

# On the rights of forest-dwellers

Why has the notification of the Thanthai Periyar Sanctuary in the Erode district of Tamil Nadu left forest-dwellers wary? How should national parks and sanctuaries be notified? What was the 'historical injustice' the Forest Rights Act was supposed to rectify?

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## EXPLAINER

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### The story so far:

Earlier this month, the notification of the Thanthai Periyar Sanctuary in Erode district of Tamil Nadu triggered consternation among forest-dwellers around it. They expressed fear that this is a prelude to their rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (FRA) being denied. They have accused the district and State administrations of violating relevant laws. The Thanthai Periyar Sanctuary is constituted from the North and South Bargur, Thamarai Karai, Ennamangalam, and Nagalur reserved forests in Anthiyur Taluk. It is located between the Sathyamangalam Tiger Reserve of Tamil Nadu, the Male Mahadeshwara Wildlife Sanctuary and the Cauvery Wildlife Sanctuary of Karnataka. Six tribal forest villages – denied basic rights and facilities because these are not revenue villages – have been excluded from the sanctuary. These settlements are confined to an arbitrary area of 3.42 sq. km.

### What are forest villages?

In 1990, the Union Ministry of Environment and Forests (MoEF) had ordered that all forest villages be converted to revenue villages. The FRA, enacted 18 years ago, also required all forest villages to be converted to revenue villages. During conversion, "the actual land use of the village in its entirety, including lands required for current or future community uses, like schools, health facilities and public spaces," were to be recorded as part of the revenue village. These rights continue to be denied to date. Strangely, 21 roads 147.1 km long have also been excluded from the notification, as if such exclusion is required for them to remain in use. This is not so by law.

As of 2016, Tamil Nadu had 736 forest villages with a population of 23,125 on record. Of them, 7,764 were from Scheduled Tribe (ST) communities. The corresponding all-India figures are 4,526 forest villages with a population of 22 lakh, with 13.3 lakh from ST communities. There are more unrecorded forest habitations.

The notification that created the sanctuary concedes that the rights admitted under the Tamil Nadu Forest Act 1882 – a time when forests were reserved – and those conferred under the FRA "shall remain and continue to be enjoyed by the persons concerned". The issue here is that Tamil Nadu has been one of the most laggard States in implementing the FRA in the country.

### What are the rights in the new Sanctuary?

Cattle-grazers can no longer graze in the Thanthai Periyar Sanctuary. Bargur cattle, a traditional breed native to the Bargur forest hills, may now be prevented from accessing their traditional grazing grounds. In March 2022, the Madras High Court revised an older order imposing a total ban on cattle grazing in all the forests of Tamil Nadu and restricted the ban to national parks, sanctuaries, and tiger reserves. Tamil Nadu is the only State in the country where there is such a ban. This order is despite the FRA, which, aside from other community rights, recognised "grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities" in all forests, including in



**Rights denied:** People fetch water from the tank at the Nellikadu habitation at Bargur hills in Erode district in Tamil Nadu in June 2023. FILE PHOTO

national parks, sanctuaries, and tiger reserves. Grazing rights are community rights of the habitation-level villages and are to be regulated by their gram sabhas.

Of Tamil Nadu's land, 26,419 sq. km or 20.3% is under notified forests. The recorded forest area is a bit higher, around 23.7%. Some 6% of the State is under Protected Areas, with five national parks and 34 sanctuaries (half of which are bird sanctuaries). The State has constituted five tiger reserves in these Protected Areas. The 801-sq.-km Thanthai Periyar Sanctuary joins them now.

### What does the WLP Act 1972 provide?

Sanctuaries and national parks are notified under the Wildlife (Protection) Act (WLP) 1972. People inside sanctuaries continue to enjoy all their rights unless prohibited, but they don't in National Parks. No new rights are permitted once the notice of intent is issued. The Collector is to inquire into the rights of all persons, their nature and extent, in the proposed sanctuary or national park. Then, the Collector's office has to decide whether to admit the claims in sanctuaries and to acquire all rights in national parks. The law mandates similar procedures when some land is initially notified as forest. But governments have not followed them.

While courts routinely condone these violations, they have become entrenched within the forest department since the start of the colonial era, with the forest bureaucracy inheriting the same tendencies. In addition, the Indian Forest Act 1927 and its clones, such as the Tamil Nadu Forest Act 1882, the WLP, the Forest (Conservation) Act 1980, and the Compensatory Afforestation Fund Act

2016 are all erected on this colonial edifice.

### How was the Forest Rights Act established?

A dam of anger ruptured around the nation after the MoEF misinterpreted a Supreme Court order and, in May 2002, required States "to evict ineligible encroachers and all post-1980 encroachers from forest lands in a time-bound manner". In 2004, the MoEF acknowledged in an affidavit to the Supreme Court in *Godavarman versus Union of India* that "the historical injustice done to the tribal forest dwellers through non-recognition of their traditional rights must be finally rectified".

In 2006, the Indian government enacted the FRA to explicitly undo this "historical injustice" resulting from the inadequate recognition of "forest rights on ancestral lands and their habitat ... in the consolidation of State forests during the colonial period as well as in independent India". The FRA requires and authorises the gram sabhas to determine and recognise forest rights, and protect and preserve the forests, wildlife, and biodiversity within their customary and traditional boundaries, including inside Protected Areas. These responsibilities were earlier vested with the Forest Department.

### How do FRA and WLP compare?

Being a later law, the FRA overrides the WLP. All provisions in the WLP that contravene provisions in the FRA are null and void. As a result, when notifying a Protected Area under the WLP, the government needs to determine rights under the FRA and acquire the consent of

the gram sabhas.

The government specifically incorporated these requirements in a 2006 amendment vis-à-vis the notification of tiger reserves.

The FRA became operational when its Rules were notified in January 2008. Since then, until 2023, the country has acquired 15,605 sq. km of Protected Areas – nine national parks of 3,462 sq. km and 77 sanctuaries of 12,143 sq km – while disregarding the changed legal regime. Of these, Tamil Nadu's share has been 15 sanctuaries spanning 4,146.7 sq. km.

The FRA violations, in the case of Scheduled Tribes, are also crimes under the 2016 amendment to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

### How has Tamil Nadu implemented the FRA?

According to the 2011 Census, there were 1,808 revenue villages in Tamil Nadu with numerous habitations in them accessing 15,826.9 sq. km of forests within revenue boundaries.

But as of September 2023, the State had recognised and issued individual titles to an extent of just 38.96 sq. km – a paltry coverage of 0.25%. Reportedly, the State has issued 531 community titles but the extent of the area thus titled remains a mystery.

Tamil Nadu is not an exception. The same pattern, more or less, runs across the country: the Environment Ministry and the forest bureaucracy continue to defy the laws, Parliament, and the will of the people, leaving forests, forest-dwellers, and wildlife in peril.

C.R. Bijoy examines natural resource conflicts and governance issues.

## THE GIST

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