

# Political Economy of Community Forest Rights

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The various dilutions, contradictory policies and litigations challenging the constitutional validity of the Forest Rights Act reveal the range and depth of opposition from an entrenched forest bureaucracy on the one hand and non-state actors on the other. The lack of implementation support to it also indicates a refusal of the political system to embrace the historic opportunity created for democratic governance of forests in India.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereafter FRA) was a landmark legislation that sought to restore the rights of forest dwellers over land (for cultivation and habitation), community forest resources and habitats, and the governance and management of forests. But 10 years later, we see that there has been a serious shortfall in the implementation of the community forest resource (CFR) rights provisions of the FRA (see Kumar et al in this issue). In most villages across states, villagers are simply unaware of these provisions. But even when they have applied for these rights, in many cases their claims have been (i) left pending for several years, (ii) illegally rejected, (iii) only partially granted, (iv) granted with the imposition of illegal conditions in CFR titles, (v) granted much smaller area than being used by the community, and/or (vi) CFR titles issued in the name of the gram panchayat or joint forest management committee (JFMC) but not the gram sabha.

What might explain this state of affairs? Taking a political economy perspective, we suggest that there are three different factors operating simultaneously: limitations of the central and state tribal welfare departments, active obstruction by the forest departments and their central ministry, and pressure from several non-state actors. We draw upon a review of various government orders/circulars and our own field experiences in different regions of India to develop and illustrate these arguments.

## Limitations of State Agencies

At the national level, the Ministry of Tribal Affairs (MoTA) is the nodal agency of the state to ensure effective implementation of the FRA in India. However, a close look at its functioning over the last 10 years suggests that the MoTA is understaffed

and under-resourced for supervising this massive task. One secretary assisted by two joint secretaries, one deputy director general and an economic advisor not only handle FRA-related work, but also a plethora of other responsibilities. Against the sanctioned strength of 137 employees, only 101 are in place (CFR-LA 2016). Neither has a separate budget provision been made to implement the FRA.

The scenario is not very different when it comes to the state-level implementing agencies across India. Most states have not made serious efforts to train the tribal welfare departments in FRA matters, or augment their resources. The FRA is a complex piece of legislation with multiple land and forest rights provisions, but tribal welfare departments have not traditionally been exposed to these issues, being focused more on welfare schemes. Implementing CFR rights provisions needs an understanding of the forest dwellers' relationship with the forest, forest records and maps, and the history of forestland reservation and displacement of communities. In the absence of such an understanding, tribal department officials have invariably relied on forest department officials in the processing of claims. The statutory state-level monitoring committees (SLMCs) for the FRA are non-functional in most states. The SLMC does not meet quarterly as required by law. For example, the SLMC of Odisha has only met eight times since its constitution in February 2008, whereas Jharkhand's SLMC has not met even once. FRA requires SLMCs to address petitions and complaints filed by gram sabhas and forest rights holders. However, most of the petitions filed to SLMCs remain unaddressed.

Recognition of CFR rights at the district and subdivisional levels also faces a number of operational challenges. Other concerns at this level of governance include long-pending CFR applications; irregular meetings of subdivision-level committees (SDLCS) and district-level committees (DLCS); non-provision of information to gram sabha on the status of CFR claims; records of rights are not changed after recognition of CFR claims; etc. Very often, the tribal welfare officers,

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from subdivision to state level, lack clarity about the recognition process and depend upon forest departments to verify the claims filed by gram sabhas. In many cases, the governor's office, especially in the Panchayats Extension to Scheduled Areas (PESA), has to intervene to rectify the decisions of DLCs and SDLCs when claims are rejected or pending for several years.<sup>1</sup>

### Active Obstruction

The proposed shift in forest governance from a highly centralised and bureaucratic structure to decentralised gram sabha control and management—which is what CFRs would bring about—has not gone down well with the state forest departments and the forest officers in the Ministry of Environment, Forest and Climate Change (MOEFCC). These actors have sought to prevent the effective implementation of CFRs in several ways, as discussed below.

### Promoting joint forest management:

The MOTA has issued guidelines to clarify that community forest resource rights recognised under Section 3(1)(i) of the FRA constitute a new category of forest to be governed and managed by the gram sabhas under rule 4(1)(e). Despite such guidelines, the forest departments across states continue to promote and encourage JFMCs. This is retrograde not only because of the confusion it creates in the village, but also because JFMCs have no statutory position and are controlled by the forest department, whereas CFR committees are autonomous and are governed by the FRA. Nevertheless, Andhra Pradesh, vide guidelines issued in 2008, has granted CFR titles in the name of Vana Samrakshna Samithis (vsss), which is a blatant violation of FRA. Other states have also followed suit, and CFR titles are being granted in the name of vsss in Chhattisgarh, Odisha and Gujarat. Under the Ama Jungle Yojana (Community Forest Protection and Management Project), the Government of Odisha has proposed to create 7,000 vsss located in 30 territorial and wildlife divisions of the state. This policy has been widely opposed as it negates the essence of CFR rights, but was given

up only when the gram sabhas became overtly assertive, as it happened recently in Bolangir and Rayagada districts of Odisha where vsss were dissolved by the gram sabhas (CSD 2016).

**Notification of village forest rules:** Several states have brought rules and orders that could scuttle implementation of the CFR provisions. For example, Maharashtra issued a Village Forest Rules (VFRs) notification in May 2014 under the Indian Forest Act, 1927. These rules place the control of management and governance of forests in the hands of committees that are constituted and controlled by the forest department, including in areas where CFR rights are to be claimed or have been claimed or received. Though initially MOTA deemed VFRs as illegal, it later diluted its stance and allowed VFRs to be implemented outside Schedule v areas. Many forest rights groups in Maharashtra are of the opinion that powerful vested interests within the bureaucracy and political class have pushed for VFRs as a core strategy to maintain their control over forests, and forestall the transfer of jurisdiction of these forests to gram sabhas.<sup>2</sup> Similarly, in Madhya Pradesh, a set of VFRs was issued on 4 July 2015 through which the government has sought to declare wooded areas, traditionally used by forest dwellers, as “village forests” instead of giving communities titles over such land under the FRA. While the FRA bestows autonomous control over community forests to gram sabhas, VFRs give control over such land to the forest department (Shrivastava 2015).

**Diversion of forestland:** If forest dwellers have rights to use and manage the forest, then it stands to reason that this right cannot be taken away for a development project without due process, that is, without the free and informed consent of the gram sabha to whom the CFRs have been granted. This implication of the FRA was first accepted in 2009 and since then has been mandatory for diverting forestland to other uses in both recognised and potential CFR areas. This interpretation was further strengthened by the Supreme Court's decision in the Niyamgiri case in 2013.

The MOEFCC, however, has in recent years issued a number of guidelines simplifying the diversion of forest for non-forest purposes. For instance, in a letter dated 4 July 2014, MOEFCC directed that proposals seeking prior approval for the diversion of forestland for prospecting are exempted from submitting documentary evidence in support of settlement of rights under the FRA. Though it was challenged by MOTA in a letter addressed to MOEFCC, pointing out that FRA does not provide for any exemption to its provisions for any category of forests, projects and persons, MOEFCC has continued attempts to bypass several provisions of the FRA.

Further, in practice, claims of villages over forestland earmarked for diversion, or leased to mining companies or industries are not being recognised or being left out of the verification process in many states. For example, Jala village in Chandwa block, Latehar district, Jharkhand had filed a CFR claim over 456 hectares of forestland, which also covers part of the forestland of Ganeshpur Coal Block leased out to a mining company. The SDLC rejected the CFR claim on frivolous grounds (Yadav 2014).

MOEFCC made yet another attempt to bypass CFRs with its August 2015 guideline permitting the leasing of up to 40% of “degraded” forests in the country to private companies for afforestation. These guidelines completely disregarded the fact that most of this forest is used by local communities, and over which they either hold CFR titles or are in the process of claiming them. The guidelines further specify that, aside from fodder, the rights on non-timber forest produce (NTFP) will be restricted to “10%–15%” of the allotted plots, which is a clear and direct violation of the FRA and the PESA. Maharashtra, Madhya Pradesh and Chhattisgarh have reportedly initiated a process towards such arrangements with the industry (Misra 2015).

**Afforestation programmes:** The forest departments continue to plan their afforestation programmes without regard for the fact that the entire forest landscape is no longer their sole property. Numerous conflicts have already emerged due to

forced plantations in the states of Odisha and Telangana. For example, in parts of Khammam district in Telangana, large-scale plantations are being carried out on *podu* (shifting cultivation) fields under the Haritha Haram afforestation scheme of the state government without recognising the rights of the cultivators under the FRA. Similar attempts have also been made in Kandhamal and Bolangir districts of Odisha where massive plantation programmes of commercial tree species (teak, rubber, tissue culture banana, etc) have been carried out by the forest department over forest and *podu* land. These include areas where forest rights have been recognised under the FRA and those where such recognition is still pending (Dubey 2015). The government fails to realise that once the right is recognised, the committee for forest, wildlife protection, conservation and management, constituted by the gram sabha under Section 4(1)(e) will take care of their own forest, taking technical support from the forest department if need be.

The enactment of the Compensatory Afforestation Fund (CAF) Act, 2016 is bound to aggravate this problem, because this act does not recognise the role of local communities and gram sabhas in afforestation. The CAF of approximately ₹42,000 crore is available to the state forest departments to carry out compensatory afforestation primarily in lieu of diversion of forestland for non-forest purposes. Despite several reports, including one by the Comptroller and Auditor General of India, pointing out that state forest departments lack the planning and implementation capacity to carry out compensatory afforestation and forest conservation, the CAF Act reinforces the existing structures to carry out the afforestation programme (CAG 2013).

Similarly, forest development corporations across different states, which hold about 1.28 million hectares of forestland leased to them by the forest department, have created new challenges in the implementation of CFRs, either claimed or recognised. For instance, the Forest Development Corporation of Maharashtra (FDCM) felled thousands of trees in

Brahmapuri forest division in early 2016, despite protests by the residents of 22 villages located in and around the forest who have received CFR rights over the forests or are in the process of filing their claims (Agarwal 2016).

### Challenges from Non-state Actors

The implementation of CFR rights has been strongly opposed by a number of non-state actors ranging from wildlife conservation groups to tendu leaf contractors to mining and power plant industries. Many wildlife groups even before the enactment of the FRA formed the opinion that the act would threaten forest conservation.<sup>3</sup> Several strategies including public interest litigations have been filed by these groups in different high courts and in the Supreme Court questioning the constitutional validity of the act. However, there is enough evidence to suggest that involving forest-dwellers in forest management will actually strengthen conservation efforts (Pathak et al, this issue).

Another major challenge to the implementation of CFR rights has come from mining and power companies. Granting of mining leases in CFR areas without the gram sabhas' consent has increased over the years. For example, in February 2016, the district administration of Sarguja, Chhattisgarh revoked the CFR titles of Ghatbarra village on the ground that the exercise of these rights was coming in the way of a coal mine that had been granted approval in 2012. This decision was taken arbitrarily without the consent of Ghatbarra villagers, most of whom are forest-dependent tribals. Likewise, forest diversion in a CFR area was approved for the 130 megawatt Kashang hydropower project in Himachal Pradesh without the consent of gram sabhas; this was stopped only after the National Green Tribunal order made it mandatory to have the approval of the gram sabhas before diverting forests. Over the years, the governments have tried to create new institutional mechanisms to support mining in forest areas by private companies in the name of creating "pro-investment climate" and "ease of doing business." New institutional mechanisms and structures in the form

of Invest India and Project Monitoring Group are found to wreck dilution of the FRA in the process of obtaining forest clearance (CSD 2015).

Similarly, the ability of gram sabhas with community forest resource rights to sell NTFPs at the best possible price has faced numerous obstacles from unscrupulous tendu leaf traders who hitherto dominated the process of tendu leaf market in every sphere—pricing, grading, weighing and counting of the forest produce. These contractors have controlled the so-called auctions conducted by the forest departments for decades, but are finding it difficult now, as village after village decided to go for an open tendering system. For example, this year around 1,000 villages in Gadchiroli district, Maharashtra decided to go for an open tendering process to sell their tendu leaf and got a better price in comparison to the earlier bidding system through forest department.<sup>4</sup> This has resulted in ending the monopoly of tendu contractors who paid low prices by following a non-transparent mechanism.

### Conclusions

The various dilutions, contradictory policies and litigations challenging the constitutional validity of FRA reveal the range and depth of opposition from an entrenched forest bureaucracy on the one hand and non-state actors on the other. But, the lack of implementation support to it also indicates a refusal of the political system to embrace the historic opportunity created for democratic governance of forests in India. The current implementation scenario suggests that the government has failed to realise the growing alienation of forest dwellers from their forest resources, with serious ramifications both for the well-being of forest dwellers and for forest conservation. The 10th anniversary of the act provides an occasion to the government machineries and political class to appreciate the potential of FRA to ensure rights and justice to millions of forest dwellers in the country, and to establish democratic governance. There is an urgent need for the government and various groups to learn from the experiences of the past, and implement the CFRs so that

both, the access to resource rights, and the protection, regeneration, and conservation of forests, can be effective in the long run.

## NOTES

- 1 For example, the governor of Maharashtra has issued several directions to put in place stronger follow-up and mechanisms for the implementation of FRA. For more details, see this link: [http://rajbhavan-maharashtra.gov.in/rajbhavan/Pages/frm\\_governor\\_roles.aspx](http://rajbhavan-maharashtra.gov.in/rajbhavan/Pages/frm_governor_roles.aspx).
- 2 This concern was raised by many forest rights groups from Maharashtra during the national convention on “FRA After Ten Years” held during 13–14 December 2016 in Delhi.
- 3 At least some of this opposition is based on a misreading of the act, such as believing that all tribals will get 4 hectares each of standing forest, when in fact the act allows only recognition

of rights on already cultivated land up to a maximum of 4 hectares.

- 4 This information is based on our discussion with several gram sabha members in Gadchiroli, Maharashtra.

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