



# Taking stock of **Forest Rights Act**

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Photo: Kai Wera



C R Bijoy

Its implementation heralded a new beginning in the conservation of forests, yet the Forest Rights Act has been diluted by factors that vary from complete apathy to lack of regulatory control. **C R Bijoy** takes the Council for Social Development's (CSD) Summary Report on Implementation of the Forest Rights Act as a base to highlight the problem areas



The Council for Social Development (CSD) in its Summary Report on Implementation of the Forest Rights Act released in September 2010,

forthrightly states that "All of the key features of this legislation have been undermined by a combination of apathy and sabotage during the process of implementation. ... Unless immediate remedial measures are taken, instead of undoing the historical injustice to tribal and other traditional forest dwellers, the Act will have the opposite outcome of making them even more vulnerable to eviction and denial of their customary access to forests. The testimonies made it clear that this is not merely a result of bureaucratic failure; both the Central and the State governments have actively pursued policies that are in direct violation of the spirit and letter of the Act."

This first ever national report from any source on this subject, candidly spells out what has happened and what should be done. The

report has also been sent to the Prime Minister and the Ministry of Tribal Affairs.

CSD, an affiliate study group of the India International Centre, Delhi, is one of the foremost institutions involved in development research in India. It is prominent in articulating social concerns amongst planners and policy-makers. The Report is an outcome of a reality check carried out at a meeting of both officials and non-officials at Delhi in April this year, on the implementation of the Forest Rights Act and subsequent discussions with various groups across the country.

### Life's centre point

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or the Forest Rights Act in short, is a flagship legislation of the UPA government. The Act recognises 13 different rights that are central to the lives of millions of forest dwellers in and around the forests. They include both community and individual rights such as rights to land under occupation and customary land, ownership of minor forest produce, rights to water bodies, grazing areas, and habitat of Primitive Tribal Groups, conversion

of forest settlements into revenue villages, and the right and power to protect, conserve and manage community forest resources.

Despite the importance enjoyed by the other rights, the 'right over community forest resources' grabs the maximum limelight from the conservation viewpoint. The Act defines community forest resources as 'customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as sanctuaries and national parks, to which the community had traditional access'. The Gram Sabha is empowered "to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity". A committee under its control is specifically to carry out these functions.

### Of dots and disaster recipes

The Forest Rights Act has been hailed by a large section of environmental, conservationist and human rights adherents as a bold step forward, not only in India but across the world. 'Joining The Dots', the damning report of the five-member tiger Task Force set up by the Prime Minister affirmed unequivocally that 'the contemporary approach of guns, guards and fences is just not the answer'. It stated explicitly that a forest inhabited and surrounded by hostile communities is a sure recipe for disaster for both conservation and wildlife.

The Ministry of Environment and Forests in its affidavit to the Supreme Court in Writ Petition (Civil) No. 202 of 1995 on 21 July, 2004 confessed that "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," "that the historical injustice done to the tribal forest dwellers through non-

## Violations aplenty

- Non-implementation of the Act in several states, national parks, wildlife sanctuaries, tiger reserves and forests intended for diversion of development projects and municipalities.
- Failure to provide information or raise awareness by the sub-divisional level committees.
- Failure to respect and operationalise Gram Sabhas by constituting them at the wrong level, rendering them dysfunctional, and expropriating their role by officials, Forest Department and Joint Forest Management (JFM) committees.
- Large-scale Forest Department interference, such as insisting on production of fine receipts or primary offence reports from the period before 1980 or the Act's cut off date of 2005. They have also been reported to insist that the claimants should be on the Forest Department encroacher lists, appropriating decision-making authority in the Sub Divisional and District Level Committees. Imposing their perspective and interests by occupying key posts in state Tribal Departments and the central Tribal Affairs Ministry is another problem that has repeatedly surfaced. Further they also insist on imposing conditions not required by law, and illegal evictions and application of contrary forestry legislations.
- Ignoring all non-land rights and community rights.
- Arbitrary rejection of claims and not informing the claimants about the reasons, thereby rendering the claimants incapable of filing appeals.
- Unilateral reductions in the size of land titles without reason.
- Manipulation of survey reports and maps.
- Denial of rights, particularly of other traditional forest dwellers, whose claims have been overwhelmingly rejected in all states, by demanding documentary evidence of 75 years of continuous residence, which is not required under the Rules.
- Actions by the Central government, particularly the Environment Ministry that violates the Act or results in violation of the Act such as afforestation and plantation programmes, Joint Forest Management, diversion of forest land for projects, particularly mining and dams, and relocation from tiger reserves.
- Lack of seriousness by the Tribal Affairs Ministry, in addressing any of these issues and improper monitoring.



**Forest dwellers:** Several communities living in the forest have also been instrumental in protecting them



**Tree talk:** Forest people are believed to understand the language of the trees

A National Forest Rights Monitoring Council has been suggested to assist the Ministry in monitoring and exercising its power under the Act. It should also review programmes, laws and actions that are inconsistent with the Act and suggest ways to remove these inconsistencies.

recognition of their traditional rights must be finally rectified" and that "the State/UT Governments have failed to give any response" and "have shown no progress in this regard".

The Forest Rights Act addresses these shortcomings by actually prescribing an open access to a democratic and transparent process centred in the Gram Sabha and its Forest Rights Committee. Their decisions are then examined by the Sub-Divisional and the District Level Committees. These Committees form the Forest, Revenue and Tribal Departments, along with nominees of

the District Panchayat. The State Level Monitoring Committee headed by the Chief Secretary is to monitor the implementation and report to the Ministry of Tribal Affairs, the nodal agency for implementing the Act. The Tribal Department of the states is the nodal agency at the state level. Any violation of the Act by any official is a punishable offence.

#### **Claims and gains**

As on September 30, 2010, the Tribal Affairs Ministry recorded an impressive distribution of 10.33 lakh titles from 29.75 lakh claims filed since the operationalisation of the Act



**Orientation:** It is necessary to make communities aware of their rights

government machinery on the Act is addressed elaborately. Mistakes committed are to be rectified by reopening decisions not in conformity such as fixing deadlines for claim submissions, operationalising Gram Sabhas at the

hamlet level and handing over all pertinent records of the villages to the concerned villages. The Ministry is also to issue directions regarding admissibility of claims of those dependent on forests from anywhere, survey and mapping to be done by

the Forest Rights Committee and not by others, presence of revenue and forest officials at the time of verification by the Forest Rights Committee and non-interference with the Gram Sabha decisions without reason. Referral back to Gram Sabhas by the higher level committees instead of outright rejections, public display of decisions taken, public hearing, and action against officials against whom complaints have been made, make for the rest of the directions.

### **Redirection**

Considering the enormous confusion that plagues the issue of evidences, the Ministry is also to clarify on non-insistence of particular evidences, permissibility of oral evidence; particularly to prove 75 years of residence for other traditional forest dwellers, and admissibility of evidence to prove residence and not occupation; which should not be made applicable to those displaced earlier. Directions are also to be issued for proactive identification of all hamlets and settlements, implementation of the Act in municipal areas; which till date, has been denied, annulment of Community Forest Resource rights granted to JFM committees and ending illegal diversion of forest without the consent of the Gram Sabhas. Also included are the withdrawal of all Critical Tiger Habitat notifications and initiation of the process as specified in Wildlife Protection Act amendment of 2006 and no relocation without completion of all legal requirements,

It is recommended by the Ministry that unrecognised rights including Minor Forest Produce; conversion of forest settlement into revenue villages; habitats of Primitive Tribal Groups and shifting cultivators; seasonal rights of nomadic and pastoral communities; and rights of illegally displaced, should now be recognised. Identification and recognition of land under occupation and not merely land under cultivation, applicability of the 4 hectares limit only to individual land rights and not other rights,

## FOREST CONSERVATION

- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, recognises the rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers over the forest areas inhabited by them and provides a framework for according the same.
- The Forest Conservation Act 1980 was enacted to help conserve the country's forests. It strictly restricts and regulates the de-reservation of forests or use of forest land for non-forest purposes without the prior approval of Central Government. To this end the Act lays down the pre-requisites for the diversion of forest land for non-forest purposes.
- The Indian Forest Act, 1927 consolidates the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce.

### ACT

1. State/Union Territory Minor Forest Produce (Ownership of Forest Dependent Community) Act, 2005 - Draft
2. Forest (Conservation) Act, 1980, amended 1988.
3. The Indian Forest Act, 1927.

### RULES

1. G.S.R.23(E) - Forest (Conservation) Rules, 2003.
2. G.S.R.719 - Forest (Conservation) Rules, 1981, amended 1992.

### GUIDELINES

No.5-5/86-FC, [25/11/1994] - Guidelines for diversion of forest lands for non-forest purpose under the Forest (Conservation) Act, 1980

Source: Ministry of Environment and Forests  
<http://moef.nic.in/modules/rules-and-regulations/forest-conservation/>

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The report outlines a modified role to the Tribal Affairs Ministry by moving away from mere gathering of statistics, to monitoring the process of rights recognition.

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Of utmost importance is a detailed clarification on the community forest resources right and operationalisation of the statutory powers of the community to protect, conserve and manage the forests; with the forest department

reorienting their operations accordingly. Threats identified include channelising NREGS funds through the Forest Department instead of the Panchayats; support to REDD, carbon forestry, carbon trading on forest land and other ways of commoditisation of forest. State governments forcing the right holders to plant commercial trees such as rubber, jatropha, tea or coffee is another aspect that needs careful handling. 🌍

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