



FOREST RIGHTS ACT:A VICTIM OF POLITICAL PROMISES AND NGOs' ACTIVISM

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Parliament has legislated the historic Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (FRA) to recognize and vest forest rights on forest lands, only into specifically defined a) Forest Dwelling Scheduled Tribes (FDST) and b) Other Traditional Forest Dwellers (OTFD), and their communities who were denied the same for generations.

It is an acknowledged fact that in the process of declaring reserve forests, in some cases, traditional rights of some individuals and communities could not be recognized and settled partly due to the failure of state administration to give statutory publicity/notice and also due to ignorance and illiteracy of people living in interior areas. After passing of Forest Conservation Act in 1980, states, custodians of forests, have been deprived of their discretion to divert any forest land for such legitimate traditional claims without prior approval of Govt. of India, as it involves compensatory non-forest lands and other statutory payments. Forest Rights Act 2006 has been brought in by Parliament with the noble intention of recognizing such legitimate forest rights into individuals who have been traditionally residing or cultivating forest lands for livelihood and communities which have been collecting MFP and traditionally protecting and managing forests for sustainable use.

But unfortunately, lately FRA has become a victim of political promises to distribute forest lands even to ineligible post 2005 forest encroachers and also a victim of activism of NGOs to spread their area of influence and recognition. Recognition of Forest Rights especially Individual Forest Right (wrongly commonly called as Patta) and Community Forest Resource Rights (CFRR) into

ineligible claimants are posing serious threats to protection, conservation and sustainability of forests and wildlife.

There are (13) types of forest rights listed under Sec.3(1) of FRA 2006 and admissible evidences to claim forest rights are listed under Rule 13. Claimant individual/community has to produce minimum two evidences out of about forty evidences listed under Rule 13. In addition, under Sec. 3(2), total 13 types of community infrastructures like Anganwadi, school, dispensary, roads, tanks etc. can be taken in a village/habitation subject to 1 Ha for each facility involving felling of less than 75 trees per ha, in relaxation of FCA, 1980.

For recognition of any of the (13) types of forest rights listed under Sec. 3(1) including IFR (patta) and CFRR, claimant individual/community has to establish occupation of claimed forest land before 13.12.2005. Forest right claims are processed through Gram Sabha (GS), Sub Divisional Level Committee (SLDC) and finalized by District Level Committee (DLC) headed by the District Collector. Forest officers are associated at all three levels of committees. Forest officers are duty bound to give their written remarks on admissibility of claims before GS/SLDC/DLC.

Proceedings at GS/SLDC/DLC are quasi-judicial as per reading of the Act/Rules and clarifications issued by the Ministry of Tribal Affairs, (MoTA), Govt of India and Nodal agency under FRA. In case of any disagreement between evidences produced and remarks given by Forest Officials and those produced by Claimant individual/community, GS/SLDC/DLC are under legal quasi-judicial obligation to pass resolutions/speaking

orders while accepting or rejecting claims.

Rules under FRA, 2006 were framed and notified on 01.01.2008. Subsequently, major amendments have been carried out in the rules through amendments in 2012 and legal framework has been deliberately diluted to minimize relevance of satellite imageries, minimize role of foresters, and an elaborate legal framework has been put in place i.e. a new distinct type of forest rights called "Community Forest Resource Rights" (CFRR). Under IFR (patta), claimant can claim upto 4 Ha of forest land for self-cultivation or habitation and this title is heritable but non-transferable and legal status of land remains as forest land.

For claiming individual forest rights, claimant has to produce minimum two evidences out of approx. forty evidences listed under Rule 13(1) including oral statement of village elders to be recorded in writing, which is mostly being misused lately. Initially, evidence of villagers' statement was included in 2007 Rules to help claimants who had been traditionally cultivating forest land without any document/record. When Rules were initially framed in 2007, it was possible for village elders to certify claims of pre 2006 cultivations with reasonable accuracy. Most of the states took special drive during 2008 -2010, on the instructions of MoTA, to identify claimants and claims were mainly considered on the evidence of satellite imagery, and oral evidences of village elders were used only in doubtful cases. On account of strict compliance and adherence to satellite imageries by forest officials, genuine claims were admitted and about 50% of the ineligible claims were rejected. MoTA has been interested in giving maximum titles and evidence of satellite imageries was coming in the way of helping ineligible claimants on political pressure in accepting post 2005 forest encroachments at state level. Deliberate efforts have been put in by MoTA to dilute evidence by satellite imageries, by delegated legislation as detailed in below.

Satellite imageries are admissible evidence under Rule 13(1) (a) which reads as follows:-

"13. Evidence for determination of forest rights. -

(1) The evidence for recognition and vesting of forest rights shall, inter alia, include -

(a) public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, micro-plans, forest enquiry reports, other forest records, record of rights by whatever name called, pattas or leases, reports of committees and commissions constituted by the Government, Government orders, notifications, circulars, resolutions;"

Efforts have been put to dilute relevance of satellite imageries and other documents available with Forest Department and admissible under Rule 13 (1)(a) as discussed above by incorporating new Rule 12 A(11) through 2012 amendments, which reads as follows:-

"12 A. Process of recognition of rights. -

(11) The Sub-Divisional Level Committee or the District Level Committee shall consider the evidence specified in rule 13 while deciding the claims and shall not insist upon any particular form of documentary evidence for consideration of a claim.

Explanation: 1. Fine receipts, encroacher lists, primary offence reports, forest settlement reports, and similar documentation by whatever name called, arisen during prior official exercise, or the lack thereof, shall not be the sole basis for rejection of any claim.

2. The satellite imagery and other uses of technology may supplement other form of evidence and shall not be treated as a replacement."

MoTA, the designated nodal agency under FRA, has tried to further dilute and create confusion

among field foresters by issuing following further clarification, though executive instructions, which goes even beyond 2012 amendments as contained in MoTALr. Rc. No. 23011/32/2010-FRA (Vol.II-pt) Dt. 12.7.2012.

"Use of technology, such as, satellite imagery, should be used to supplement evidences tendered by a claimant for consideration of the claim and not to replace other evidences submitted by him in support of his claim as the only form of evidence"

Above distorted clarification issued by MoTA gives a wrong impression as if satellite imagery can be produced only by claimant and that too to supplement his claim over forest land, not to reject/contradict his claim. FRA Act or Rules donot stipulate that evidences listed under Rule 13 shall be only produced by the claimant individual/community. All evidences listed under Rule 13 can be used by the claimant as well as by Forest Department or any other agency/person to challenge admissibility of evidence rendered by claimant individual/community. On account of above dilution of Rules and deliberate confusion created by MoTA, an impression has been created among foresters that satellite imageries are not primary evidence but supplementary in nature and they cannot be used to reject ineligible claims.

Satellite imageries are admissible evidence under Rule 13(1)(a) read with Rule 12 A(11) as discussed above. Forest officers are duty bound to give their remarks on admissibility of claims in writing before GS/SLDC/DLC. In case of failure of GS/SLDC/DLC to consider remarks given by the forest officers and accepting ineligible claims without passing any speaking orders/resolutions while acting as quasi-judicial authority, foresters must register their dissent on GS/SLDC/DLC minutes of meeting and report the matter to the next level of Committee. In case of overlooking by DLC, the DFO must write to the PCCF & HoFF for taking up the issue with the State Level Monitoring

Committee under FRA headed by the Chief Secretary and report the matter to MoEF and MoTA, depending upon the situation.

Most of the states took special drives and gave recognition to the eligible Individual Forest Rights (Pattas) after promulgation of FRA Rules on 1.1.2008. Granting Individual Forest Rights (Patta) under FRA, however, encouraged fresh forest encroachments and political parties have been promising fresh forest rights/pattas especially before elections.

States filed written affidavits before hon'ble Supreme Court in W.P.(Civil) No 50/2007, 109/2007 filed by Wildlife First and others including Sri J.V.Sharma, rtd. IFS from united A.P. and states claimed to have successfully implemented IFR (Patta) and granted titles.

Some state administrations, under directions of political executives, are helping post 2005 forest encroachers by convening Gram Sabha/SLDC/DLC meetings repeatedly for IFR(Patta) by exploiting lacuna in Rules framed under FRA. As per procedure contained under Rules, Gram Panchayat is supposed to conduct Gram Sabha meeting at habitation level (not at Panchayat level as under PR Act) to ensure better participation of villagers. Gram Sabha have to elect 'Forest Rights Committee' among villagers ensuring statutory participation of Schedule Tribes and women and give three months soft time to invite applications from claimants which can be extended without any time limit by just assigning reason for such extension; quorum of Gram Sabha meeting was 2/3rd in 2007 Rules which has been reduced to one half of all members of Gram Sabha in 2012 amendments, and pass resolutions by majority. All such elaborate legal framework has been put in place to ensure that no eligible claimant is left from applying at village level as and when meeting of Gram Sabha is called for IFR(Patta) and claims are processed and approved in a transparent manner. But some state administrations under

political mandate are misusing Rules, as it does explicitly prohibit calling of Gram Sabha meeting for second or third time for the purpose of re-identifying claimants under IFR(Patta). FRA Rules enables calling of Gram Sabha meetings any number of times to consider all (13) types of forest rights listed under Sec.3(1) including CFR/CFRR and especially every time any of (13) community infrastructures listed under Sec.3(2) like school, dispensary, Anganwadi etc is proposed, in relaxation of FCA 1980. States are misusing the above loophole in FRA rules and are conducting Gram Sabhas repeatedly for Patta distribution, especially before elections.

In recent past, Maharashtra, A.P. and Telangana granted Individual Forest Rights (Patta) additionally on lakhs of acres of forest lands in a short span of one month by taking fresh special

drives in the name of left over claimants, even after submitting written affidavit before hon'ble Supreme Court. State Administration under political mandate are helping post 2005 forest encroachers and are approving claims mainly based on the most susceptible oral evidence of village elders certifying forest land occupations before 13.12.2005, even after more than 15 years after the cutoff date and by discarding the most scientific and impartial evidence of satellite imageries admissible under Rule 13(1) read with Rule 12 A (11) of FRA Rules 2007.

After claiming successful implementation before Hon'ble Supreme Court, additional IFR (Patta) given in recent past in Maharashtra, Andhra Pradesh and Telangana during a short span of one month, presumably under political mandate, is as follows:-

STATE	MONTH	ACRES	MONTH	ACRES	ADDITIONAL	% INCREASE OVER PREVIOUS DISTRIBUTION
MAHARASTRA	JAN.19	2,66,329	FEB.19	3,92,928	1,26,599	50%
A.P.	DEC.21	2,39,554	JAN.22	4,36,606	1,97,052	82%
TELANGANA	JUNE 23	3,10,916	JULY 23	6,69,689	3,58,774	115%

Probably for the first time in the country, forest field officers in Telangana in all forest divisions gave claim-wise written remarks on admissibility of claims based on satellite imageries and field inspections to SLDC/DLC. But their written remarks have been overlooked by DLC by misinterpretation of clarifications issued by MoTA regarding relevance of satellite imageries and evidences to be produced by claimants. Patta certificates have been issued with facsimile signatures of the Collector/DFO/DTWO against specific instructions issued by MoTA not to use facsimile signature. Based on the information furnished under RTI by the PCCF office and Tribal Welfare Dept., DLCs have approved an additional 3,58,760

acres to 1,33,301 claimants against 1,44,388 acres covering 67,192 claims recommended by forest field officers. The additional 2,14,388 acres have been given patta by discarding remarks of Forest Department during July 2023, before state elections in December 2023. Two NGOs namely 'Forum for Good Governance' (FGG) headed by Sri P.M.Padmanabha Reddy, IFS(rtd) and Sri Satish Kumar Reddy have filed two PILs before hon'ble Telangana High Court and FGG have also filed a complaint before CEC for violation of FCA 1980 on account of 2.14 lakhs acres of excess land distributed under the disguise of FRA and the matter is pending.

In recent years, post 2005 forest encroachers

are misusing immunity provided under Sec.4(5) against any efforts put by Forest Department to evict them under Indian/State Forest Acts. Sec4(5) of FRA gives protection against any forceful eviction from forest lands till claimant's application is finally decided by the DLC under FRA. Section 4(5) of FRA reads as follows:-

"Sec 4(5)- Save as otherwise provided, no member of a forest dwelling Scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupation till the recognition and verification procedure is complete."

Sec.4(5) was incorporated under FRA to protect all claimants/applicants from date of his application before Gram Sabha till final decision by DLC. But state governments are conducting Gram Sabha for Individual Forest Rights (Patta) by conducting special drives from time to time depending upon political convenience and as such recognition of IFR(Patta) has become a continuous unending process. Even after convening of Gram Sabha and recognition and issuance of IFR(Patta) to all eligible claimants' preferred before Gram Sabha, new applications are being filed endlessly in the hope of such exercise in future based on promises made by political parties. Recently, misuse of Sec.4(5) by post 2005 forest encroachments has to come to notice in Telangana, when some recent forest encroachers as per satellite imageries have approached the high court against eviction notice issued by Forest Range Officers and obtained interim stay orders; and same may be happening in other states also.

The Second most misused forest rights under FRA is 'Community Forest Resource Rights' incorporated as a separate distinct forest rights under Rules through 2012 amendments by MoTA. Prior to 2012 amendments to FRA rules, only two statutory applications were provided- 'Form- A' for Individual Forest Rights (Patta) and 'Form-B' for all remaining Community Forest Rights (CFR) listed

under Sec.3(1) of FRA Act and titles were issued in two statutory forms- 'Annexure-II' for IFR (Patta) and 'Annexure-III for CFR'.

MoTA carried out drastic amendments in FRA Rules 2007 in the year 2012. While downgrading importance of the most scientific evidence of satellite imagery and reducing the role of foresters, MoTA introduced a distinct forest right called 'Community Forest Resource Rights' (CFRR). Once CFRR is recognised and title is issued, responsibility of protection, regeneration and management of given forest lands goes into the hands of Community/Gram Sabha and Forest Department gets relegated to an advisory role. In 2012 FRA Rules amendments, elaborate legal framework has been put in place to recognise and operationalise CFRR. Community/Gram Sabha is supposed to prepare a 'Community Forest Management Plan' keeping needs of the community into consideration duly taking the working plan into consideration and modifying as per local needs. Separate application form in 'Form-C' and separate format for CFRR title has been prescribed under 'Annexure-IV' exclusively for CFRR.

The most damaging amendment has been incorporation of Rule 12 B (3) and (4) relating to CFRR, which reads as follows:-

"(3) The District Level Committee shall ensure that the forest rights under clause (i) of sub-section (1) of section 3 relating to protection, regeneration or conservation or management of any community forest resource, which forest dwellers might have traditionally been protecting and conserving for sustainable use, are recognized in all villages with forest dwellers and the titles are issued.

(4) In case where no community forest resource rights are recognized in a village, the reasons for the same shall be recorded by the Secretary of the District Level Committee."

By incorporating new Rule 12 B (4), it has become

mandatory for DLC, headed by the District Collector to record reasons in DLC resolutions, if CFRR is not recognized to any Gram Sabha/village/habitation. The author is of the opinion that newly incorporated rule is against the objective and preamble of FRA Act 2006 passed by the Parliament. The objective of the FRA Act passed by the Parliament was to recognize forest rights in individual/community which have been traditionally enjoying without legal recognition. Parliament never had intention of creating any new forest rights which were not being enjoyed traditionally. The intention of Legislature in respect of CFRR becomes clear by reading of Sec.3(1)(i) which reads as follows:-

"right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

It is evident that the intention of the Parliament was to confine CFRR to only those community/Gram Sabha/Village which has been traditionally protecting, conserving and managing claimed forest land for sustainable use, not to extend CFRR to all communities/Gram Sabhas. The Ministry of Tribal Welfare by incorporating Rule 12 B (4), through amendments carried out in 2012 under delegated legislation, has not only gone beyond the scope of FRA Act passed by the Parliament but simultaneously put forests and wildlife under great threat by handing over protection and management responsibility to such Gram Sabha/Community which are not having any previous experience and expertise in scientific forest management and thereby endangering ecological security of the country.

Regarding applicability of FRA in protected areas, once CFRR is recognized under Sec.3(1)(i), Gram Sabha/Community will have statutory right to protect, regenerate and manage such specified earmarked forest land area falling under National Parks and Sanctuaries also and Forest Department will have only an advisory role. For declaring any

forest area inviolate for conservation of wildlife in protected areas in National Park/Sanctuary falling under CFRR, there is an elaborate procedure to declare 'Critical Wildlife Habitat' prescribed under Sec. 4(2)(a) to (e) under FRA and the process is so complex that as per information available till now, no 'critical Wildlife Habitat' has been notified under Sec.4(2) of FRA in any state.

Among foresters there is lot of confusion about applicability of FRA in Joint Forest Management areas. Communities in forest areas falling under JFM are only partner with Forest Department in the management of forests as per executive instructions issued by concerned state government and the forest land always remained under exclusive occupation of Forest Department not with the Community. JFM Committees will not be eligible for CFRR under FRA, unless it is established that Community was in occupation of claimed forest area before 13.12.2005 required under Sec. 4(3) and Claimant Community has been traditionally protecting, conserving and managing claimed forest land for sustainable use as stipulated under Sec.3(1)(i) of FRA Act 2006.

As per MPR posted on the website of MoTA, till now CRFF has been recognized over 1.8 lakh acres of forest lands. As per a report published by a group of NGOs in 2016 under the aegis of OXFAM-India, they identified state-wise total of 8.50 crore acres of forest lands potentially eligible for CFRR, excluding J&K and N-E states, which comes to about 55 % of national forest areas. Handing over 55% of national forests in the hands of untrained and inexperienced Gram Sabha/community for protection and management of forests including protected areas will not only affect 55% forests but may also adversely affect the remaining 45% forests under protection and management of traditionally trained and expert foresters. NGOs have been actively working with MoTA and pursuing expansion of CFRR for their vested interest of increasing their area of operation, influence and

credibility to facilitate international fundings/ recognition. Recently in Chattishgarh state, about 9.50 lakh acres were given under CFRR in a short span of 2-3 months before state elections. Some NGOs, especially coming from other state, are pressing hard to hand over management of forests to Communities/Gram Sabha and they took strong objections to even naming Forest Department as Nodal Agency only for CFRR, which is technical in nature and required technical guidance of trained foresters, and state govt have to withdraw such letter.

Unfortunately, so far 1.80 crore acres of forests have been given under CFRR without adhering to Sec.4(3) of FRA stipulating occupation of claimed forest by community before 13.12.2005 and without satisfying requirement of Sec.3(1)(i) prescribing protection, regeneration or management traditionally by the claimant communities for sustainable use. Forest Departments have failed in their legal duty of giving remarks in writing before GS/SLDC/DLC when such ineligible claims are being admitted. Most of such 1.80 crore acres of forests have been traditionally under occupation, protection and management of Forest Department not communities.

In conclusion, it can be inferred that the objective of the Parliament while passing FRA was to restrict recognition of forest rights only to those individuals and communities who were occupying claimed forest lands before statutory cut-off date of 13.12.2005 and were enjoying certain rights traditionally, though not legally recognised. MoTA, political parties and NGOs are trying to give pattasto post 2005 encroachments by discarding satellite imageries and relying solely on the most susceptible evidence of village elders' statement, even after two decades of cut-off date of 13.12.2005; and transferring protection and management rights to all Gram Sabha/villages under CFRR without adhering to Sec.3(1)(i) and Sec.4(3). Unfortunately, limited

entitlement as contemplated under FRA is being converted into universal entitlement endangering ecological security of the country. In such a situation, it becomes legal, moral and professional responsibility of all foresters from beat guard to DFO level to ensure strict compliance to the provisions of FRA and Rules framed thereunder. They must give written remarks on admissibility of claims made under FRA and give written dissent, in SLDC/DLC minutes of meetings, if remarks given by them are not considered or are rejected by SLDC/DLC, without passing any speaking orders/ resolutions in their quasi-judicial responsibility.

In view of widespread news of misuse of FRA, a group of senior ex-IFS officers retired from the cadre of DG, ADG, HoFFs, CWLW, PCCF, APCCF from different states have formed a peer group and it is working towards educating forest field officers on different aspects of FRA and measures to prevent its misuse. The group has prepared a e-handbook titled "FRA-Foresters Guide" in English, Hindi and Telugu containing detailed guidance, interpretation of Act/Rules, FRA Act/ Rules and important clarifications issued by MoTA for use of forest field officers. The group has also recently prepared a one page appeal to foresters on misuse of FRA and its prevention in English and 10 other Indian languages for easy understanding of forest field officers in the country. The Group has also prepared a repository on FRA containing FRA Act, Rules, orders of hon'ble Supreme/High courts on FRA, clarifications issued by MoTA, press reports from different states, representations by the group to Hon'ble PM, MoEF Minister, MoTA minister, state Prl. Secretaries, PCCF & HoFF etc in a sharable folder on Google Drive named as "FRA for foresters" which can be accessed by any serving or retired foresters by clicking on the link given below.

https://drive.google.com/drive/folders/1L5N4EgfbGJwC2aV-DOAQkQB1YgLEiGFX?usp=drive_link

SOME SUGGESTIONS TO ENSURE STRICT COMPLIANCE TO FRA 2006 :-

1. MoTA to issue instructions/amend rules prohibiting receipt of fresh applications for IFR(Patta) before Gram Sabha in those villages/habitations where process of identification and distribution of IFR (Patta) has been completed once, without specific prior written permission given by MoTA, and based on detailed reasons assigned by state govt in any exceptional circumstances.
2. MoTA to give some definitive time frame to states wherever exercise has not been taken upto complete identification and distribution of IFR(Patta)Pattas by state govt without giving any future extension.
3. MoEF& CC to verify IFR(Patta) claims admitted after 2016 when states submitted written affidavit in W.P.(Civil) 8/2008, 109/2008 with reference to satellite imageries to ensure no diversion of forest landstook place in violation of FCA 1980, to post 2005 encroachers.
4. MoTA to provide funds to state govt. to demarcate IFR(Patta) already granted on ground with pillar/stone to help poor claimants to enjoy his forest rights and to prevent any further encroachment.
5. MoTA to issue clarification stating that satellite imageries are admissible evidence under Rule 13(1)(a) read with Rule 12 A(11).
6. MoTA to issue clarification stipulating passing of speaking orders by quasi-judicial authority i.e.GramSabha/SLDC/DLC wherever forest dept or any other dept or person produces admissible evidence challenging evidences produced by claimant individual/community.
7. Foresters to insist on critical scrutiny of the most susceptible evidence of village elders' statement certifying occupation of claimed forest land, after 20 years of cut- off date.
8. Foresters to give written remarks on each claim on its admissibility or otherwise before GS/SLDC/DLC.
9. Foresters to give written dissent in GS/SLDC/DLC resolutions wherever their remarks are not considered or rejected without assigning any speaking orders.
10. Foresters to give specific remarks wherever unfounded claim is made by Community for CFRR claiming occupation of given forest lands before 13.12.2005, as required under Sec4(3) of FRA 2006.
11. Foresters to give specific remarks wherever unfounded claim is made by Community for CFRR claiming traditional protection, conservation and management of given forest lands before 13.12.2005, as required under Sec. 3(1)(i) of FRA 2006.
12. Foresters to produce admissible evidences/documents listed under Rule 13(1)(a) before SLDC/DLC to establish continued occupation of forest lands both before and after 13.12.2005 wherever unfounded claims are preferred under Community Forest Resource Rights.
13. Foresters to produce admissible evidences/documents listed under Rule 13(1)(a) before SLDC/DLC to establish continued protection, conservation and management of forest lands before 13.12.2005 wherever unfounded claims are preferred under Community Forest Resource Rights.
14. MoEF& CC to issue instructions to all state forest departments to evict encroachments within a specified time frame.

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