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IMPLEMENTING THE FOREST RIGHTS ACT: ADDRESSING A HISTORICAL INJUSTICE

In 2006, the Forest Rights Act departed from a history of suppression by recognising customary rights of forest dwellers. Communities that had earlier been considered as encroachers were allowed to claim their rights over ancestral land. The total number of claims exceeded expectations of policy makers by far, even as community claims remained very low. But the overall implementation of the Act has not lived up to promises: inadequate community awareness, conflicting legislations, the lack of devoted staff, and issues of governance have undermined a reform that will, if implemented properly, transform regions ridden by extreme poverty and political violence.

The Food and Agriculture Organisation estimates that almost 400 million people depend on forests for sustenance and complementary income.¹ These populations are among the most vulnerable: forest dependents constitute two-thirds of the extremely poor, and half of them belong to marginalised Adivasi communities.² Data uncertainties cloud assessments of the scale of displacement, but estimates suggest that between 100,000 and 600,000 people have been evicted from protected areas since Independence, thus endangering their sources of livelihood.³ Poor Adivasis remain the only social group in India whose average life expectancy at birth, at 57 years, has *declined* slightly between 1998-99 and 2005-06.⁴

Indian laws since colonial times have considered forest dwellers as “encroachers” and have criminalized their forest-related livelihood activities - collecting forest produce, farming, grazing of animals, and using water bodies.⁵ The Forest Department’s control over high value forest produce has further hampered the recognition of forest dweller’s rights.

In 2006, the Scheduled Tribes and Other Traditional Forest Dweller’s (Recognition of Forest Rights) Act (hereafter Forest Rights Act) recognised customary rights over ancestral land. The landmark legislation laid the foundation of more democratic forest governance through the recognition of individual and community forest rights.⁶ It entitles individuals, families or communities to a right over their own land, and importantly, empowers the gram-sabha, or village assembly, with initiating the process of recognition.

However, the implementation of the act has been a mixed story, where a few successes were shadowed by many failures. Till September 2013, the government had received 3.5 million claims, but only 39.7 per cent had resulted in land titles. Inter-state variations are stark, with 66 per cent of claims resulting in a land title in Tripura while less than one per cent do in Bihar. Community forest rights were lagging behind - they constituted just below two per cent of all claims, and only 29 per cent of such claims had resulted in land titles.⁷

The Minister for Tribal Affairs recently admitted that the implementation of the act is “rather slow and tardy”, but went on to put the onus on state governments responsible for implementation.⁸ At a time when policy makers are concerned about the act’s achievements, research, community consultations and grassroots mobilisation provide lessons that are worth drawing on:

- ▶ Strengthen implementation of the Forest Rights Act through an awareness campaign, tighter monitoring and better redressal systems.
- ▶ Improve records of recognising community forest rights titles with a special focus on neglected areas and groups.
- ▶ Devote full time staff at sub-divisional and district levels for the implementation of the Forest Rights Act.
- ▶ Address conflicts between the Forest Rights Act and other laws, policies and programmes.

Context

India has seen dramatic economic growth in recent decades. But extreme poverty remains common amongst certain groups and regions. It is more prevalent in forest areas than agricultural or urban areas,⁹ and is most acute among Adivasis, whose human development indicators lag 20 years behind national averages.¹⁰ Estimates suggest that up to 400 million people in India depend on forests to meet day-to-day needs of firewood, fodder, timber for agricultural equipment and construction, food and medicines.¹¹

Laws and forest governance systems inherited from the colonial era have for long deprived people from using their forest resources freely, thus condemning them to extreme vulnerability. The Forest Rights Act marks a shift in that regard. After the Stockholm and Rio declarations on environment and development,¹² the Government of India progressively introduced legislations that recognize Adivasis' rights over ancestral land - a longstanding demand. However, the limited scope of such initiatives intensified popular mobilization. Extensive consultations and policy debates spanning almost three decades eventually culminated in the enactment of the Forest Rights Act.¹³ The reform recognises:

- The right to live in and cultivate forestland that has been under the occupation of a household or community for 75 years, up to a maximum of four hectares.¹⁴
- Rights of individuals and communities over minor forest produce, fish and other products of water bodies, grazing land and so on.
- The right of communities to protect, regenerate, conserve or manage any forest or community forest resource it has traditionally protected or conserved.
- A multi-layered governance structure consisting of government officials and elected representatives at gram-sabha, sub-divisional, district and state levels.¹⁵
- Heritable but not alienable or transferable rights.¹⁶

The onus of implementation lies with state authorities through a three-tier structure involving the gram-sabha, sub-divisional and district level committees. A state level committee is responsible for monitoring implementation, while the central Ministry of Tribal Affairs acts as nodal agency that provides detailed guidelines and monitors the overall implementation.¹⁷

Despite such promising provisions, progress on the ground was "dismal" according to the Standing Committee on Social Justice and Empowerment that reviewed the implementation of the act in 2011.¹⁸ Hearings revealed a range of obstacles - a lack of ambition among top officials, resistance among lower level officials, a general lack of awareness, restrictive rules, and commercial pressures linked to the natural wealth within forests. The Forest Department, which has managed forest resources since colonial times, continues to be seen as an obstacle, despite attempts to limit its role in the implementation.¹⁹

Some of these weaknesses have since been addressed. An amendment of the rules in 2012 clarified ambiguities regarding the definition of community forest rights and decentralised the governance of non-timber forest produce; gram-sabhas were given specific roles in the conservation and management of community forest resources; the responsibilities of implementing agencies were better defined.²⁰ An apex court judgement upholding the need for prior recognition of forest rights and gram-sabha consent before awarding clearances was a significant step ahead,²¹ since as much as 182389 hectares of land have been diverted for non-forestry projects without gram-sabha consent between 2008 and 2011.²²

The union Cabinet has very recently approved a centrally sponsored scheme providing a minimum support price for minor forest produce. The central government will contribute with INR 10 billion and state governments with INR 2.5 billion to ensure fair prices for collecting, processing, storing, packaging and transporting for the 12th Five Year Plan period.²³ Despite such positive steps, much remains to be done for the Forest Rights Act to fulfil its potential.

► **Strengthen the implementation of the act through an awareness campaign, tighter monitoring and better redressal systems**

It is often noted that the potential of the law and its most important provisions are still not known by target communities, civil society organisations and implementing authorities.²⁴ A large study across 8 states found that 68 per cent of single women headed households did not apply for rights, because they lacked awareness and access to services provided under the act.²⁵ Officials who are responsible for informing gram-sabha members are themselves found to be "thoroughly ignorant" about the act.²⁶

A recent national consultation suggested setting up National Forest Rights Act Council involving the concerned ministries, individuals from gram-sabha committees and expert civil society members.²⁷ The council would function along the lines of the National Rural Employment Guarantee Scheme Council, with an independent role of monitoring implementation. The council will also conduct social audits, hear grievances and provide guidance when needed. Similar independent monitoring bodies at state and district levels should organise regular public hearings.

► **Improve records of recognising community forest rights titles with a special focus on neglected areas and groups**

The Forest Rights Act recognises community rights over forest resources. These rights apply to common forest land within villages or seasonal grazing areas for pastoral communities. They even include reserved forests and protected areas such as sanctuaries and national parks.²⁸

Initially, community claims were expected to be as numerous as individual claims, because they provide secure livelihood avenues through forest resources.²⁹ But the number of claims has remained very low and many reported community claims are for development projects like roads and health centres. This is despite the fact that India counts about 170,000 forest fringe villages covering 32 million hectares.³⁰ Severe data limitations regarding community claims to land are an additional expression of neglect. The neglect is particularly glaring in protected areas, forest falling within municipal areas and among Particularly Vulnerable Tribal Groups, nomadic pastoralists, shifting cultivators and Other Traditional Forest Dwellers.

Stakeholders responsible for implementing the act should take action to address this neglect. The Ministry of Tribal Affairs, in partnership with state nodal agencies and civil society groups, should design a campaign to spread awareness about community rights with a special focus on Particularly Vulnerable Tribal Groups and pastoralists. Administrative hurdles when claiming community rights should be addressed and a mechanism set up to systematically identify and prevent rejections on improper grounds.³¹ State level monitoring committees should meet regularly and take *suo motu* action in such cases. State action plans must be reviewed and monitored on a regular basis with the involvement of civil society. If action plans violate the act, immediate amendments and corrections must take place.³²

More fundamentally, the rights-based, decentralised paradigm of the Forest Rights Act calls for a deeper change in governance. The relation between the gram-sabha and the Forest Department needs to be clarified. The Forest Department should support gram-sabha committees for managing and protecting forests. However, the structure of such committees should not be externally imposed; instead, they may evolve out of existing bodies as deemed appropriate by the gram sabha.

Wherever community claims are under consideration, the Forest Department should reform existing management plans in collaboration with the gram-sabha. Natural resource related schemes and programmes should be channelled through gram-sabhas and panchayati-raj institutions. Beyond this, a multi-stakeholder consultation is needed to identify further changes in resource allocation, planning and management of forest required to ensure effective decentralised governance.

► **Devote full-time staff at sub-divisional and district levels for the implementation of the Forest Rights Act**

The 2010 joint committee found that tribal and social welfare departments have inadequate staff to deal with

implementation.³³ The appointment of full-time staff at sub-divisional and district levels is an immediate requirement. In addition, civil society organisations suggest setting up a technical advisory team consisting of at least one-third of civil society members to help sub-divisional and district committees in their tasks and assist communities in demarcating boundaries and mapping out community forest resources.³⁴

Centre and state governments should allocate separate financial resources to fund full-time positions without diverting funds meant for other purposes, notably from the Tribal Sub-Plan.

► **Address conflicts between the Forest Rights Act and other laws, policies and programmes**

The conflict between various related laws, policies and programmes has slowed down the implementation of the Forest Rights Act. Misinterpretation by different state governments adds to the confusion.³⁵ The Land Acquisition Act for example provides that community rights can be acquired in exchange for a compensation. The Mines and Minerals Act does not sufficiently recognise and protect customary forest rights in Scheduled Areas and elsewhere.³⁶ The gram-sabha does not play a central role when notifying protected areas under the Wildlife Protection Act. Rules of the Panchayat (Extension to Scheduled Areas) Act contradict the Forest Rights Act in some states like Rajasthan, as do joint forest management programmes in Odisha and Maharashtra.³⁷

The Ministry of Tribal Affairs has recently issued clarifying orders and directives to state governments, triggering progress in some states. Nevertheless, a thorough review of all relevant legislations needs to be carried out to ensure the coherence between the Forest Rights Act and the Indian Forest Act (1927), the Forest (Conservation) Act (1980), the Wildlife (Protection) Act (1972), the Biological Diversity Act (2002) and the Panchayats (Extension to the Scheduled Areas) Act (1996). Furthermore, a roadmap should be developed to ensure convergence between the Forest Rights Act and existing developmental schemes such as the Mahatma Gandhi National Rural Employment Guarantee Scheme and National Watershed Development Programme.

The importance of the above recommendations cannot be overstated. The historical violence perpetuated against forest dwellers is unlikely to subside with the passage of a single law.³⁸ However, the Forest Rights Act could, if implemented in letter and spirit, be a significant step towards this goal.

With this brief, Oxfam India backs the recommendations of Community Forest Rights Learning and Advocacy (CFR-LA) Process.

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