

THE IMPLEMENTATION OF THE FOREST RIGHTS ACT IN INDIA: CRITICAL ISSUES

Debnarayan Sarker

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The Forest Rights Act 2006 was designed to provide secure property rights to the forest dwellers of India. This paper analyses the effect of the legislation and finds that it has proved largely ineffective at meeting its objectives. There is evidence to suggest that the implementation of the Act has been undermined by bureaucratic interests.

Keywords: Forest Rights Act, India, indigenous peoples, property rights.

Introduction

An estimated 275 million people in rural areas of India depend on forests for at least part of their livelihoods (World Bank, 2006). Half of India's 89 million tribal people live in forest fringe areas (ibid.). Effective forest management therefore has the potential to bring significant economic benefits, particularly to some of the poorest groups in Indian society (ibid., p. 2). Forest products are crucial to the rural economy in India and the dependence of tribal groups on forests for sustenance and income generation is also significant, depending on the community and region (Sarmah and Rai, 2000, p. 207). The overall estimate is that 33% of the tribespeople earn their livelihood from forests and forest products (ibid.). Many of the products, including non-timber forest products (NTFPs), provide sustenance to Indian rural people who collect a large part of their day-to-day necessities, including food and medicines, from the forests (ibid.). In addition, the traditional forest dwellers have been cultivating vast areas of forest land as their livelihood. But India's traditional forest dwellers have lacked any formal rights to the forest land that they have depended on for generations.

The Indian Forest Act 1927 and Wildlife (Protection) Act 1972 attempted to address this issue. Under these laws the rights of people living in or depending on the area to be declared as a forest or protected area were

to be 'settled' by a 'forest settlement officer'. The officer would enquire into the claims of people to land, minor forest produce, etc., and, in the case of claims found to be valid, he would allow them to continue or extinguish them by paying compensation. But studies suggest that for many areas this process either did not take place at all or took place in a highly faulty manner.¹ Moreover, those whose rights were not recorded during the settlement process were susceptible to eviction at any time. This has led to harassment, evictions and the extortion of money from forest dwellers by forest officials, who wield absolute authority over forest dwellers' livelihoods and daily lives. The Forest Rights Act (FRA) 2006 is intended to correct the 'historical injustice' done to forest dwellers by the failure to recognise their rights. These points were reinforced by the Prime Minister at the State Environment Minister's Conference in New Delhi on 17–19 August 2009, where he stated that '[the] Act is an opportunity to guarantee the legitimate rights of forest dwellers and to bring them in the frontline of the environmental movement for regeneration' (Uppal and Bose, 2009). However, it can be argued that the FRA has had little impact to date. It has conferred much too little on far too few: a maximum of about half an acre to less than 1% of the families covered by the Act. As for village community rights over pastures and forest produce, these are yet to be taken into account (Jena, 2010). Indeed,

the struggle for forest land, rights over community resources, habitat and community conservation has arguably intensified (Dash, 2010).

Accordingly, the Railway Minister, Mamata Banerjee, has called for further legislation to address the injustices committed against forest dwellers. On 9 August 2010, at a huge political rally in an area hit by Maoist insurgency², she proposed 'to bring [a] comprehensive bill for securing the forest rights of the tribes', stating 'The forests are their birth right' (Ghoshal and Dutt, 2010, p. 9). Although this demand may be viewed as an attempt to increase the political strength of her party in the Maoist-hit area, it reflects both the continued salience of the issue and concerns that the noble objectives of the FRA have been undermined by the authorities tasked with its implementation.

The objectives of the FRA

The FRA aims to restore the rights of forest-dwelling communities to land and other resources which were denied to them under the continuing colonial forest laws (which did not take into account the ways of life of tribal communities). The FRA provides for the recognition of individual family rights over traditionally used land – which had previously been treated as 'encroachment' – as well as community rights over land and forest, such as for grazing and forest produce, with a view to providing sustainable livelihood options and maintaining ecological balance.

At the individual level, the purpose of the law is to distribute forest land to forest dwellers or tribespeople, often claimed to be at the rate of four hectares per family. The Act is intended to recognise lands that are already under cultivation as on 13 December 2005, not to grant title to any new lands. Eligibility for rights under the Act is confined to those who 'primarily reside in forests' and who depend on forests and forest land for a livelihood. In addition, eligibility requires that either the claimant must be a member of the 'Scheduled Tribes' in the scheduled area (the cut-off date to qualify for holding rights being from 25 October 1980 to 13 December 2005), or must have been residing in the forest for 75 years. At the community level – usually one village unit – the Act recognises rights to access minor forest products other than timber, and to carry out fishing activities in water bodies. It also attempts to formalise grazing rights for pastoral communities and nomadic tribes, as well as protecting community forests, supporting cultural diversity and enabling communities to claim intellectual property rights over traditional knowledge.³ Supporters of the Act and others claim that before the FRA India's forests were governed by two main laws, the India Forest Act 1927 and the Wildlife (Protection) Act 1972 in which, as mentioned above, the rights of people living in or depending on the forest or protected area are to be 'settled' by a 'forest settlement officer'. Supporters of the FRA argue it will redress the 'historical injustice' committed against forest dwellers, while including provisions for making conservation more effective and more transparent. The demand for the law has seen massive national demonstrations involving hundreds of thousands of people.

Background of conflicts involving the forests in India

Essentially, in the context of Indian forestry, several strands have contributed to the present emphasis on the FRA. If we look at the history of conflicts involving the forests, we find that the local forest fringe communities in all parts of India have mobilised repeatedly against the custodian forest management system (accelerated forest cutting for the commercial needs either of the government or of the rulers of India) to protect their traditional rights to the forest land (Poffenberger, 1995). The *Santal*, *Bhumij* and *Mahato* tribes, with some low-caste Hindus, mobilised on several occasions against Mughal and British rulers to protect their traditional rights to forest land (Sarker and Das, 2006, pp. 270–271; Sarker and Das, 2008, p. 23). These struggles continued following independence, against the custodian policies of Indian government. Examples of organised resistance by forest fringe communities include the Chur Rebellion (1767–1805), the Naik Revolt (1806–16), the Hul Rebellion (1855), the Chipko Movement (1973–80) and the Appiko Chalewali Movement (September to November 1983). During the Chur Rebellion, the tribal communities of the area mobilised resistance through a series of armed revolts against the British. The British had empowered a new class of *zaminders* (landowners) who attempted to clear forest land and convert it into agricultural land to increase their revenue. Tribal guerrillas were so effective that even as late as 1800, after nearly 40 years of British occupation, a collector reported that two-thirds of Midnapore district, in southeastern India, consisted of jungle, the greater part of which was inaccessible (Duyker, 1987, p. 35; Sarker and Das, 2006, p. 271). Yet gradually the colonial authorities succeeded in strengthening their control, despite subsequent revolts by forest people. The pressure on the forest grew further by the 1850s as the growing railway system demanded immense quantities of logs to provide sleepers. It is said that during the Hul Rebellion (on 16 July 1855) some 10,000 tribespeople from the southeastern part of India stood their ground firmly and fought with bows and battle-axes in a battle near Pirpaiti (Dutta, 1940, p. 26; Sarker and Das, 2008, p. 23). The revolt collapsed eventually after half their members were killed. Despite their defeat, the Hul Rebellion profoundly influenced the ideological development of many local tribal communities (Duyker, 1987, p. 35; Sarker and Das, 2008, p. 23) and lives on in the songs and oral traditions of this area.

Similarly, during the post-independence era the Chipko Movement (1973–80), which was primarily organised in an interior village in the Garwal Himalaya but swept the Himalayan foothills, is considered as a fight by local forest fringe communities for their basic subsistence, which had been denied to them by the institutions and policies of the state (Gadgil and Guha, 1994, p. 104; Guha, 1989). One of the major achievements of the Chipko Movement, which followed the non-violent Gandhian tradition of protest, was the ban on cutting down trees for 15 years in the forests of Uttar Pradesh, enacted in 1980. Subsequently bans were imposed in Himachal Pradesh, Karnataka, Rajasthan, Bihar and Karnataka. Inspired by the Chipko Movement, the local forest fringe villagers of Western Ghats in the Uttar Kannada region of Karnataka in south India, started the Appiko Chalewali Movement during

September to November 1983. It campaigned against the destruction of forest due to the commercial felling of trees for timber extraction and to secure its supporters' basic subsistence needs from forests. In September 1983, the women and youth of the region decided to launch a movement similar to Chipko. The agitation continued for 38 days and this finally forced the state government to concede to their demands and withdraw the order for the felling of trees (EEM, n.d., p. 152). However, despite all this organised resistance by traditional forest fringe communities, the rights to forest land necessary to secure their livelihoods were not forthcoming.

Key issues

Although the FRA Bill was passed by the Indian Parliament on 13 December 2006, the Act only became effective on 1 January 2008. The FRA has created controversy among environmentalists, wildlife conservationists, supporters of traditional non-tribal forest dwellers and supporters of granting new lands to forest dwellers. It is therefore important to examine the key issues and problems that have affected the implementation of the FRA, particularly given the absence of studies examining the implementation of the FRA in Indian states as a whole during the period after the Act came into effect. What is the progress of the FRA in providing its 'stakeholders' with individual titles which recognise their right to hold a piece of forest land either for self-cultivation or for any other common occupation so as to ensure their livelihood? How successful has the Act been in terms of community rights – which may be considered more equitable since all households within the community, including the poor and landless, can have access to forest products (Sathyapalan, 2010, p. 69)? What are the main constraints stakeholders face from the authorities charged with implementing the Act?

The process of implementation

By combining data from Indian states (Table 1), it can be calculated that by the end of February 2010 – just over two years

after the FRA became effective – only 28% of claims had resulted in the distribution of property titles (Government of India, 2010a). Although 17 Indian states received claims from stakeholders, three states failed to distribute titles to the individual stakeholders. Only two states – Andhra Pradesh and Tripura – managed to process successfully more than 50% of the claims they received. Of the remaining states, Chhattisgarh fulfilled 44.15% of claims received and Orissa distributed titles for 37.51% of claims. But the performances of other states in providing titles are very poor. And although Andhra Pradesh, Chhattisgarh and Orissa are affected by left-wing extremism (LWE), their performance at distributing individual titles to stakeholders is much better than that of other LWE states such as Madhya Pradesh, Uttar Pradesh, Jharkhand, Maharashtra and West Bengal. Bihar, another LWE state, had granted no titles as of 28 February 2010, despite having received 788 individual claims. So there appears to be no clear relationship between implementation of the FRA and extremist politics, even though it might be assumed that distributing land rights to the poor would be a higher priority in areas where communist factions receive widespread support.

It is worth mentioning that the above analysis of the implementation of the FRA did not separate the number of individual claims received and titles distributed between Scheduled Tribes and other traditional forest dwellers, although both are the legal claimants of the FRA. Supporters of traditional non-tribal forest dwellers argued against the distinction under the Act between the eligibility rights of tribal claimants, who should have used the holding rights from 25 October 1980 to 13 December 2005, and those of non-tribal claimants, who should have used the forest land for at least 75 years, by saying that such a classification would discriminate against the claims of traditional non-tribal forest dwellers and that it would undermine the democratic nature of the processes in the Act. Indeed, some studies show that it is difficult for traditional non-tribal forest dwellers to prove 75 years of existence on the land in order to claim rights to it under the FRA (Dash, 2010; Jena, 2010).⁴

Table 1: Data on the implementation of the FRA

State	Total number of claims received (individual)	Total number of claims received (community)	Percentage of claims resulting in the granting of titles	
			(individual)	(community)
Andhra Pradesh	318,750	7,068	54.38	0
Tripura	164,726	–	51.45	0
Chhattisgarh	486,101	–	44.15	0
Orissa	353,803	1,895	37.51	8.87
Rajasthan	59,578	322	23.96	0
Tamil Nadu	10,766	–	19.54	0
Madhya Pradesh	378,559	5,907	19.15	0
West Bengal	131,664	10,119	13.67	0
Uttar Pradesh	73,143	–	12.40	0
Assam	97,111	4,343	12.37	1.11
Kerala	35,658	1,164	11.10	0
Jharkhand	24,847	371	10.08	0
Gujarat	178,207	8,127	8.17	0
Maharashtra	317,322	–	2.30	0
Karnataka	45,801	–	0.00	0
Bihar	788	–	0.00	0
Uttarakhand	182	–	0.00	0
Total	2,677,006	39,316	28.31	0.67

Source: Compiled from Annexure-II (a and b) and Government of India (2010a); data for the period 1 January 2008 to 28 February 2010.

Moving to the issue of community claims, of 39,316 claims received only 0.67% had resulted in the granting of titles by 28 February 2010 (Table 1). The data also show that although nine Indian states received community claims, titles were granted in only two states – Orissa and Assam. But progress on community claims in these two states is abysmally low: the percentage of claims granted titles in Orissa and Assam was 8.87% and 1.11% respectively. These results also show that two years after the FRA came into force, not a single title of community claims had been provided in almost all Indian states. Dash (2010, p. 1) argues that comparison of the community claims with the number of forest fringe villages makes it evident that only 20% of forest communities have so far been able to claim community rights, because provisions with regard to community rights are neither understood nor implemented. But the assignment of community rights is very important in ensuring a sustainable livelihood for the forest dwellers since most of the tribal communities living inside and on the fringe of forest areas are heavily dependent on minor forest produce.

The above data point to serious problems in the implementation of the FRA. In an analysis of the main constraints in the implementation of FRA in the Western Ghats region of Kerala, Sathyapalan (2010) identifies a lack of co-ordination between government departments, because each department tries to take a stand that is based on its original mandate, the objectives of the department and the 'set of rules' in a given action area.⁵ He also argues that such a lack of co-ordination may persist in the future (*ibid.*, p. 72). Moreover, in many places, it is the field-level functionaries of the forest and revenue department who are dominating the proceedings (Dash, 2010, p. 1). This violates Section 6(1) of the FRA in the process of its implementation.⁶ There are also cases where claimants have received less forest land than the claimed area; where the sub-divisional and district-level committees have arbitrarily decided on the area of claim without considering the actual extent; where claims only in revenue forest are considered, leaving the land in the reserve forest⁷; and where claims are excluded on land whose type has changed from the forest category in the earlier settlements to the revenue category in the latest settlement (*ibid.*).

Stakeholders have also been facing a lot of practical problems related to the role of the implementing authority. Important among them are a lack of information regarding the FRA; inaccessible locations; non-cooperation between stakeholders and forest officials; and corruption resulting in the diversion of forest land into developmental projects and commercial plantations without recognition of the rights of local communities. As regards the passing of information to the stakeholders on the provisions of the FRA, there have been numerous instances where a significant proportion of stakeholders have not been able to submit their claims to the implementing authority due to a lack of information on how to do so. For example, many have not heard of the Act even within a 30 km radius of the state capital Ranchi in Jharkhand state (Sinha, 2010). A survey conducted across sample households in the Western Ghats region of Kerala showed that nearly 47% of the tribal households had never heard of the FRA (Sathyapalan, 2010, p. 69). The underlying reasons are that information regarding the provision of the Act has not

been conveyed to many hamlets due to various location-specific disadvantages.⁸ Furthermore, there is evidence that the claimants for individual titles have been waiting long periods for an official response, some for over a year after submitting their application forms. They are routinely and regularly called for meetings 30 km away, but meetings that frequently do not happen because one or other government functionary is unable to attend (Sinha, 2010).

Regarding non-cooperation between stakeholders and forest officials, Jena (2010) reports that past and present forest officials are among the most serious hindrances to the full implementation of the law. This is because the FRA gives people a significant amount of the power once wielded exclusively by the department over forests. She also points out that states across India have seen legal petitions filed by retired forest officers seeking a stay in the implementation of the law. Sinha (2010) argues that forest officials not only do not extend any help to those wanting to exercise their rights over forest land as stipulated in the law, they also resort to various devices to deny them those rights. State agencies – especially the forest and revenue departments – may not want to see the FRA implemented in letter and spirit because it will undermine their control over the resources. So these agencies, along with some NGOs and feudal lords, have allegedly been spreading misinformation about the Act to create confusion and conflict (Sahu, 2010).

Corruption has affected the process as well. Low-level government personnel, who visit villages to measure land, usually demand a substantial bribe in return for processing a claim of title under the FRA.⁹ And in some areas, like Jatropa plantation areas, Niyamgiri hills in Orissa district, there are claims that the FRA has been violated because some forest lands have reportedly been earmarked for development projects and commercial plantations without recognition of the property rights of local communities (Dash, 2010). This has raised questions about the sanctity of the Act, especially Section 4(4), which provides non-transferable and non-alienable rights, and Section 4(5) which states that forest communities shall not be removed or evicted from the forest land until the recognition and verification procedure is over.

Conclusions

Comparing the number of claims processed (2.7 million claims filed and 760,000 titles issued) with the estimated number of people economically dependent on forests (275 million) suggests that the FRA has done little to extend property rights in its first two years. Only a minority of individual claims has resulted in the issue of titles. Worse still, no community titles have been issued to claimants in almost all states. In addition, most of the claims for titles from traditional non-tribal forest dwellers were rejected because understandably the claimants could not prove that they satisfied the requirement of using forest land for 75 years. Lack of information regarding the provisions of the Act has also prevented stakeholders from submitting their claims to the authorities. Similarly, lack of co-ordination between government departments, corruption, and attempts to use forest land for development projects and commercial plantations, are also important constraints on the implementation of the FRA. At its first joint meeting on 17

May 2010, the national FRA committee stated on the issue of titles that '[the] high rate of rejection without field verification by the officials has made a mockery of the provision of the law' (Government of India, 2010b, p. 2). It is also of the view that claims are often rejected without even informing the applicant and in most cases no reason is cited. At the same time the claims are also settled without proper verification and survey (ibid.). All these facts and findings lend credence to the evidence of the very poor performance of the FRA in Indian states as a whole during the two years after it came into force. This illustrates the difficulties of granting formal property rights to forest dwelling peoples and communities. A comprehensive Forest Rights Bill, which learns from mistakes, removes the anomalies of the FRA and creates a transparent implementing authority, is urgently needed to sustain the livelihoods of forest dwelling communities.

1. For an introductory summary, see [http://en.wikipedia.org/wiki/Forest_Rights_Act_\(India\)#Background](http://en.wikipedia.org/wiki/Forest_Rights_Act_(India)#Background).
2. Lalgah in West Midnapore district, West Bengal state.
3. Section 3 of the Forest Rights Act gives communities (who live in the forests) the right to manage and protect forests they have customarily managed, even though these are government property. For details, see Section 3 of FRA, 2006.
4. In Orissa more than two-thirds of the 300,000 ownership applications received from the claimants belonging to traditional non-tribal forest dwellers as of 1 March 2010 were rejected because the claimants could not prove that they had been using the forest land for 75 years (Jena, 2010).
5. The forest department, for example, considers the implementation issue as a continuation of the forest co-ordination policy 1988, while for the department of tribal affairs, it is a tribal welfare issue. The survey department and local bodies perceive their roles mainly as facilitators. Although the *gram sabhas* (village assemblies) are the most empowered authority in the implementation process, they seem to wait for directions from the higher authorities. Due to various biophysical and community-related factors the process of implementation got delayed (Sathyapalan, 2010, p. 72).
6. Section 6(1) of the FRA provides that the *gram sabha* will initially pass a resolution recommending whose rights to which resources should be recognised. This resolution is then screened and approved at the level of the subdivision (or *taluka*) and subsequently at the district level. The screening committees consist of three government officials (Forest, Revenue and Tribal Welfare departments) and three elected members of the local body at that level. These committees also hear appeals.
7. Reserve forests are protected and controlled by the Forest Department. Revenue forests are overseen by the Revenue Department.
8. There are approximately 37,000 families living in different tribal hamlets which are scattered across the Western Ghats region. Many of these hamlets are located quite far from the headquarters of their respective *panchayats*. The tribal communities are not able to represent themselves adequately at the *gram sabha* meetings due to hilly terrain and the scattered nature of tribal hamlets and interior locations (Sathyapalan, 2010, pp. 68–69).
9. Jena (2010) claims that in Boudh district under Orissa state, low-level government personnel who visit villages to measure land usually ask 5,000 rupees in exchange for processing a claim. In Jharkhand the low-ranking official who measures the piece of land claimed by a family often demands Rs1,500 to Rs2,500 from every villager for doing his job (Sinha, 2010).

References

Dash, T. (2010) 'The Ineffective Forest Rights Act', *The Economics Times*, 1–2. Available at <http://economictimes.indiatimes.com/article/show/5851232.cms>.

- Dutta, K. K. (1940) *The Santal Insurrection of 1955–1857*, Calcutta: University of Calcutta.
- Duyker, E. (1987) *Tribal Guerrillas: The Santals of West Bengal and the Naxalite Movement*, Delhi: Oxford University Press.
- EEM (Environmental and Ecological Movement) (n.d.) 'The Popular Movements: Appiko Movement', pp. 147–156. Available at <http://www.scribd.com/doc/15990953/Environmental-and-Ecological-Movements>.
- Gadgil, M. and R. Guha (1994) 'Ecological Conflicts and the Environmental Movement in India', *Development and Change*, 25, 101–136.
- Ghoshal, D. and I. A. Dutt (2010) 'Mamata Plays to the Gallery at Naxalite Heartland: Promise Land Rights for Tribals, Prods Insurgents To Give Up Violence', *Business Standard*, Kolkata (city), 10 August, 36, 136. Available at <http://www.business-standard.com>.
- Government of India (2010a) 'Status Report on Implementation of the Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 28 February 2010]. Available at http://tribal.gov.in/writereaddata/mainlinkfile/File_1210.pdf.
- Government of India (2010b) 'Minutes of First Meeting of National FRA committee', 17 May, p. 7.
- Guha, R. (1989) *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya*, New Delhi: Oxford University Press; Berkeley, CA: University of California Press.
- Jena, M. (2010) 'Law on Forest Rights Fails to Deliver', *Environment India*, IPS. Available at <http://ipsnews.net/news.asp?idnews=50652>.
- Poffenberger, M. (1995) 'The Resurgence of Community Forest Management in the Jungle Mahals of West Bengal', in D. Arnold and R. Chandra Guha (eds.) *Nature, Culture and Imperialism: Essays on the Environmental History of South Asia*, Delhi: Oxford University Press, pp. 336–69.
- Sahu, S. K. (2010) 'Supporters of the Forest Rights Law Intimidated in Orissa', *Infochange India News & Features Development News in India*, 4 August. Available at <http://infochangeindia.org/201008048438/Environment/Features/Supporters-of-the-forest-rights-law-intimidated-in-Orissa.html>.
- Sarker, D. N. and N. Das (2008) 'A Study of Economic Outcome of Joint Forest Management Programme in West Bengal: The Strategic Decisions between Government and Forest Fringe Community', *Indian Economic Review*, 43, 1, 17–45.
- Sarker, D. N. and N. Das (2006) 'Towards a Sustainable Joint Forest Management Programme: Evidence from Western Mednapore Division in West Bengal', *South Area Research*, 26, 3, 269–289.
- Sarmah, D. and S. N. Rai (2000) 'Forest Resource Management in India: Role of the State and its Effectiveness', in S. N. Chary and V. Vyasulu (eds.) *Environment and Management*, New Delhi: Macmillan, pp. 206–220.
- Sathyapalan, J. (2010) 'Implementation of the Forest Rights Act in the Western Ghats Region of Kerala', *Economic and Political Weekly*, 45, 30, 65–72.
- Sinha, R. (2010) 'India: How the Forest Rights Act Tramples Tribal Right, Frontlines of Revolutionary Struggle'. Available at <http://evolutionaryfrontlines.wordpress.com/2010/06/20/india-how-the-forest-rights-act-tramples-tribal-rights/> June 8.
- Uppal, V. and A. U. Bose (2009) 'Implement Wildlife Habitats and Community Forest Rights for Better Conservation', pp. 101–135. Available at http://www.wwfindia.org/news_facts/73420/community-forest-rights.
- World Bank (2006) 'India: Unlocking Opportunities for Forest-Dependent People', The World Bank, Agriculture and Rural Development Sector Unit, South Asia Region, Oxford University.

Debnarayan Sarker is Professor and Secretary at the Centre for Economic Studies, Presidency College, Kolkata (sarkar_d_n@rediffmail.com).