



# **How FCA 2023 amendments seek to undermine Adivasi land protections guaranteed in Forest Rights Act, 2006: SC** Adivasi and forest dwellers' rights renewed threat as the Supreme Court reviews Parliament's sweet 2023 forest law changes

**The Supreme Court is considering a crucial contradiction in the tussle between the Forest Rights Act 2006 (FRA) and the amended Forest (Conservation) Act 1980 (FCA, 2023) after latter (FCA)'s controversial amendments in 2023. The FRA 2006 was intended to provide certainty and security for Adivasi and forest dwelling communities; it is a historic legislation enacted after years of mobilisation by South Asia and India's forest dwelling communities. However, the expanded powers of regulation and exemptions slipped into the FCA 2023, under Modi regime that did so without the rigour of Parliamentary debate, pose, afresh, new risk to the hard-fought rights of India's indigenous. This marks a crossroad in India's policy frame and understanding of conservation forests, rights of indigenous peoples and their pivotal role in conservation and or stewardship of the environment.**

The Forest Rights Act was passed in 2006 following decades of struggle by forest-working people to redress the exclusionary legacy of colonial and post-colonial forest laws. The FRA acknowledges the rights of individual and community access to land, housing, and to minor forest produce, and grants Gram Sabhas authority to manage and protect forests. The intent of the FRA was to transfer authority from the centralised forest-administrative bodies (like the Forest Department) to local communities to make the Gram Sabha's consent a precondition for the approval of any forest diversion. And decentralisation was recognised as key to protection of both land rights and forest protection.

The Forest (Conservation) Act, enacted in 1980 –and hurriedly amended in 2023 without debate– centralised approach to conservation and, following amendments in 2023, has gone further still to consolidate centralized control over forest land. The amendments narrowed the definition of the term "forest" and included broad exemptions for strategic and commercial projects, and also authorised the liberalization of diversions under the law. The amendments to the FCA have dismantled community consultation, removed environmental protection, and ultimately weakened the requirements to divert land from indigenous peoples in favour of land acquisition for development. The FCA now enables diversion of forest land for national security and infrastructure development, particularly in border areas, and weakened the requirement for Gram Sabha consent, designed to make community consultation a formality after the diversion has occurred.

It is crucial at this junction to recall the eviction order, passed by the Supreme Court in February 2023 that became the ground for nationwide and lasting protests by forest dwellers and Adivasis. The intent and impact of the order would have been to displace as many as one crore forest community members. Hence, its passage became yet another pivotal moment in the struggle for land and forest rights in India. The order triggered mobilisation among Adivasi and forest community members and immediate society response at the nation level, notably the All India Union of Forest Working Peoples (AIUFWP).

and Citizens for Justice and Peace (CJP). Within two weeks, national civil society intervention (close to a dozen and a half interim applications were finally filed) led to the Court staying its eviction order. The move was also necessitated after an affidavit, filed by the Ministry of Tribal Affairs that requested reconsideration of the case. The matter still awaits hearing before the Supreme Court, and demonstrates the ongoing struggle over the rights of statutory recognition against conservation. On October 24, 2023, again, the Ministry of Tribal Affairs (MOTA) has –once more–sharply rebutted a plea which has challenged before the Supreme Court (SC) the legal validity of the 2012 Rules, made under the law, *The Express* has learnt. In a counter affidavit filed before the SC in the same matter, the Centre has not only defended the legal validity of the Act but also stressed that the law goes beyond mere land owners' regularisation and aims to restore dignity, livelihoods, and cultural identity of forest-dependent communities.

AIUFWP is a national, women-led membership union representing forest-dwelling communities, cultural workers, and Adivasis. It creates leadership for grassroots communities, especially among forest-dwelling women, advocates for distributive justice, and works with stakeholders across India to secure recognition and recognition of community based customary forest rights. CJP operates as a legal rights advocacy organisation, in close alliance with the AIUFWP by supporting ground-level training and interventions. CJP is both drafter and co-petitioner in the detailed interlocutory application (IA) filed before the Supreme Court in 2019 (<https://cjp.org.in/sokalo-gond-and-nivada-rana-lead-the-campaign-for-forest-rights-in-sc/>). This IA detailed the historic disenfranchisement of India's indigenous peoples that led to the enactment of the 2002 Forest Rights Act, the systemic grievances with claims being denied, due process failings and the deliberate bypassing of Gram Sabhas, and violations of the statute scheme for the Forest Rights Act, 2006 by the forest administration. It also emphasised that mass evictions (not mandated in the law itself) were without constitutional justification and violated natural justice and legal protections.

In the follow-up hearings, the Supreme Court, going well beyond its original order, required states to file affidavits investigating state processes concerning the assessment of forest rights claims and also to identify claims that were denied altogether. Determining whether community land rights are properly granted is now a question of what the Court would deem sufficient transparency in state action.

Apart from this crucial matter (*Wildlife First*, in which Adivasi unions and others have intervened), at the same time, the apex court of India –another bench–is considering challenges to amendments to the Forest (Conservation) Act enacted hurriedly in 2023, which would broaden the chasm between statutory protection (under the FRA 2006) and state sovereignty (under the FCA). As publicly noted in one of the recent bench observations, the principle basis for halting mass evictions focused on the unresolved policy and law contradiction between the tenurial and welfare entitlements granted by the

Rights Act and the hard restrictions allegedly imposed for sake of conservation by the Forest (Conservation) Act. Thus, this continuing litigation is sitting at the crossroads of India's obligations—to forest-dwelling peoples and conservation—creating a tension and dispute between rights-based justice and regulatory control the recurrent subject for adjudication in the future.

Criticism of the FCA amendments is directed specifically to their consequences in the North-East, a multitude of forests are not recognised officially by the state yet serve as crucial in-state clearing for indigenous communities or communities in general. The amendments have bypassed (pushed as Gram Sabhas, authorised less participatory governance, and fostered concerns regarding green cover and monoculture afforestation. The Godavarman judgment (1996) expanded the definition of "forest" to include unclassified and community forests; however, the newly repealed law does not recognise these areas subject to exploitation.

The approach of the Supreme Court has fluctuated over the years: see for example the direction of the Wildlife First case, and then the Niyamgiri judgment acknowledged consent from Gram Sabhas prior to forest diversion. Nevertheless, the legal condition for indigenous rights is presently ambiguous and somewhat unpredictable on forest use, where the discretion of execution has taken priority over community rights and constitutional guarantees.

The exclusion of indigenous communities from forest governance has a historical precedent, as far as colonial rule where laws regarded them as encroachers instead of custodians of land and resources. The FRA can be understood as an acknowledgement and a corrective action towards this injustice by recognising the rights of Scheduled Tribes and other traditional forest dwellers to land, resources and self-governance. The FRA was a multifaceted, energising outcome for these communities after decades of mobilising their rights and advocating for their access to and enjoyment of forests as an acknowledgment of their livelihoods and to democratise forest governance and restore dignity to marginalised communities.

In many ways, the expansion of centralised governance through The Forest (Conservation) Act has been legitimized via the Supreme Court's Godavarman judgement of 1996, an important case that greatly expanded the administrative definition – and control over the meaning of "forest." Centralization directly contradicts the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA), which creates firm ground for a decentralised, community-based rights agenda for forest management. The tension is not simply administrative or logistical but is an observed and cor

tionally established tension in the power relationship between the executive and authoritative and empowered Gram Sabhas, flooring the foundational conflict of purpose between development, conservation, and indigenous rights.

The Godavarman judgment explicitly stated, “...the word ‘forest’ must be understood according to its ordinary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of **Section 2(i)** of the Forest (Conservation) Act. The term ‘forest land’, being in Section 2, will not only include ‘forest’ as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership.” (Godavarman v UOI, 1996). By contrast, FRA 2006 frames the legal mandate as, “...to recognize and vest the forest rights and occupation in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such areas for generations but whose rights could not be recorded; in order to correct the historical injustice done to forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem.”

The 2023 FCA amendments, with a narrower definition of what qualifies as “forest,” and less opportunity for Gram Sabha participation, are yet another movement towards executive power, effectively circumventing the FRA’s commitment to decentralisation and democracy. This constitutional tension needs to be resolved and is at the forefront of ongoing litigation and policy discussions concerning forest governance, development priorities, and the protection of indigenous and community rights.

## **Conclusion**

There is an urgent need for a renewed and comprehensive framework that reconciles the inherent community and historic rights of communities over land/the commons and those of “the state” that seek to unilaterally claim land for corporate development. Such a people’s right driven scheme would be one that upholds constitutional protections, revives community governance, and ensures community participation in environmental assessments. It will take the reversal of community jurisdiction and accountability of the state to limit logging in India’s forests, and the Supreme Court’s intervention as a new beginning. India will only be able to protect its forests when it also protects the rights of those who have historically cared for them; by reaffirming the primacy of Gram Sabhas, transparency in impact assessments, and a stronger legal basis for rights recognition.

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