



Forest Conservation Rules, 2022- An overview of changes that snatch rights of Gram Sabhas

The forest conservation rules present a new challenge to an already ill implemented Forest Rights Act, 2006; they take away the right of Gram Sabha to first consent to any diversion of forest land.

Suresh Chouhan, Chairman of the National Commission for Scheduled Caste and Schedule Tribes (NCSCST), reportedly, has intimated the Ministry of Environment, Forests and Climate Change (MoEFCC) that the latest Forest Conservation Rules, 2022 be put on hold for the rule have taken away rights of Scheduled Tribes to consent to *any* diversion project in forest area [1] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-advansi-gram-sabhas#_ftn1) In this context, this article provides an overview of how the 2022 Rules diverge significantly from the previous 2009 and 2017 Rules and how they insidiously aimed at taking away the hard-earned rights of India's Adivasis (indigenous) and forest workers people.

Before going into the legalities that the Rules present us with, there is an importance to the context of forest conservation.

Almost half a century ago, the then Indian Prime Minister Indira Gandhi was the only head of state in attendance at the United Nations Conference on the Human Environment – otherwise known as Stockholm Conference which saw the participation of 114 countries. Her words at that historic conference are worth recollecting, *“On the one hand the rich look askance at our continuing poverty – on the other, they warn us against their own methods. We do not wish to impoverish the environment any further and yet we cannot for a moment forget the grim poverty of large numbers of people. Are not poverty and pollution need the greatest polluters? For instance, unless we are in a position to provide employment and power for the daily necessities of the tribal people and those who live in or around our jungles, we cannot prevent them from combing the forest for food and livelihood; from poaching and from despoiling the forest. When they themselves feel deprived, how can we urge the preservation of animals?”* [2] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-advansi-gram-sabhas#_ftn2)

There are two kinds of politics embedded in this statement. One – developing world's concern that it needs to have the same means and methods the developed world had, for it to develop and the world to protect the environment does not fall onto the shoulders of the developing world alone. This is the dominant narrative today in the climate change discourse in the global south.

The second nature of this politics is about conservation of forests, and this is of relevance to the global south. One school of thought about the conservation of forests argues for state's control over forests without any human interference and with minimal community participation. Another school of thought, emergent after international and national recognition of the contribution of the world's indigenous populations towards conservation and forest produce, argues for greater community participation, and better *recognition* of indigenous persons' rights in the whole process of forest conservation.

vation. This recognition of *rights and agency* to the India's indigenous populations came after a long period of struggle of the forest working people. The historic passage of the Forest Rights Act, 2006 (Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006) was amended by amendments to the Wildlife Protection Amendment Bill in 2005 that recognised in law the protection of endangered species needed to keep in mind the livelihood needs of local people. A new mode of development inspired by the 'Gujarat Model' nationally, especially since 2014, has in fact meant the passage of a slew of laws and rules that contradict the rights guaranteed under the FRA 2006. The new Rules of 2022 to the Forest Conservation Act are the latest in a long line of t

What are Forest Conservation Rules?

The Forest Conservation Act, 1982 is an act to provide for the conservation of forests. The act states that state governments cannot pass any order, except with the prior approval of the central government, to take away the tag of reserve forest from any forest area; to permit the usage of forest area for non-forest purposes; to assign any portion of forest land to non-governmental organisations including corporates; to clear off the forest land from the naturally grown trees for the purposes of afforestation. ^[3] (<https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-advansi-gram-sabhas#>

Section 3 of the act gives the central government the power to constitute an advisory committee to give it recommendations about the approvals or any other matter. Section 4 states that the government has the power to make rules to carry out the provisions of the act. Under this power given to the government, the Forest Conservation Rules, 1982, Forest Conservation Rules, 2003 and Forest Conservation Rules, 2022 were enacted.

Forest Conservation Rules, 1982 had provisions for the constitution of an advisory committee to advise the central government on whether approvals to applications for diversion of forest area. Rules also had provisions for members and the conditions the committee should consider while giving its recommendations. The conditions, as stated by Rule 5 are—

“(a) Whether the forest land proposed to be used for non-forest purpose forms part of a nature reserve, national park, wildlife sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying in severely eroded catchment;

(b) Whether the use of any forest land is for agricultural purpose or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro-electric project;

(c) Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose; and

(d) Whether the State Government or the other authority undertakes to provide at its cost for acquisition of land or an equivalent area and afforestation thereof.”

Evidently, there is no mention of Adivasi/tribal rights (land or forest) or welfare or any requirement that this committee should look into the effect of a project on the tribals living in the concerned area.

The Forest Conservation Rules were again enacted in 2003 replacing the 1981 rules, and thereafter too, the rules were amended in 2004, 2014 and 2017. [4] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftn4)

The latest Forest Conservation Rules, 2022 replace the 2003 Rules.

Forest Conservation Rules, 2003 and Forest Rights Act, 2006.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006- popularly known as Forest Rights Act (FRA) recognises the rights of forest dwellers and the importance of their participation in the forest management processes.[5] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftn5) It also marks a shift from the colonial era notion of forest dwelling communities being isolated entities which prey on forests. The act is based on the principle that the communities are a part of forest ecosystems- a principle on which there is a growing amount of supporting literature.[6] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftn6) ‘Gram Sabha’ is an important entity within the act’s tools to achieve its objective. Gram Sabha- which has been empowered to implement crucial provisions of the Act including the recognition of individual forest rights, protection of the forest ecosystem etc is a committee consisting of village elders with full and unrestricted participation of women. It can be considered as nucleus of forest communities in India as far as rights of forest dwellers are concerned.

How Does FRA 2006 conflict with or affect the FC Rule, 2003 (FC Rules, 2003)

There are two stages of approval prescribed in the Forest Conservation Rules, 2003 for any application by any entity to use the forest land. One is the ‘In-Principle’ approval and the second is the ‘Final’ approval.’ After an application from a user agency to use forest land for a purpose, the MoEF sends the application to the State Government for its approval. The State Government then forwards the application to the MoEF for its approval. The MoEF then issues the final approval. The MoEF also issues the final approval to the user agency. The MoEF also issues the final approval to the user agency.

an In-principle approval along with certain conditions that are to be fulfilled. The user agency (company or entity which is applying) is given time to comply with the conditions laid down by the government, and thereafter the final approval is given by the MoEF. The application by the user agency goes through the following authorities before it gets an 'In-principle' approval:

Nodal Officer — —> Divisional Forest Officer and the District Collector — —> Conservator of Forests — —> Nodal Officer — — —> State Administration — —> MoEF.

In this process, before the application passes from the District Collector, the District Collector is mandated by the Rule 6(3)e of the FC Rules, 2003 to complete the process of recognising and vesting of individual (and community) forest rights under the FRA. The District Collector therefore was required to *ensure* consent from each Gram Sabha for the activity mentioned in the application along with any rehabilitation measures if there are any- and then pass a report of his findings to the Conservator of forests according to this rule.

According to Rule 8 of the FC Rules, 2003- when an 'In-principle' approval comes, the user agency should re-submit the report of it complying with the conditions of 'In-principle' approval to the Divisional Forest Officer (DFO). After necessary checks, the DFO should forward it to the Conservator of Forests. As per Rule 8(g), the Conservator of Forests should send the report from DFO, along with District Collector's report regarding the FRA [the report as per Rule 6(3)] to the nodal officer.

Rule 6(3)(e) of the FC Rules, 2003 states as follows:

(e) the District Collector shall—

(i) complete the process of recognition and vesting of forest rights in accordance with the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2006) for the entire forest land indicated in the proposal;

(ii) obtain consent of each Gram Sabha having jurisdiction over the whole or a part of the forest land indicated in the proposal for the diversion of such forest land and compensatory and ameliorative measures, having understood the purposes and details of diversion, wherever required; and

(iii) forward his findings in this regard to the Conservator of Forests;

This rule gave paramount importance to people's governance, that is the Gram Sabha and its consent over the diversion of land is and was essential. The Rules under this Law are in tune with the Statutory Rights guaranteed under the FRA 2006 which is to give a right to the forest dwelling people to participate in the decision making over the purpose for which the land is going to be used and on nature of compensation and rehabilitation. In fact, the Rule 6(3)(e) was amended in 2017 to constitute present wording. Before 2017, it was not explicitly stated that the District Collector should obtain consent of *each gram sabha*.

What changes with the Forest Conservation Rules, 2022(FC Rules, 2022) ?

The FC Rules, 2022 however do not require the collector to obtain the consent of Gram Sabhas before the In-principle approval. Forest rights (of Adivasis/Indigenous peoples and Forest Dwellers) have only been mentioned once in the FC Rules, 2022. The FC Rules, 2022 state that the state government may pass an order, after the final approval from the Central Government, for de-reservation or diversion or assignment of forest land on lease etc after the final approval from the Central Government — after ensuring settlement of rights under FRA and fulfilment of compliances under other laws. This means, the Central Government can give its final approval and will, thereafter, leave the state government to pass an order for de-reservation or diversion or assignment. It is then the state government now to make sure that the claims of forest dwellers are settled.

This means, neither Gram Sabha consent is required to be obtained before the grant of the In-principle approval, nor is it necessary for the collector to oversee the process of recognition and vesting of individual claims of forest rights before the grant of In Principle approval. The FC Rules, 2022 snatch away the participatory rights of the forest dwellers by making them simple bystanders to a process that affects their land and forest rights, their culture and livelihood. The issue of Gram Sabhas and FRA, according to the new rules, comes into play *only after* a final approval has been given by the Central Government.

The MoEFC itself, in 2009 issued guidelines to state governments, asking them to include FRA specific compliances in applications for diversion of forest land for non-forest purposes. In the guidelines, one of the entries was that the consent of each Gram Sabha in the jurisdiction should be enclosed with the application. The guidelines required the following to be enclosed with the application.[7] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftn7)

1 A letter from the State Government certifying that the complete process for identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion with a record of all consultations and meetings held;

- 2 *A letter from the State Government certifying that proposals for such diversion (with full detail project and its implications, in vernacular/ local languages) have been placed before each concerned Gram Sabha of forest-dwellers, who are eligible under the FRA;*
- 3 *A letter from each of the concerned Gram Sabhas, indicating that all formalities/processes under FRA have been carried out, and that they have given their consent to the proposed diversion and compensatory and ameliorative measures if any, having understood the purposes and details of proposed diversion.*
- 4 *A letter from the State Government certifying that the diversion of forest land for facilities managed by the Government as required under section 3(2) of the FRA have been completed and that the Gram Sabhas have consented to it.*
- 5 *A letter from the State Government certifying that discussions and decisions on such proposals taken place only when there was a quorum of minimum 50% of members of the Gram Sabha present.*
- 6 *Obtaining the written consent or rejection of the Gram Sabha to the proposal.*
- 7 *A letter from the State Government certifying that the rights of Primitive Tribal Groups and Pre Agricultural Communities, where applicable, have been specifically safeguarded as per section 3(2) of the FRA.*
- 8 *Any other aspect having bearing on operationalisation of FRA.*

Whereas between 2009 to before 2022, the land and livelihood rights of India's indigenous Adivasi and forest dwellers was the focus and priority, 2022 has seen a dangerous shift. The priority of MoEFCC now seems to have changed regarding harmonising FRA 2006 into its own rules.

The Niyamgiri Bauxite Mining Case

In the case of Orissa Mining Corporation vs. MoEFCC, the Supreme Court had directed that the proposals for bauxite mining be placed before Gram Sabha for examination on whether the proposed mining would infringe in the religious rights of the forest dwelling communities or not and the MoEFCC should take a decision in the light of the Gram Sabha Resolutions in the said matter.[8] (https://salindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftn8)

The court stated as follows:

“58. We are, therefore, of the view that the question whether STs and other TFDs, like Dongaria Kondia Kandha and others, have got any religious rights i.e. rights of worship over the Niyamgiri hills, known as Niyamgiri, near Hundaljali, which is the hill top known as Niyam-Raja, have to be considered by the Gram Sabha. Gram Sabha can also examine whether the proposed mining area Niyama Danger, 10 km away

the peak, would in any way affect the abode of Niyam-Raja. Needless to say, if the BMP, in any way, their religious rights, especially their right to worship their deity, known as Niyam Raja, in the hills to the Niyamgiri range of hills, that right has to be preserved and protected. We find that this aspect of the matter has not been placed before the Gram Sabha for their active consideration, but only the individual claims and community claims received from Rayagada and Kalahandi Districts, most of which the Gram Sabha has dealt with and settled.”

The notification of FC Rules, 2022 can be seen as re-introduction of the archaic school of thought that vouches for greater state control on forests, which in turn means an ease of handing large tracts to corporates without the consent of India's indigenous communities.

Only in recent years have the land and livelihood rights of India's vast indigenous communities, Adivasis and Forest Dwellers entered the periphery of India's electoral discourse. The FC Rules 2022 mark a significant shift in the policy of forest conservation, which previously was in harmony with the Forest Rights Act, 2006 and snatch away the rights of Adivasis and forest dwellers.

Elections in the state of Gujarat in 2002 should impact this issue too. Adivasis are about 7-8 per cent of India's population. Now, the NCSCST has stepped in with a sharp disagreement to the latest policy changes. The Commission has called out the FC Rules 2022 as an all-out diversion of the rights regime of the FRA. Once before, when this government had not opposed a controversial Supreme Court Order to “evict” Adivasis, a concept alien to the FRA Act 2006, it had capitulated to large-scale Adivasi protests. Will such protests re-emerge now or will the government push through amendments that snatch away the rights of India's Adivasis and forest dwellers? [9] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftn9)

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[1] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftnref1) <https://timesofindia.indiatimes.com/india/put-anti-tribal-forest-rules-on-hold-panel-tells-moef/articleshow/94974415.cms> (<https://timesofindia.com/india/put-anti-tribal-forest-rules-on-hold-panel-tells-moef/articleshow/94974415.cms>)

[2] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftnref2) <https://scroll.in/video/809376/watch-scenes-from-the-conference-in-1972-that-led-to-world-environment-day> (<https://scroll.in/video/809376/watch-scenes-from-the-conference-in-1972-that-led-to-world-environment-day>)

[3] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftnref3) Section Forest Conservation Act, 1982, https://legislative.gov.in/sites/default/files/A1980-69_0.pdf (https://legislative.gov.in/sites/default/files/A1980-69_0.pdf)

[4] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftnref4) <http://forarance.nic.in/Rules.aspx> (<http://forestsclearance.nic.in/Rules.aspx>)

[5] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftnref5) <https://vicode.nic.in/bitstream/123456789/8311/1/a2007-02.pdf> (<https://www.indiacode.nic.in/bitstream/123456789/8311/1/a2007-02.pdf>)

[6] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftnref6) Bhat-tacharya, Ajoy Kumar. *Community participation and sustainable forest development: global perspectives*. Concept Publishing Company, 2001.

[7] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftnref7) [http://forarance.nic.in/writereaddata/public_display/schemes/981969732\\$3rdAugust2009.pdf](http://forarance.nic.in/writereaddata/public_display/schemes/981969732$3rdAugust2009.pdf) ([http://forestsclearance.nic.in/writereaddata/public_display/schemes/981969732\\$3rdAugust2009.pdf](http://forestsclearance.nic.in/writereaddata/public_display/schemes/981969732$3rdAugust2009.pdf))

[8] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftnref8) https://main.sci.gov.in/pdf/SupremeCourtReport/2013_v6_piv.pdf (https://main.sci.gov.in/pdf/SupremeCourtReport/2013_v6_piv.pdf)

[9] (https://sabrangindia.in/article/2022-forest-conservation-rules-snatch-away-rights-ativasi-gram-sabhas#_ftnref9) <https://india.mongabay.com/2022/02/environment-ministry-pursues-ease-of-business-one-office-order-at-a-time/> (<https://india.mongabay.com/2022/02/environment-ministry-pursues-ease-of-business-one-office-order-at-a-time/>)

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