

Biodiversity Conservation and Forest Rights Act

https://www.researchgate.net/publication/318489911_Biodiversity_conservation_and_forest_rights_act

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Several wildlife groups have opposed the Forest Rights Act as being anti-conservation. However, field experience indicates that the act can and is being used by local communities for arresting biodiversity decline by opposing the diversion of forests to mega-development projects and by using situated knowledge and values to bring about conservation.

The conservation model in India has been top down, bureaucratic and arbitrary. The Indian Forest Act (IFA) first enacted in 1865 established state control over forests, primarily used by the colonial government for extraction of timber. This centralised control of forests continued and even intensified under the independent Indian state, where forests were either diverted for developmental purposes or designated as “protected areas” to meet international conservation goals. The primary instrument for the latter has been the Wildlife Protection Act (WLPA) 1972.

The model of conservation enshrined in the WLPA is premised on creating human-free zones for the protection of rare species based on the erroneous notion that local people are the prime drivers of wildlife decline. While such protected areas approach has been successful to some extent in protecting certain species, it has done so at the cost of the cultural, economic, social and political rights of communities living in these areas (Pathak Broome et al 2014). A 2009 estimate suggested that about 1,00,000 families have been displaced over the last three or four decades from protected areas (Lasgorceix and Kothari 2009). Given the reports of ongoing relocations across the country over the last decade, this figure could only have increased. Thus, by actively alienating local people, the WLPA furthered the marginalisation of forest dwellers while ignoring the real reasons for wildlife population decline. These include intensive hunting of tigers and other large animals by British and local rulers in the past, and a decline in wildlife habitat due to continuous large-scale diversion of forests for agriculture, dams, and mining. A long struggle against such exclusionary forest policies and conservation practices resulted in the enactment of the Forest Rights Act (FRA), 2006.

Given the conventional conservation discourse that local ways of use of forests and conservation cannot coexist, there was and continues to be much opposition to the implementation of the FRA from conservationist groups.

Conservationists' Opposition

Soon after the rules of the act were notified, writ petitions against the FRA were filed in the high courts of Andhra Pradesh, Odisha, Tamil Nadu, Maharashtra and Madhya Pradesh (mostly by retired forest officials) and in the Supreme Court (by a group of prominent wildlife non-governmental organisations (NGOs)) on the grounds that the act was unconstitutional; the existing IFA and WLPA provided adequate protection to local people; recognition of the rights of forest dwellers would increase encroachment on forestland due to false claims; and that the passing of the act had been carried out in haste and without adequate thought being applied to the impact of the FRA on forests and wildlife. While most petitions have been dismissed by the high courts, the Supreme Court has transferred the remaining cases to itself and is currently hearing the cases together (Forest Campaign 2017).

The state, too, has made efforts at obstructing the implementation of FRA, particularly by attempting to dilute those provisions of the act that mandate seeking consent of affected gram sabhas for diverting forests towards non-forestry purposes (Sethi 2013, 2016; Sahu et al in this issue). Most recently, the National Tiger Conservation Authority (NTCA) has issued a blatantly illegal order, violating not only the FRA but also the WLPA, by stating that no rights should be granted in tiger reserves under the FRA.¹

A growing body of research and discourse, within conservation organisations, recognise that a sustainable and effective protection of sensitive ecosystems requires the democratic involvement of those who live in and depend on those ecosystems as legally empowered rights holders. This has also been recognised in the Convention on Biological Diversity (CBD), particularly in its Programme of Work on Protected Areas

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(POWPA) (Pathak Broome 2016). Reacting to efforts that seek the dilution and obstruction of FRA, 22 prominent wildlife experts and conservationists wrote to the minister of environment, forest, and climate change in 2016, saying that “undermining the FRA will greatly damage environmental protection” and asking him to ensure that the “implementation of and respect for” FRA is a top priority (Kalpavriksh 2016a). Subsequently, 40 environmental organisations and experts, from over 20 countries, issued a statement in support of this letter (Kalpavriksh 2016b).

This article argues that by recognising and vesting forest rights to local people, the FRA empowers forest dwelling communities to manage natural resources and conserve biodiversity. Additionally, by envisaging and providing for local stewardship of forests, it creates a possibility of collaboration between local people, state agencies and other actors, on equal terms. The FRA vests a particularly significant right to forest dwellers, namely the “right to protect, regenerate or conserve or manage any community forest resource² which they have been traditionally protecting or conserving for sustainable use.” This grants local institutions the opportunity to define conservation according to their customary and historically informed understanding and practice. Additionally, the FRA empowers communities to “protect forests, wildlife and biodiversity, and to ensure protection of catchments, water sources and other ecologically sensitive areas.” The amended FRA rules of 2012 elaborate on the constitution of committees for communities to undertake these functions as well as prepare conservation and management plans for community forest resources.³

The FRA also serves as a crucial barrier to one of the main drivers of biodiversity decline in India, namely, the diversion of forests for developmental purposes. Under the Forest (Conservation) Act, 1980 (FCA) such diversion was to be entirely decided upon by state constituted agencies and institutions. The FRA changes this by also empowering forest dwelling communities to preserve their habitat from “any form of destructive

practices affecting the cultural and natural heritage;” and empowers them to “stop any activity which adversely affects the wild animals, forests and biodiversity.” These two powers have been further reinforced by a government circular (MoEF 2009). This circular makes it mandatory for the processes of recognition of forest rights under FRA to be completed, and the informed consent of the affected gram sabhas sought before diverting forests for non-forestry purposes. The circular also mandates consent for compensatory and ameliorative measures associated with such diversion of forests. The next section details how these provisions concerning management and diversion are being used on the ground by local communities towards achieving conservation goals.

Protection from Diversion

The government’s own data shows that 14,00,000 ha of forests have been diverted since 1980 for non-forestry purposes, mainly for mining, defence projects, and hydroelectric projects. In response to a query in Parliament in 2016, it was officially accepted that up to 25,000 ha of forests are being diverted every year for non-forestry activities.⁴ It has also been argued that the process of clearing projects is non-transparent, non-consultative, and without the consent of the communities who depend on these lands and resources. There are hundreds of examples of local communities resisting such diversion of forests. The Madia Gonds in Gadchiroli are resisting the diversion of 15,000 ha of dense forests for 25 different mining projects in the district (Dahat 2017). Communities in Murbad taluka of Maharashtra continue their protest against Kalu Dam, being constructed to provide water to Mumbai city, which will inundate landscapes that these communities live and depend upon (Tatpati nd).

The provisions of the FRA for the first time have given such communities a legal instrument to prevent state-sanctioned deforestation. Gram sabhas have been able to use these clauses with variable degrees of success. A leading example emerged in the Niyamgiri case of Odisha in which the Supreme Court upheld FRA

and ordered that forests could be diverted for mining only if the gram sabhas of the local Dongria Kond community gave their consent (*Orissa Mining Corporation v Ministry of Environment and Forest and Ors* 2013). The Court’s judgment described the FRA as “strengthening the entire conservation regime” in India. Subsequently, many other communities across India, resisting forest diversion, have used these provisions and the Supreme Court order. These include communities of the Kashang valley in Himachal Pradesh (Aggarwal 2016), Mahan forests of Madhya Pradesh (*Pioneer* 2014), the Lepcha and Monpa communities in the Dongzu valley of Sikkim (Lepcha 2016) and Nyamjang-Chuu valley in Arunachal Pradesh (Personal communication with Save Mon Region Federation)⁵ respectively.

Elsewhere, communities have been less successful only because the central and state governments have actively undermined these provisions. District administrations have held “false” gram sabhas, gram sabhas have been threatened, and/or the Forest Advisory Committee (FAC)⁶ has not considered gram sabha rejections in their decision-making. In an extreme case, such as that of the Hasdeo Arand forests in Chhattisgarh, a lease was granted for coal mining in 2012, and local communities had filed their claims for these forests as their traditional community forest resources (Choudhury 2015). While their community forest resource (CFR) rights had been recognised in 2013, they were subsequently cancelled in 2016, although there is no provision in the FRA or in any other law for these rights to be cancelled. The community has since appealed the cancellation in the Chhattisgarh high court and the forest clearance in the National Green Tribunal.

Another form of forest diversion is when forestry operations by the forest department lead to clear-felling of the forest. Such operations, while providing daily wage labour to some local communities, have often led to the disruption of existing patterns of resource use by local people (Guha 1994). The enactment of the FRA has legitimised the resistance of communities against monoculture

plantations, clear-felling of dense old-growth forests by the Forest Development Corporations (FDC), and commercial forestry operations in traditional forests, which deplete biodiversity and threaten food security. Examples include the forest-dwellers of Chilapata in the North Bengal *Dooars* (foothills of the eastern Himalayas);⁷ the Baiga community in a few villages of Dindori district, Madhya Pradesh (Kothari and Desor 2013); the Kutia Kondh community in Rayagada district, Odisha (Abrol 2016), and dozens of villages in Gadchiroli and Chandrapur districts of Maharashtra (Agarwal 2016a).

Local Governance

There is a growing literature on the positive conservation and livelihood outcomes from the decentralisation and local control of environmental resources. Mendha-Lekha village in Gadchiroli district of Maharashtra, where self-rule and forest conservation date back a few decades (Pathak and Gour-Broome 2001), was one of the first villages to have claimed and received CFR rights over 1,800 ha of forests. While initiating a forest governance and management system, the village set aside 10% of forest area for wildlife, compiled a community biodiversity register, and for livelihood have decided to carry out forest management activities (soil and water conservation, mulching for bamboo, etc) instead of heavy extraction of resources. In Maharashtra's Amravati district, near the Melghat Tiger Reserve, Payvahir village claimed and received community forest resource titles in 2012. Subsequent forest management and governance led to uniting a conflict-ridden village towards an envisioning and planning process which led to regenerated forests, return of wildlife, and livelihoods through forest-based activities, including the sale of custard apple and *tendu patta* (Dahat 2013). Pachgaon village in Chandrapur district of Maharashtra, after receiving CFR rights in 2012, has also been nearly self-sufficient in generating local livelihood from regulated bamboo harvests. To maintain the diversity of their forests the villagers decided not to harvest *tendu patta*⁸ that was traditionally an

important non-timber forest produce earning substantial revenue. They have done this to reduce forest fires, allow for regeneration, and provide *tendu* fruits for wildlife. In addition to devising rules and regulations of use for their 2,487 acres of community forest resources, the village also protects 85 acres as a strict protected zone for wildlife. Inspired by these villages, gram sabhas that have received CFR rights in the buffer zone of Tadoba Tiger Reserve are now in the process of devising similar conservation and management plans.

The FRA offers the chance to rethink wildlife conservation approaches in protected areas too, by making local communities rights-holders in the forest. However, the implementation of the FRA in protected areas has been dismal, with active attempts to stall the implementation, like the recent NTCA order. The few and far examples of protected areas, in which gram sabhas have claimed and received rights, suggest that local people continue to fight for their rights. In the Eastern Ghats, 21 villages inside Simlipal Tiger Reserve have prepared community-led conservation and management plans over the CFR rights recognised in April 2013 (Agarwal 2016b). The plans rely on traditional methods of water diversion for agriculture, plantation of fruit-bearing trees, and ecological monitoring of their community forest resources. This is one of the few examples in the country where the district administration is supporting the process. In contrast, in Biligiri Rangaswamy Temple (BRT) Tiger Reserve in Karnataka, 32 gram sabhas of the Soliga tribe received their community forest resource titles in 2011, covering nearly 60% of the sanctuary (Pallavi 2013). These settlements came together to formulate a tiger conservation plan, and identify habitats of critical importance for tigers and other animals. The plan has not been recognised by the forest department nor have the remaining gram sabhas in the wildlife sanctuary received their community rights (Madegowda et al 2013). Official records of BRT show that the tiger population has continued to increase even after Soliga tribals' individual and community rights have been recognised.⁹

In Yawal wildlife sanctuary in north Maharashtra, the local tribal *sangathan* (association) is using FRA along with other relevant acts to initiate a number of social, ecological and economic processes in villages in and around the sanctuary. Interestingly, the Yawal wildlife sanctuary has been regularly in the news for allegations of large-scale forestland occupation post-FRA enactment. Yet, Yawal is where a collective process by local gram sabhas, local tribal *sangathans*, and forest and other government departments, has led to reduction in recent forestland occupations after the land and forest rights claims of the local people were filed and recognised (Pathak-Broome 2013). Fifty-eight villages within Shoolpaneshwar Wildlife Sanctuary have received community forest resource titles to about 40,000 ha constituting 65% area of the sanctuary (Mehta and Mehta 2016). In many of these villages, community forest resource management committees have been formed, and are currently in the process of drafting management plans and rules and regulations, while earning livelihoods from the extraction of dry bamboo.

Conclusions

While the FRA was initially conceived as a legislation aimed at giving forest dwellers rights that they had been historically denied, the examples provided above, few as they are, do give us a sense of what is possible should the FRA be implemented more thoroughly. These examples only add to similar experiences from other countries illustrating positive conservation outcomes when people's rights to govern, manage and use their local landscapes are recognised. Many such efforts of community-based conservation have de facto existed across the country (Pathak 2009), and with the implementation of FRA they get legal recognition and support. Amongst the biggest conservation gains from the FRA are those that stymie the widespread state-sponsored and supported diversion of forests. These examples also show that there is little basis for the idea that conservation and people's use of forests do not go together. On the

contrary, ecosystems that have been managed and used by local people are the ones that are today identified as zones of high biodiversity. The FRA could, therefore, provide the legal space to return entire landscapes to their historical use regimes and for local people to use their situated knowledges to manage and conserve ecosystems.

NOTES

- 1 The order can be accessed here: http://fra.org.in/ASP_OrderCirculars_UploadFile/%7B87628850-a404-4179-b843-aba8fb37c2e%7D_Conferring%20rights%20under%20FRA%20in%20critical%20tiger%20habitats_28th%20Mar17.pdf.
- 2 Here, community forest resource is defined as “customary common forestland within the customary or traditional boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas...”
- 3 A guideline on the management of community forest resources has been issued by the Ministry of Tribal Affairs. It can be accessed at: http://fra.org.in/ASP_OrderCirculars_UploadFile/%7B251045ea-c745-4af0-9f75-7413d4a95636%7D_Circular%20on%20CFR%20Management%20Updated.pdf.
- 4 See www.ercindia.org.
- 5 Villages in the Tawang valley, over which the dam is going to be built, have passed resolutions against the project stating that their rights under the FRA have not been recognised.
- 6 The Forest Advisory Committee (FAC) has been set up under Sec 3 of the Forest Conservation Act to advise the central government on giving clearances for the diversion of forests to non-forest purposes and in other matters related to conservation which the central government will bring to its notice.
- 7 The Range Forest Officer of Moraghat Range in Jalpaiguri issued a letter to the gram sabha of Khairbari village to seek permission to carry out logging operations in the forests protected by the community under the FRA. The community refused to grant permission (Letter No 26/MGT-5 from the Range Manager, Moraghat (Logging) Range, Jalpaiguri, to the Secretary and President of North Khairbari Gram Sabha, Jalpaiguri, dated 6 March 2014; copy available with authors).
- 8 Tendu or Diospyros melanoxylon leaves are used for making bidi (local Indian cigarettes).
- 9 Survival International studied classified files of the National Tiger Conservation Authority during 2010–14, when the tiger numbers doubled in the sanctuary. See: <http://www.survivalinternational.org/news/11004>.

REFERENCES

Abrol, P (2016): “Listening to the Bejuni,” *People’s Archive of Rural India*, 8 December, <https://ruralindiaonline.org/articles/listening-to-the-bejuni/>.

Agarwal, S (2016a): “Planting Problems,” *Down to Earth*, 15 November, <http://www.downtoearth.org.in/news/planting-problems-56169>.

— (2016b): “21 Villages Inside Simlipal Tiger Reserve Granted Community Forest Rights,” *Down to Earth*, 25 March, <http://www.downtoearth.org.in/news/21-villages-inside-simlipal-tiger-reserve-granted-community-forest-rights-53296>.

Aggarwal, M (2016): “NGT Stops Work on Himachal Pradesh Hydroelectric Project,” *Live Mint*, 6 May, <http://www.livemint.com/Politics/k8MMZOnhMdsI3RIhIhMOIK/NGT-stops-work-on-Himachal-Pradesh-hydro-electric-project.html>.

CFR–LA (2016): “Promise and Performance: Ten Years of the Forest Rights Act in India,” *Community Forest Rights—Learning and Advocacy Process*, www.cfra.org.in.

Choudhury, C (2015): “Not Just a Coal Block,” *People’s Archive of Rural India*, 2 January, <https://ruralindiaonline.org/articles/not-just-a-coal-block-hasdeo-arand/>.

Dahat, P (2013): “A New Turn for Tendu,” *Hindu*, 23 May, <http://www.thehindu.com/news/national/other-states/a-new-turn-for-tendu/article4739840.ece>.

— (2017): “Villagers Protest Mining in Gadchiroli,” *Hindu*, 26 January, <http://www.thehindu.com/news/national/other-states/Villagers-protest-mining-in-Gadchiroli/article17094501.ece>.

Forest Campaign (2017): “Supreme Court Declines Attempt to Get FRA Struck Down,” *The Forest Rights Act*, 31 March, <https://forestrightsact.com/2017/03/31/281/>.

Gol (nd): “State-wise Summary of FCA Projects,” *e-Green Watch*, Ministry of Environment and Forests, and National Informatics Centre, Government of India, New Delhi, http://egreenwatch.nic.in/FCAProjects/Public/Rpt_State_Wise_Count_FCA_projects.aspx.

Guha, R (1994): “Colonialism and Conflict in the Himalayan Forest,” *Social Ecology*, R Guha (ed), pp 275–302, Delhi: Oxford University Press.

Kalpavriksh (2016a): “Open Letter: Request to MoEF to Ensure that the FRA is Implemented and its Integrity Upheld – as a Vital Measure for Conservation,” Kalpavriksh, <http://www.kalpavriksh.org/index.php/13-home/405-open-letter-request-to-moef-to-ensure-that-the-fra-is-implemented-and-its-integrity-upheld-as-a-vital-measure-for-conservation>.

— (2016b): “Endorsement of Request by Indian Conservationists to Uphold and Implement India’s Forest Rights Act, 2006,” Kalpavriksh, <http://www.kalpavriksh.org/index.php/13-home/408-international-conservation-organizations-endorse-indian-conservation-groups-appeal-to-the-minister-of-environment-and-forests-to-uphold-and-support-the-forest-rights-act>.

Kothari, A and S Desor (2013): “Baigas’ Battle,” *Frontline*, 17 May, <http://www.frontline.in/environment/conservation/baigasbattle/article4653458.ece?homepage=true>.

Lasgorceix, A and A Kothari (2009): “Displacement and Relocation of Protected Areas: A Synthesis and Analysis of Case Studies,” *Economic & Political Weekly*, Vol 44, No 49, pp 37–47.

Lepcha, G (2016): “Now It Is Loud and Clear that Dzongu No More Want Dam,” Facebook, 25 November, <https://www.facebook.com/gyatso.lepcha.3?fref=ts>.

Madegowda, C, N Rai and S Desor (2013): “BRT Wildlife Sanctuary, Karnataka,” *Community Forest Rights under the Forest Rights Act: Citizens’ Report 2013*, S Desor (ed), Kalpavriksh, Pune and Vasundhara, Bhubaneswar with Oxfam India, New Delhi, on behalf of Community Forest Rights—Learning and Advocacy Process, <http://fra.org.in/document/Community%20Forest%20Rights%20under%20FRA%20Citizens%20Report%202013.pdf>.

Mehta, T and A Mehta (2016): *Gujarat Scheduled Areas of Eastern Tribal Belt: Promise and Performance of Forest Rights Act: The Tenth Anniversary Report*, Community Forest Rights—Learning and Advocacy Process, <http://www.cfra.org.in/resources/Gujarat%20Report%2007Dec16.pdf>.

MoEF (2009): “Diversion of Forestland for Non-forest Purposes under the Forest (Conservation) Act, 1980: Ensuring Compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006,” Circular No: F No 11–9/1998–FC (pt), Ministry of Environment and Forests (FC Division), Government of India, New Delhi.

Orissa Mining Corporation v Ministry of Environment and Forest and Ors (2013): Writ Petition (Civil) No 180 of 2011, Judgment by Supreme Court dated 18 April.

Pallavi, A (2013): “Court Upholds Soliga Tribe’s Community Forest Rights,” *Down to Earth*, <http://www.downtoearth.org.in/news/court-upholds-soliga-tribes-community-forest-rights-41256>.

Pathak, N and V Gour-Broome (2001): “Tribal Self Rule and Natural Resource Management: Community Based Conservation at Mendha Lekha,” Pune: International Institute for Environment and Development and Kalpavriksh.

Pathak, N (2009): “Community Conserved Areas in India: A Directory,” Pune: Kalpavriksh, https://www.researchgate.net/publication/258285917_Community_Conserved_Areas_in_India_-_An_Overview.

Pathak Broome, N (2013): “On-site Research in Yawal Wildlife Sanctuary, Jalgaon, Maharashtra” (unpublished field notes).

— (2016): “Draft Wildlife Action Plan National Laws and International Obligations,” *Economic & Political Weekly*, Vol 51, No 40, pp 16–20.

Pathak, Broome, N, S Desor, A Kothari and A Bose (2014): “Changing Paradigms in Wildlife Conservation in India,” *Democratising Forest Governance in India*, S Lele and A Menon (eds), pp 181–221, Oxford University Press.

Sethi, N (2013): “Tribals’ Consent on Forest land only in Exceptional Case: Government,” *Times of India*, <http://timesofindia.indiatimes.com/home/environment/developmental-issues/Tribals-consent-on-forestland-only-in-exceptional-cases-Govt/articleshow/18523255.cms>.

— (2016): “Taking Consent from Tribal Gram Sabhas Is Not Practical: Anil Madhav Dave,” *Business Standard*, 5 October, http://www.business-standard.com/article/current-affairs/will-change-forest-and-wildlife-laws-to-make-our-forests-productive-anil-m-dave-116100400125_1.html.

Tatpati, M (nd): *Assertion of Rights: Using the Forest Rights Act, 2006 to Safeguard Community Forests*, Kalpavriksh and Greenpeace, unpublished.

Pioneer (2014): “Mahan Villagers File Claim for Right Over Forests,” 8 August, <http://www.dailypioneer.com/state-editions/bhopal/mahan-villagers-file-claim-for-rights-over-forests.html>.

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