

Forest Rights Act : Introspecting the Legal Expropriation

Banojyotsna Lahiri, Assistant Professor, Department of Sociology, Jamia Milia University, New Delhi

Abstract:

The present NDA government, right after coming to power in 2014, made some attempts to change the existing legal safeguards of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This article takes a look at the Act beyond the tampering by the current regime, and historicises its conception and motives and shows how the non-implementation of this Act is in fact integral to its flawed structures. The article juxtaposes the Act with various visions about commercial forestry pushed by World Bank and tries to contextualise the conception of the Act within that framework.

Key words: *Forest Rights Act; Adivasi; Land; World Bank*

In the haste displayed by the various ministries under the present central government to implement pending projects of mining and other industries and terming the legal safeguards for people, against such land acquisition or encroachment in forest rights as ‘hindrance to development’, lies the merit of revisiting the laws regarding forest rights. Such flouting and dilution of the legal safeguards for forest rights has been a matter of concern and outrage among activists, and rightly so. However, simultaneously it is also necessary to take a nuanced and thorough view to understand, whether such legal safeguards were infallible so far, and whether laws like Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 were indeed brought in to secure the rights of the forest dwellers. In this article, I shall demonstrate how the said Act, contrary to its stated aims, had inherent loopholes and was systematically prevented from being implemented even before the National Democratic Alliance (NDA) 2 came to power. Moreover, while the present ruling regime is openly flouting the minimum safeguards guaranteed in the Act, this law itself had hidden motives that facilitate the loot of the forests and denial of rights to adivasi and forest dwellers the inception of which predates the current government.

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006: *Correcting Historical Injustice?*

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter FRA), is a historic juncture in the strife-ridden long road traversed by the adivasis and state on the questions of land, forest and rights. For the then government, the Act apparently sought to rectify a “historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem”. That such a late realization dawned over the state was not out of choice or benevolence but because of the struggle put up by various movements of the adivasis led by political organizations, democratic rights groups, tribal organizations and some NGOs that forced the government to at least recognize the *historical injustice* meted out to the adivasis. These struggles were directed against large scale mining, the Special Economic Zones and other such similar large scale projects all of which entailed a large usurpation of the lands of the adivasis along with the destruction of forests in the name of ‘development’. The formulation of FRA was therefore a necessity in a specific historical context.

The Act, briefly put, recognizes thirteen different rights that are integral to the lives and livelihoods of Scheduled Tribes and other traditional forest dwellers all over the country. These rights include rights to land under occupation as well as customary land, ownership of minor forest produce, rights to water bodies, grazing areas, habitat of Primitive Tribal Groups (PTGs), conversion of all types of forest villages/settlements to revenue villages, the right and power to protect, conserve and manage community forest resources, etc. For the NGOs and other civil liberty groups which approached the question of deprivation of the adivasi from a more liberal perspective, the FRA was a victory. The ensuring of the ownership of land and forest produce for the adivasis was welcomed by a major section of activists. But one needs to scrutinize the Act as well as probe into the will of the rest of the state machinery in implementing the Act before drawing any such conclusion about it. As one can draw from the various instances cited

above, the mere passing of legislation, without a change in the existing social relations, or condition for the large section of the adivasis dispossessed from their lands. That held true for the FRA and its subsequent non-implementation too.

The first introduction of the Act in 2006, and the beginning of its implementation in 2008, met with both cautious celebrations and large scale criticism from various quarters. The act recognises individual rights to land being cultivated in forest as prior to 13 December 2005 (See FRA 2006, section 4(3)). It also recognises community rights and other traditional customary rights of the community to the forest such as *nistar* rights, rights to ownership, collection, use and disposal of minor forest produce, rights to traditional water bodies and their produce, grazing rights and traditional seasonal resource access of nomadic or pastoralist communities, rights to biodiversity, cultural diversity, rights of habitation, and any other customary rights not mentioned (FRA section 3 (a to m)). More importantly, it accords legal rights and vests powers to the communities to protect and manage their community forest resources in accordance with their traditional modes of conservation and also protect the forests, wildlife and biodiversity (FRA section 3 (i) and section 5). The act grants the “right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling ST or other traditional forest dwellers” (FRA 2(3A)). When the Act was first placed much debates started especially by the conservationists along with the influential ‘tiger lobby.’ They deemed the Act as a sell out of the forests by the government to cater to its vote bank contingencies. The Act was referred to a Joint Parliament Committee which suggested some major changes, many of which were later incorporated in the Act. These changes were: (a) The cut-off date for claiming rights to land was changed from 1980 to December 13, 2005; (b) The provision was changed to also include other non-tribal traditional forest dwellers instead of only STs; (c) The ceiling of landownership was changed from 2.5 ha to 4 ha per nuclear family (though the JPC did not recommend any limit); and (d) The penal provisions for forest dwellers were removed. The act granted the “right of ownership, access to collect, use and dispose of minor forest products that have been traditionally collected within or outside village boundaries” to the STs and traditional forest dwellers, even in the areas deemed protected areas.

There was a strong opposition to the Act as I have mentioned, from the conservationist lobbies. They felt giving 2.5 ha (later 4 ha) land to ST and other forest dwellers implies handing over vast swathes of forest land to these people and making it vulnerable to their unbridled exploitation. That was actually a misconception. In reality, the act was not going to vest any new land to anybody. Rather it was only going to give legal recognition to lands that people were already ploughing since prior to 2005. There the maximum recognition could be for four hectares. If someone had land more than 4 ha even then (s)he will get recognition for maximum 4 hectares. If someone had been ploughing one hectare, only that one hectare will be legally recognized. So the MoEF was not going to distribute any new land but simply recognizing the land that the people have been ploughing on for decades now.

The (non)implementation of FRA:

The FRA was finally implemented and notified in 2008. The main glaring drawback of the FRA which scholars also gloss over is the over-emphasis and recognition the Act gives to individual claims but strangely remain ignorant about community ownership and community claims. The government propaganda also chose to focus more on the gram sabha’s role in determining land deeds but not in collectively managing and regenerating forests. Thus, the act was less aimed at developing collective endeavours to manage or protect forest but rather to prompt people to claim private property and individual ownership to land. The government’s own committee, i.e. the Report of National Committee on Forest Rights Act¹, formed under the chairmanship of N.C Saxena, in 2010, talked about the major lacunas that they found in the implementation of the FRA.

The Act laid a procedure for allotment of the forest land that was deemed to be democratic and transparent. In section 6 it held that first the Gram Sabha (which is the full village assembly and not just the Panchayat heads) will meet and decide on the recommendations i.e. who has been cultivating which land for how long; what kind of minor forest produce is collected in that forest area etc. The Gram Sabha’s recommendations will go through two screenings at the taluka and district level (section 6(6)). If anyone wants to appeal against any false claim he’ll have to approach this authority and if his claim is proved the, said right will be rejected. The National Committee, clearly showed that in most of the states the formation of Gram Sabhas have not taken place and the gram sabhas instead of being called at the village level are being called at the Panchayat level, which is illegal. (The National Committee

on Forests Act, p. 206). The report further shows stating many instances, that due to hasty inquiries and lack of verification of the claims at various levels, plenty of cases of wrong rejections have been noted. The claimants are not even notified in writing about the reasons behind the rejections. The village level inquiry reports are simply signed at the district and block level and not even one per cent of the village level inquiries have been cross checked (Ibid. P.86-92). In not a single instance the Committee found the Sub-divisional Level Committee (SDLC), providing maps, documents and evidence to the Grams Sabhas or Forest Committees, which is required as per the FRA (Ibid. P.207). Most crucially the Committee noted with concern that widespread evictions were continuing in clear violation of the section 4(5) of the FRA which states, 'Save as otherwise provided, no member of FDST or OTFD shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete'. The Committee noted that there is little evidence to provide that such illegal activities were dealt with nay seriousness by either the MoEF, or state government or MoTA (National Committee on forest Rights Act, p.76).

Sagari R. Ramdas (2009: 76) who has worked on the non-implementation of the FRA cites a glaring example from Andhra Pradesh. According to the government statistics, till 30 June 2009, 3,29,233 claims were received by the gram sabhas of which 3,23,272 or 98% were individual claims and 5,961 are community claims. Of these, 2,14,430 claims or 65% were approved and sent onto the Sub-Divisional Level Committee (SDLC), of which 1,40,359 (or 65%) were recommended by the SDLC to the District Level Committee (DLC). The DLC approved 1,33,619 claims, which ultimately constitutes a mere 41% of the total claims originally submitted to the gram sabha, of which too finally only 67,855 titles were distributed. The status of community claims is once again conspicuously absent from the data on the official web site (2009: 76).

Further, According to the FRA rule number 3 (1):

The Gram Sabhas shall be convened by the Gram Panchayat and in its first meeting it shall elect from amongst its members, a committee of not less than ten but not exceeding fifteen persons as members of the Forest Rights Committee, wherein at least one-third members shall be the Scheduled Tribes. Provided that not less than one-third of such members shall be women: Provided further that where there are no Scheduled Tribes, at least one-third of such members shall be women.

On paper, ensuring the participation of not just people in general but also, oppressed sections like STs and women seem pretty democratic. However, in reality such a proposal is absurd and not feasible. These meetings, as I have learnt from in my field in Jharkhand and as has been pointed out by others in different states, are held in Panchayat head offices in the most perfunctory way which makes travelling for most women impossible. Therefore, neither the required quorum is made nor is participation of women ensured. These meetings are just held as a matter of formality and quickly declared as 'successful convention of gram sabhas.' The sudden formation of such democratic bodies is only possible when there is a movement on ground of the people and collective participation is consistent. The top-down approach of suddenly propping up bodies in places where the state has virtually remained absent for decades is therefore endeavour riddled with an impossibility of being realized in practice.

The undermining of community claims over forests has also been done deliberately by the state. Despite provisions in FRA, the encouragement about community claims is very low across different states.(ibid: 80) The National Report on Forest Rights Act also clearly admitted that out of the thirteen sets of rights that are recognized by FRA, twelve pertain to community rights, which are grossly undermined in the process of recognition. Community rights like nistar, and other rights of communally owning, regenerating, protecting community forest resources have been clearly ignored.(The National Report on Forest Rights Act, p. 208) The Committee noticed that, there is a clear bias in prioritizing individual rights over community rights among officials at the SDLC or DLC level. Moreover, lack of consolidated data from the MoTA over such community claims and practices, largely precludes the verification of community claims to forest rights. In fact, the Committee noted that maximum confusion and ignorance prevail among officials and claimants over the community forest resources, and it points out in the claim form B, the sub-section about claims for community owned resources is not even mentioned. The Committee notes 'this inexplicable and unexplained omission has ' caused many communities to not claim this right of community forest resources'.(Ibid. P.10)

Thus, the only set of claims that has been so far entertained within FRA is that of individual land holdings. But this has also led into individual claim to property being prioritized which again reinforces the gendered inequalities in the existing property relations. Such individual claims mostly go in the name of men of the family further alienating the women from the land which could have been better ensured by seeking community ownership over forests. Moreover, even the very few women who are given land titles are further forced into doing commercial plantation over their lands, which defeats the entire purpose of ensuring legal deeds in the first place.

For the NGOs and other civil liberties bodies which welcomed and celebrated the FRA, the non implementation is a cause of 'apathy and sabotage' that plagues the proper implementation of the Act and that if goes on this way 'instead of undoing the historical injustice to tribal and other traditional forest dwellers, the Act will have the opposite outcome of making them even more vulnerable to eviction and denial of their customary access to forests.' (Council for Social Development: Summary Report on Implementation of the FRA, p.1). Before contesting their larger perspective, it is also important to give a brief detail of the latest situation of the implementation of FRA across various states, since that too reflects the character of the state in subverting their own legislations.

Across the major states, according to most of the surveys, the implementation of the Act has hardly taken place. The main aspect that has been grossly undermined is the role and function of the gram sabhas that were envisioned when the Act was passed.² In violation of the law, instead of forming gram sabhas or using existing ones, officials of the Forest department and Joint Forest Management (JFM) committees constituted by the gram sabhas have been empowered instead. Instead of forming Forest Rights Committees as provided in the law, the forest department controlled JFM committees have been used as legitimate community bodies thereby retaining the erstwhile control of the Forest Department undiluted. More importantly, there has been a large scale interference by the Forest department in the recognition of the rights.³ Similar reluctance is shown in forming the Forest rights Committees which were envisioned to be the primary bodies where people could put their claims.⁴ There has been gross reluctance by the Forest Department, as is furnished in *all* the NGO reports, to even recognize individual title deeds at a mass scale. Title deeds have been handed over but selectively and the interests and discretions of the FD. Demands are made of the claimants to produce receipts of fines or Primary Offense Reports from prior to 1980 or the cut-off date of 2005. Moreover, the FD also demands that the claimants should be named in the list of encroachers prepared earlier. Many conditions which are not required in the law are often imposed and in some states like Madhya Pradesh, contrary laws have been passed which contradict the rights that could be achieved through FRA.⁵

In all the states, eviction of adivasis are still taking place at a substantial level. Most importantly, the collective or community rights that are being established through sections 3(i) and 5 are being grossly ignored and the Act is being used only to issue individual title deeds to people. There has also been reporting of the abuses of GPS technology to manipulate maps and the areas under which land titles are being given. There has been gross discrimination with the Other Traditional Forest Dwellers (OTFD). Although the Act does not require the production of concrete proofs of 75 years of continuous residence which is almost impossible to obtain for majority of people, such proofs are made mandatory in most of the states for the issuing of titles to land. Contrary to the provisions of the Wildlife Protection Act as amended in 2006, the government notified the "critical tiger habitats" in all the tiger reserves of the country. This once again resulted into harassment and eviction of the adivasis and forest dwellers from these regions. The central government and the MoEF has continued with various policies like plantation programmes, joint forest management, diversion of forest lands, relocation from tiger reserves etc. which are in direct violation of the FRA.

For various NGOs and other civil liberty groups, the FRA was a hope and a result of struggle and the challenge that lies ahead is in its proper implementation. In all the conferences and seminars that I attended organized by these forces, this hope was palpable unchangeably. While the FRA was somewhat a product of struggles by various forces on the question of forest rights for the people, can we really say the real motive of the state in passing this law was actually to ensure the long denied rights of the people and correct the *historical injustice* meted out to them for centuries? What can explain such an ironic *benevolence* given the Indian state's consistent systemic attempts to regularly loot the forests, divert forest lands for mass destruction by the multi-national corporations and deny with all violent means the rights and accessibility of the people to forest land and forest produces? Did the character of the Indian state suddenly change? Quite the contrary, the subservience of Indian state to imperialist capital and its concurrent anti-people policies have only intensified. Across states, there have been series of brutalities reported where people are being booked, fined, penalized and even killed even after the implementation of FRA.

The Recent Tampering of the FRA: Unbridled Plunder by a Ruthless Regime

The present NDA government, right after coming to power in 2014, made some blatant attempts to interfere with the existing legal safeguards of the Act. The most crucial of the changes that it is trying to bring in, include the removal of the provision for “prior informed consent of Gram Sabhas” before the forests are cleared of for an industrial project. The Environment Ministry had allowed coal mines with a capacity of less than 16 million per annum to expand without even conducting a public hearing as was the rule earlier. Further the Environment Ministry has relaxed the entry of industrial projects within 5 km radius of a protected forest area, without even seeking permission from the National Board for Wildlife. Earlier, for setting up projects within even 10km of protected areas, this permission from NBWL was mandatory (Narayanan, 2014). Coupled with the central government’s attempts to dilute the Forest Act, various state governments on their own are also subverting the crucial provisions of FRA. The Maharashtra government for example, is implementing the Maharashtra Village Forest rule, 2014 which circumvents the rights enshrined in the FRA. The new rules take away the autonomy and ownership of forest dwellers on Minor Forest Produces and almost trample the hold of the gram sabhas over forest land.

The current regime is therefore violating and subverting the FRA even more diabolically. However, that does not imply that in the previous regimes, the FRA was protecting the legal rights of the forest dwellers as well as their access to the forest land and resources infallibly. The enactment of FRA should rather be understood in the larger global political economic picture. Behind the smokescreen of correcting historical injustice, the FRA was rather crafted with a larger motive to ensure plunder of forest resources by finance capital.

FRA: Speculating the Real Motives of the State

In 2005 the World Bank released a report on opportunities in Indian forests which aimed to “assist communities to use forests as a means of moving out of poverty”. (2006: p.ix). It is important to mention that this report also categorically focus on four factors that will enable the people and the state for better management of forest. These factors include, securing tenure and management rights for forest dwellers, strengthening forest management in monitoring and control, developing effective institutional models and lastly integrating communities in more efficient market system. Clearly the FRA is in sync with this World Bank Report which should not be seen in isolation but understood as the reflection of the greater imperialist interest that has always propelled subservience of Indian economy and its concurrent policy making. The report clearly states,

Although the most efficient option might be to assign land title to communities (or households), this is a long-term and politically sensitive issue. As an interim measure, tenure could be granted for a fixed term, giving the community specific contractual rights and responsibilities over the forest, China has had successful experiences with this approach. (ibid: xiv)

Further, it goes on to explicate that “local ownership offers opportunities to capitalise on forest assets” (ibid: 13) and “without more secure and efficient tenure over natural resources such as forests, communities lack incentives to invest.”. (ibid: 48). The real motive behind distributing land deeds by the state, thus, is to facilitate commercial plantations and afforestation programmes that suit larger interests of the capitalist market. Therefore quite unassumingly, the World Bank Report constantly harps on the ways and means to introduce more reforms in the forest economy and to successfully integrate the forest economy to the global capitalism. It points out the lacuna in the existing approach of the various governmental agencies to view forest produces especially non-timber forest produce as ‘different’ from other agricultural commodities and therefore the marketing of such products is sought through the forest department. The World Bank denounces such blockades and seeks a much more flexible strategy for marketing forest produces. It encourages private investment at a much larger scale and suggests the removal of state institutions regulating or mediating the purchase of marketable forest commodities and that they should be encouraged for ‘direct marketing’. According to the Report, “This revised focus would support a model in which communities, in conjunction with *panchayats*, gradually assume responsibility for micro-planning, plan implementation, harvesting, marketing, and protection, with technical guidance from the forest department or private consultants” (ibid: xvii). The earlier projects endorsed and promoted by the World Bank had mainly been about Joint Forest Management, which in the garb of ‘empowering’ people had pushed them to constricted and regulated forestry that suits market interests further alienating them from customary and regular access to forest produces at their own will.

Its rhetoric notwithstanding, the only target of FRA from the state seems to be the issuing of private land deeds promoting individual ownership. The continuous legal travesty of justice should be contextualized within a larger frame. The brazen continuities of the colonial law in a way can be used to question the real nature of Indian 'independence.' Right from the colonial times, the legalization of forests shows the systemic expropriation of resources. It also shows that when it comes to the adivasis in particular as amongst other marginalized sections, the tendency of the Indian state has been at best one of utter dehumanizing patronization and at its worst is extremely brutal and inhuman. Law far from acting as a weapon in the hands of the wretched to get justice has mostly fortified the interests of the ruling classes and the market.

Endnotes

- ² In the first instance when in 2008 Ministry of Panchayati Raj wrote to the various state governments that all panchayats have to convene gram sabhas within ten days i.e. on 28th February 2008, it was assumed all across the states that the meeting will have to be that of the gram Panchayat. This trend remained and MoTA also remained unclear on this aspect. In many states, the gram sabhas could not even meet the quorum and the proceedings remained stalled instead of being corrected because of that.
- ³ Some State governments empowered government officials and other bodies to virtually replace the gram sabha. For example, the government of West Bengal sought to bypass the Gram Sabha's power to elect the Forest Rights Committee by issuing an order that the Committee would instead be appointed by the Gram Unnayan Samiti (a body of the Panchayat). Similarly, the government of Chhattisgarh issued orders effectively transferring the powers of the Gram Sabha to lower level forest and revenue officials and asking the claimants to submit their claims to the Panchayat Secretary instead of the Forest Rights Committee. The Ministry of Tribal Affairs, instead of objecting to such gross violations has rather rated Chhattisgarh as the 'best performing state' for simply having 'completed' the task of disposing of all received claims prior to the Ministry's own arbitrary December 31, 2009 deadline.
- ⁴ The Government of West Bengal issued a circular that was in gross violation of FRA and it stated that the Forest Rights Committee would be appointed by a sub-committee of the panchayat and would include the forest guard and a revenue official. According to the NGO Reports, till today, excepting for areas where grassroots movements are active, FRC members do not know what their responsibilities are and, in many cases, they do not even know that they have been made FRC members. In Jharkhand, FRCs are yet to be elected in many villages.
- ⁵ Section 13 of the FRA clearly states that 'save as otherwise provided in this Act and PESA, the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force'. Despite this, the Uttar Pradesh Forest Department has been booking villagers for offenses under the Indian Forest Act and even denying them bail. The Madhya Pradesh Forest Department went as far as making an amendment to the Madhya Pradesh Forest Act which makes activities such as grazing and collection of any forest produce from any reserved forest an offense punishable with a fine of Rs 15,000, or one year's imprisonment or both. This is not just in major violation of FRA but also effectively nullifies the recognition of minor forest produce and other forest rights under the FRA. The President of India however not only gave assent to the amendment in April but also simultaneously awarded the MP government for its laudatory implementation of the law.

References:

- ¹ The full report, Report of National Committee on Forest Rights Act, is available at <http://www.downtoearth.org.in/dte/userfiles/images/fracommittee.pdf>