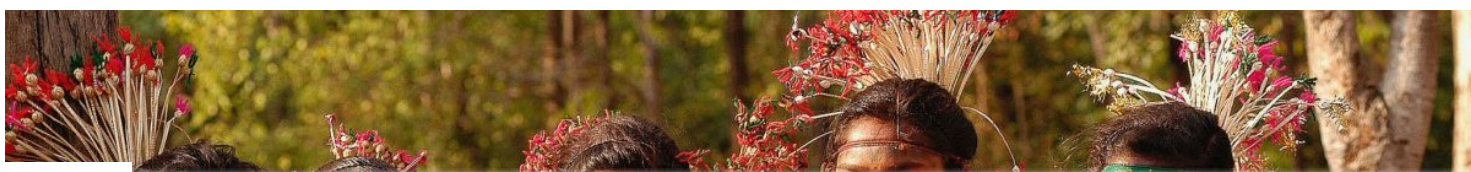


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ANALYSIS RIGHTS

# Why Is the Upcoming SC Hearing on Forest Rights Act Crucial for 78 Lakh Adivasis?

The apex court will soon revisit a 2008 petition which described FRA as "unconstitutional", "anti-conservation" and beneficial to "encroachers". The verdict could either uproot or improve the lives of over 16.3 lakh families.



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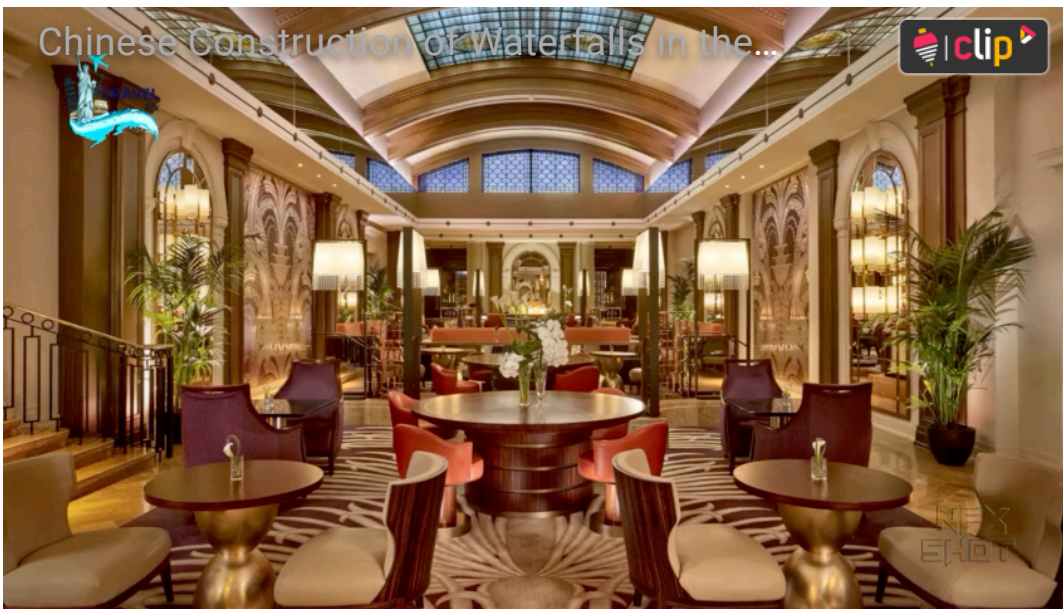


## Paromita Bathija



ENVIRONMENT LAW RIGHTS 21/DEC/2022

The Supreme Court is set to soon revisit a case that could either uproot or improve the lives of over 16,30,000 families of forest dwellers – an estimated **78,00,000** people. This case involves false claims made by certain conservation non-governmental organisations (NGOs) to delegitimise India’s Forest Rights Act (FRA).



## How did we get here?

Adivasis and Other Traditional Forest Dwellers (OTFDs) have historically co-existed with, and managed, some of our most biodiverse forest ecosystems. While their social, economic and environmental practices are changing over time, forest-dwelling communities **continue** to be the most competent and committed defenders of India's forests.

Under the **British Raj**, forest governance utilised Western logic that people who live with nature cannot preserve or use it 'efficiently'. Colonial-era policies criminalised and excluded forest-dwelling communities. Forest areas were

only considered from the point of view of timber and coffee plantations that supported the colonial economy.

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**Also read: Forest Rights Act: Over 1.6M Families Face Threat of Eviction From Forest Land**

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Post-Independence, **similar** logic has been applied. Forest dwellers are excluded and evicted to make forest areas available for development, **resource extraction**, or **wildlife sanctuaries**, national parks and **tiger reserves**. Meanwhile, resettlement and rehabilitation promises by state governments, forest departments, and NGOs often remain **unfulfilled**.

Following a long **movement** by forest dwellers and advocacy groups calling for these historical injustices to be addressed, India finally passed the landmark FRA in 2006.

Under this **Act**, Adivasis and OTFDs can file claims for legal recognition of forest rights. This includes rights to inhabit, cultivate, and practice community-led forest management in areas they have lived in for generations. Gram Sabhas can inform claims-decisions, and also deny consent to environmentally destructive projects in forest areas. Since 2006, forest dwellers across the country have

successfully acquired individual forest rights. In 2013, the Dongria Kondh Adivasis established the FRA's importance as a conservation policy. They leveraged the Act to **stop a bauxite mining project** that would have destroyed their sacred lands in Odisha's Niyamgiri forests.



NSS activists dance with their traditional axes as part of the annual festival to pay tribute to Niyamraja, a Kondh deity of universal law who they believe is embodied in the Niyamgiri hills. February 2011.

Despite these progressive developments, an 'eviction lobby' emerged to oppose the Act. A lack of political will, the influence of private developers, bias against forest dwellers, and exclusionary approaches to conservation have limited the FRA's implementation.

In 2008, a small group of conservation NGOs associated with this eviction lobby filed a **petition** that initiated the current Supreme Court case. The petitioners falsely claimed that FRA was “unconstitutional”, “anti-conservation”, and beneficial to “encroachers”.

Their arguments appeared to have worked. In 2019, the Supreme Court passed an order that all forest dwellers whose FRA claims had been rejected – over 16.3 lakh families – could be **evicted** from their homes.

Forest dwellers and supporting groups organised large-scale **pushback** against this worrying decision. Conservation groups who had filed similar petitions withdrew them after seeing the counterproductive impact of such legal manoeuvres. Hundreds of conservationists **spoke out** against the petition and eviction order.

The Union government – the primary respondent in the case – finally **said** that state authorities should review the grounds on which claims had been rejected before evictions could take place. In late 2019, the Supreme Court put the eviction decision on temporary hold.

However, neither of these responses addressed the constitutionality of the FRA before jumping ahead to possible evictions.

### **What did the petition say?**

If we examine the petition, we see three key strategies used: misrepresenting the FRA, sharing derogatory ideas about forest dwellers, and promoting an outdated model of conservation.

First, the petitioners are logically inconsistent. They want the FRA revoked on the grounds that its claims-making process is flawed. However, they asked the Supreme Court to order evictions based on the results of this same process.

They declare that insufficient expertise and conflicts of interest make Gram Sabhas “incompetent, untrained and unsuitable” for making decisions about FRA claims. This is a flawed interpretation of the FRA and delegitimises the Gram Sabhas’ fundamental role in our democracy. Gram Sabhas are the institutional entity through which forest rights claims are submitted, and rejections are appealed – but they do not single-handedly influence decisions. It makes recommendations to sub-divisional and divisional committees which finalise decisions.



Photo: Roy/Pixahive, CC0

Second, the eviction lobby attempts to dilute the historical injustices faced by forest dwellers. It shows a preference for the colonial-era **Indian Forest Act** (1927) over the FRA.

The petition claims that the FRA will give away “valuable natural assets of the nation”. This indicates that granting forest rights to Adivasis and OTFDs will somehow take the forest away from, or reduce its benefits for, non-forest-dwelling populations. This is an intentional **misrepresentation**. The FRA does not bring material changes or “fresh encroachments” into forest landscapes.

It offers legal recognition of what was already in place – pre-existing rights in historically inhabited areas.

The petitioners single out “landless and poor” forest dwellers as having “an insatiable appetite” for resources. This claim is false, **derogatory** and supports a history of exclusion. Landlessness was associated with colonial laws which centralised ownership of forestlands. Today’s bureaucratic procedures fail to recognise historical documentation of land ownership, or OTFD groups being denied land ownership based on stigmas of caste. The FRA enables communities to move past these histories by acquiring legal rights to customary lands.

Finally, the petition relies on an exclusionary ‘hardline’ model of conservation.

In most of India’s Protected Areas, forest dwellers lived in those landscapes before they were declared critical biodiversity habitats. As new boundaries were drawn around these landscapes for conservation, forest dwelling communities suddenly became “encroachers” in their own homes.

This is an **outdated** and widely criticised Western approach of separating people from nature that ignores history – *not* a pathway to successful conservation.

Also read: [Environment Ministry's New Forest Diversion Rules Are Bad News for Forest Rights](#)

Incredibly, the petitioners even manage to move the discussion away from the rights of forest dwellers and onto themselves, claiming the FRA violates *their own* fundamental rights. This makes the fundamental rights of non-forest-dwelling people seem contingent upon the denial of those same rights to forest-dwellers.

### **What could the SC decide?**

Now, as the case is reopened, the Supreme Court will make a pivotal decision. This decision will effectively signal the nature of India's role in global environmental governance in the coming years.

The petitioners are clearly a small outlying group. Their hardline agenda is not supported by broader conservation interests. The eviction lobby views forest-dwellers as “encroachers” on their own lands, as well as in broader understandings of the “nation”. Upholding the 2019 eviction decision is likely to indicate to forest-dwelling communities that they lie outside the considerations of India’s legal and environmental priorities.

Instead, the Supreme Court could choose to entirely revoke the eviction order. It can do the necessary work of upholding the constitutionality of the FRA. This would secure the rights of lakhs of forest dwellers now and in the future. It would also position India to globally pioneer forest rights and inclusive environmental governance.

*Paromita Bathija is a PhD student in the Department of Geography at the Ohio State University.*