

What encroachment into forest lands means [Commentary]

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26 May 2025 India Beyond Protected Areas

Comments

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- *Large-scale forest ‘encroachment’ legalised by the colonial forest laws that consolidated into the Indian Forest Act, 1927, continues its reign even today.*
- *The traditional forest dwellers are criminalised as ‘encroachers’ in their own homes despite the democratisation of forests with the Forest Rights Act, 2006.*
- *However, forest encroachment for large-scale commercial gains from extractive industries, development projects and infrastructure, is made swift and easy.*
- *The views in the commentary are that of the author.*

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Forest ‘encroachment’ under the legal cover of the Forest Act of 1865, commenced with the inception of the Imperial Forest Department in 1864, now India’s Forest Department. This colonisation continued post-independence through the colonial era Indian Forest Act of 1927 (IFA). The government proclaimed any piece of land to be ‘forest’ by notifying it to this effect. These incursions not only ravaged the forests and all its denizens, but also unleashed a bloody saga of resistance in defence of democracy in the forests that continues till date. The centuries-old traditional use of forests by forest dwelling communities got disrupted. This is in spite of the provisions to recognise and settle forest rights in the IFA and its look-alike state laws.

Encroachment vs. unsettled claims

On March 28, 2025, the environment ministry, complying with the National Green Tribunal order of April 19, 2024, in OA No.129/2024, submitted an affidavit that about 1.3 million hectares (13,05,688.387 ha) of forest land are 'encroached' as on March 2024. This data is from 20 states and five Union Territories (UTs); response from the remaining eight states and three UTs were awaited. The case, registered *suo motu*, pertains to a news item titled [Forest land five times Delhi's geographical area under encroachment govt data shows](#) appearing in Deccan Herald of January 5, 2024. It quoted 0.75 million hectares (7,50,633 ha) as the forest area under 'encroachment'. The [India State of Forest Report 2023](#) records 25.17% of the country or 80 million hectares (827,35,700 ha) as land under forest (21.76%) and tree cover (3.41%).



Local residents ride a boat in the Sundarbans National Park. The colonial Forest Act of 1865 disrupted the centuries-old traditional use of forests by forest-dwelling communities, labelling it encroachment, in spite of provisions to recognise and settle forest rights. Image by Bri Vos via [Wikimedia Commons \(CC BY 2.0\)](#).

The environment ministry spews out figures of 'encroachment' at regular intervals in both the houses of the Parliament. As of [May 2002](#), the figure stood at 1.4 million hectares (14,95,746.732 ha). A decade later [in 2021](#), the figure was 1.3 million (13,29,450.2 ha). Meanwhile, responding to IA 703/2001 regarding forest 'encroachments' in WP(C) No. 202/1995, T.N. Godavarman Thirumulpad v. Union of India & Ors., a continuing mandamus, the Supreme Court, on [February 18, 2002](#), asked "What steps have been taken to clear the encroachments from the forest which have taken place at an earlier point of time?" This was a follow up to the order of [November 23, 2001](#) asking for filing of affidavits in reply to the application 'against the illegal encroachment of forest land in various States and Union Territories'. Even though the Supreme Court did not order any eviction, yet the environment ministry issued [a circular on May 3, 2002](#), to the state governments misrepresenting this court order alleging that 'approximately 12.50 lakh ha of forest land is under encroachment', and ordered that 'all encroachments which are not eligible for regularization... should be summarily evicted in a time bound manner, and in any case not later than 30th September 2002'. The eviction drive without regularising all eligible encroachments was indiscriminate, ruthless and widespread. Evictions were carried out from about 150,000 hectares (1,52,400.110 ha) between [May 2002 and March 2004](#). This also resulted in [a nationwide struggle](#) by forest dwellers resulting in the [Scheduled Tribes and Other Traditional Forest Dwellers \(Recognition of Forest Rights\) Act, 2006](#) (FRA).

The FRA, in effect, clearly distinguished 'unsettled claims' from 'encroachments'. It recognised and vested forest rights in eligible forest dwelling scheduled tribes and other traditional forest dwellers when it was notified for operation with effect from December 31, 2007. It provides 'a framework for recording the forest rights so vested' through an elaborate, transparent democratic three-layered scrutiny: gram sabha's public scrutiny, then a sub-division level committee of representatives of the Revenue, Tribal Welfare and Forest departments along with three Panchayat representatives, and finally a similar district level committee. At least two pieces of evidence are required in support of each claim, and are subjected to rigorous ground-truthing through public verification. This open process of determining, demarcating, verifying, recognising and titling rights was to finally settle the unsettled claims on forest lands occupied before December 13, 2005. The outrageously erroneous forest and revenue records were then to be

finally rectified.



A sign in Pakke Tiger Reserve in Arunachal Pradesh. The environment ministry claims figures of 'encroachment' at regular intervals; on March 28, 2025, it submitted on affidavit that 13,05,688.387 hectares of forest land in 20 states and five union territories are 'encroached'. Image by goldentakin via [Wikimedia Commons \(CC BY 2.0\)](#).

Forest 'encroachment' redefined

A year and a half prior to the FRA, on July 21, 2004, the environment ministry, [in an affidavit in the Supreme Court in IA No 1126 in IA No 703 in WP \(C\) No 202/1995](#), acknowledged that a record of rights did not exist due to which rights of the tribals could not be settled during the process of consolidation of forests in the country. Therefore, the rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these tribals have become *encroachers in the eyes of law*.

It also recognised that lands have been proclaimed as Reserved Forests on many occasions without settlement of tribal rights as the records of rights never existed for tribals, specifically, their rights were not recorded and have never been recognised. The National Forest Policy, 1988 gives due regard to the traditional rights of the tribal people on forest land and it recognizes symbiotic relationship between the tribal people and forests.

The affidavit also stated that in order to fulfill the commitments as enshrined in the National Forest Policy, 1988, in respect of settlement of people's rights, especially tribals' rights, over the forest lands in a regulated manner, the Central Government on September 18, 1990 through the environment ministry, issued a number of guidelines 'for one time settlement of the people's rights under Forest (Conservation) Act, 1980'. These guidelines pertained to regularisation of encroachments on forest lands, review of disputed claims over forest land arising out of forest settlement, settlement of disputes regarding pattas/leases/grants involving forest land and conversion of forest villages into revenue villages and settlements of other old habitations on forest land, and alleged that the State Government/UT Administration have shown no progress in this regard.

The guideline of February 5, 2004, for [regularisation of the rights of the tribals on the forest lands](#) with a cut-off date of December 31, 1993, was "based on the recognition that the historical injustice done to the tribal forest dwellers through non-recognition of their traditional rights must be finally rectified," said the affidavit. The Supreme Court stayed this guideline on February 23, 2004.

With these, from being 'encroachers' in their own homelands, they became 'eligible encroachers' in law, even though this status upgrade was denied in practice. It is only with the enactment of the FRA in 2006 that regularisation of encroachment got transformed to 'recognition of their rights'. The FRA finally recognised forest dwelling communities for what they are, as 'traditional forest dwellers' and 'right holders'. The preamble of the FRA unequivocally recognised 'the historical injustice to the forest dwelling scheduled tribes and other traditional forest-dwellers who are integral to the very survival and

sustainability of the forest ecosystem’.



Women of Central India's Gond tribe during a festival. A nationwide struggle by forest dwellers in the early 2000s resulted in the Forest Rights Act, 2006. It recognised forest rights in eligible forest dwelling communities. Image by Varaprasad Sidam via [Wikimedia Commons \(CC0 1.0\)](#).

With the notification of the Forest Rights rules in 2008, the environment ministry affirmed in its [2009 Country Report to the FAO](#) that FRA ‘assigned rights to protect around 40 million ha of community forest resources to village level democratic institutions. The fine-tuning of other forest-related legislations is needed with respect to the said Act.’ This figure of 40 million ha, over half of all forests in the country, was independently corroborated years later in ‘[Potential for Recognition of Community Forest Resource Rights Under India's Forest Rights Act](#)’, a 2015 study. It relied on the data from the [State of Forest Report, 1999](#), Census 1991 and Census 2001. Instead of amending the pre-FRA laws that are founded on the colonial notion that forest-dwellers are encroachers and their life inside the forests a crime, [the environment ministry did just the opposite](#): It went about hacking the FRA through administrative fiat, encouraging scant regard for the law by the Forest Departments in the forests. So too the 2006 amendment to the Wildlife Protection Act, 2006 (WLPA) that made Tiger Reserves a statutory category continues to be steadfastly ignored and violated. Section 38V of WLPA which made rights recognition of forest dwellers a necessary pre-condition for creation of Tiger Reserves is patterned on the FRA.

The tribal affairs ministry has now gone ahead requiring all the states and UTs to use the Census of India 2001 and 2011 amongst other sources to map the potential forest lands that fall within the purview of the FRA and the jurisdiction of the gram sabhas in its [operational guidelines for various interventions](#) of October 2024. Odisha and Tamil Nadu have released the FRA Atlas depicting the potential villages accessing forest land; other states are working on it. These forest areas now potentially fall outside the category of ‘forest encroachment’ by forest dwelling communities.

Forest encroachment of another kind

While all these were happening, forests were being diverted for government and private agencies explicitly to deforest the forest land for non-forestry purposes after getting them lawfully diverted under [the Forest \(Conservation\) Act, 1980](#) (FCA, now called the Van Sanrakshan Evam Samvardhan Adhiniyan, 1980). Actually another form of forest ‘encroachment’ though not legally labelled so.

Prior to 1976 when ‘forests’ was under the legislative and governance domain of the states, about 41,35,000 hectares (41.35 lakh ha) [of forest land were diverted](#) for non-forest purposes between 1951-52 and 1975-76. After the forests became the joint responsibility of the union and state governments when it was brought under the [concurrent list](#) through the 42nd amendment to the constitution, and the enactment of the FCA, ‘encroachment’ through forest diversion was made lawful and regulated. Since 1980 to 2008, when the FRA became operational and the eligible encroachers became right holders, 0.7 million hectares (7,96,938.29 ha) [were diverted](#) without as much as recognising and settling the rights of eligible encroachers or compensating them in most instances. Post-2008 when the ‘eligible encroachers’

actually became lawful 'right holders' under the FRA, forest encroachment by large corporations and State agencies continued through the legal conduit of FCA swallowing yet [another 3.19 lakh ha](#) till date without as much as recognising, settling and compensating the rights of these rights-holders; most of their rights still remain unrecorded, and even if recorded, simply trampled over with impunity.

Men of the Jaunsari tribe in Uttarakhand. In July 2004, the environment ministry, acknowledged that forest-dwelling tribals were deprived of their traditional rights to venture into and use forest resources, making them 'encroachers in the eye of law'. Image by Shreyash Chauhan via [Wikimedia Commons \(CC BY-SA 4.0\)](#).

Eligible 'encroachers' transitioning to right holders

Seventeen years after the Forest Rights Rules were notified in 2008, 206,000 hectares (20.6 lakh ha), or 2.5% of the 827,360 hectares (827.36 lakh ha) of forest lands, have been titled for pre-2005 habitation and cultivation by [January 2025](#). Another 570,000 hectares (57.1 lakh ha), an overblown figure, were titled as community rights that require a thriving forest, mostly overlapping with each other. At best 15-20% of the estimated 40 million ha forests have so far been titled and recorded under the FRA. Most of the [4,526 forest villages](#) (Census 2011) continue to be deprived of public facilities as their right to conversion into revenue villages continue to be violated.

On [February 28, 2019](#), the Supreme Court, in WP (C) No.109/2008, had to keep on hold its own order of [February 13, 2019](#) to evict all the claimants whose FRA claims stood rejected, over a million or so. The union and the state governments had then contended that most claims were rejected without following the due legal process, and hence needed to be fully reviewed. The case primarily challenged the constitutionality of the FRA which has not yet been heard in all these many years.

The environment ministry enthusiastically [amended the FCA in 2023](#) in its quest to ease and speed up forest diversion for non-forestry purposes. The major target of this amendment is to restrict the definition of 'forest', and thus the application of the FCA, only to notified forests, and roll back the definition advanced by the Supreme Court where 'forest' is 'understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership of the land' vide its judgment [of December 12, 1996 in WP\(C\) 202/1995](#). Even within the restricted definition of forest, certain categories of projects such as the defence-related ones or camps for paramilitary forces were excluded from the purview of FCA. Even more so, the mandatory FRA compliance, including gram sabha consent, that is required for forest diversion in over half of all forest lands as pre-condition, was made a post-diversion responsibility of the state governments. While the Supreme Court in WP(C) No.1164/2023 has [clamped down on the exclusion of what it sought to add to what forest lands are](#), it has remained conspicuously silent on the tearing apart of FRA compliance in the FCA amendment.

Even while all these changes were taking place to harness the forest to the development juggernaut, the environment ministry, through its National Tiger Conservation Authority, directed the state governments to hasten the '[voluntary relocation](#)' of the [remaining 64,801 right-holder families](#) in 591 villages from the critical tiger habitats of the tiger reserves. 25,007 families from 251 villages have been relocated since

1973 till mid-2023 without recognising their rights under the FRA and denying their due entitlements in lieu of the relocation. Indeed, every single one of 58 tiger reserves declared across India has been notified in violation of the relevant provisions of the WLPA.

What lies behind this crude cover up of facts of history and law under the canvas that parades itself as 'forest encroachment' and peddled in the corridors of the institutions of democracy, governance and justice? Keeping the water constantly muddied and unsettled as long as possible is also a cover to a whole lot of easy and cheap forest grab by the affluent and powerful, be it for development, resource extraction, forest conservation or wildlife protection.

The author examines natural resource conflicts and governance issues.

Read more: [The Forest Rights Act sees outcome in a women-led forest stewardship scheme in Odisha](#)

Banner image: Women of the Mannan tribe in Kerala fishing. The tribal affairs ministry requires all states and union territories to map potential forest lands that fall within the purview of the Forest Rights Act. Image by Nebu George via [Wikimedia Commons \(CC BY-SA 4.0\)](#).

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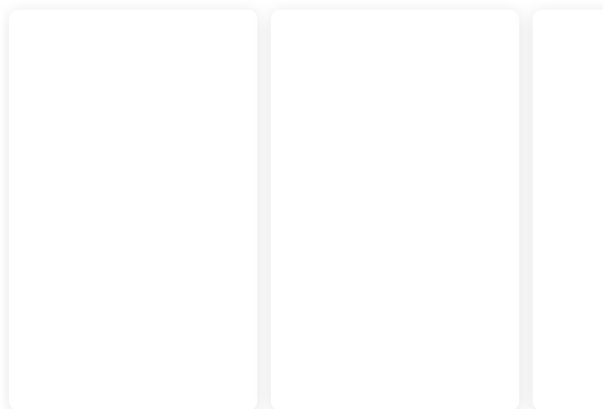
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