest Rights (IFRs) and using them as a land distribution mechanism while implementing FRA. Instead of Community Forest Resources Rights (CFRRs), several states have recognized IFRs and Community Forest Rights (CFRs). The revolutionary perspective of FRA is being hindered by selective implementation. Only 1.6% (46,156) of the 2.9 million claims resolved under the FRA, according to a report from the Union Ministry of Tribal Affairs published in 2010, were accorded community rights, and the majority of these even do not include rights over Minor Forest Produce. According to a joint study by the Rights and Resources Initiative in Washington, Vasundhara in Bhubaneswar, and Natural Resources Management Consultants in Delhi, at least 40 million hectares of forest land are eligible for CFR rights, and approximately 90 million tribal people should benefit from them<sup>11</sup>. IFR is not opposed by the Forest Department because it does not threaten the authority of the Forest Bureaucracy over forest resources. This selective implementation is politically advantageous for state governments vying for investment because CFRs and CFRRs must obtain Gram Sabha approval before diverting forest land for infrastructure and industrial projects.

The existence of clauses that allow the federal government to reject a Gram Sabha decision based on a report from a State level Monitoring Committee not only limits the efficient implementation of FRA but also lessens the power of the Gram Sabha.

Differentiated eligibility requirements for Other Traditional Forest Dwellers (OTFDs) are a significant negative. OTFDs must demonstrate three generations' worth of continuous

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<sup>9</sup> Mohanty H and Singh S, 'Recognition of Forest Rights of Scheduled Tribes: In Context of Community Forest Rights' [2020] SSRN Electronic Journal

<sup>10</sup> Sharma AB, 'The Indian Forest Rights Act (2006): A Gender Perspective' (2017) 2 *ANTYAJAA: Indian Journal of Women and Social Change* 48

<sup>11</sup> Narayanan, 'Forest Rights Act: How Rules Fail in the Jungle' (The Economic Times) <https://economictimes.indiatimes.com/news/economy/policy/forest-rights-act-how-rules-fail-in-the-jungle/articleshow/49175798.cms> accessed 1 August 2023

habitation or dependency in the area. This goes back to a time before surveys, land demarcations, and official documents were available. The impression that non-tribal people are encroachers and opportunistic and are not dependent on forest resources is reinforced by this discriminatory treatment<sup>12</sup>. FRA is a groundbreaking law, but women have yet to achieve their full potential. The laws do give some gender representation in the form of joint titles and clauses for representation, but they do not yet guarantee the inclusion of the views of the most marginalized groups in the community at large and in decision-making processes.

Framing the debate as tribal rights versus animal protection presents another challenge. In a paper published in 2013, Prakash Kashwan details how the Environment Ministry gave state governments the order to designate all current protected areas as important tiger habitats before the FRA implementation began in 2006. And in 2012, the Ministry attempted to have these places removed from the National Board for Wildlife's jurisdiction, ostensibly in order to divert forest land. Scientists and environmentalists must actively pursue this work and keep asking themselves who has access to the forests when forest residents are driven out. The preservation of tribal rights and the conservation of wildlife should not be seen as separate pursuits. Study conducted by Ramdas (2010) demonstrated the interdependence and complementarity between tribal rights and wildlife/forest protection<sup>13</sup>.

Previous studies demonstrated how operational factors such as the remoteness and inaccessibility of the forest area, a lack of information, distorted information flow, a lack of accountability, ineffective coordination, bureaucratic interest, a lack of political will, and indifference toward tribal interests act as major obstacles and undermine the very purpose of the act<sup>14</sup>. Hegemonic discourses of environmental protection stand in as a limiting factor alongside these structural factors, such as social hierarchies, the connection between the local elite and the forest bureaucracy, laws, state policies, and governmental procedure, "illiteracy of tribal," and the operation of the forest department outside of democratic norms<sup>15</sup>. Understanding this complicated dynamic and the various stakes in the status quo is necessary for successful implementation of FRA.

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<sup>12</sup> Sharma, 'The "other" in the Forest Rights Act Has Been Ignored for Years' (The Wire) <https://thewire.in/rights/the-other-in-the-forest-rights-act-has-been-ignored-for-years> accessed 1 August 2023

<sup>13</sup> Gajah and Praja: Conservation, Control, and Conflicts

<sup>14</sup> Chemmencheri SR, 'Decentralisation, Participation and Boundaries of Transformation: Forest Rights Act, Wayanad, India' [2013] *Commonwealth Journal of Local Governance* 51

<sup>15</sup> Springate-Baginski O, Sarin M and Reddy MG, 'Resisting Rights: Forest Bureaucracy and the Tenure Transition in India' (2012) 12 *Small-scale Forestry* 107



## **VI. CONCLUSION**

The FRA represents a shift away from governmental control and toward community-managed forest governance. The recognition of tribal people as the original inhabitants indicates a change in perspective, at least at the policy level. The FRA has the authority to reestablish tribal rights and democratically manage the forest. Compared to past laws, the FRA is without a doubt a revolutionary piece of legislation, but its implementation is difficult. The act's inadequate execution and manipulation prevent it from achieving its novel aim. Lack of institutional support makes tribal communities' issues worse because they are less conversant with modern politics and legal systems. Tribal people are therefore remain at the bottom of the system, which still persists. The forest bureaucracy, which historically played a substantial exploitative player role, is nevertheless a source of support for some of the decentralized institutions that emerged as a result of the FRA. The difficulty for FRA is to implement an inclusive and participatory development strategy given these structural and institutional limitations.

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