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Forest Rights Act: A new dawn

FRA empowers the best forest lived-in experienced and knowledgeable Gram Sabhas as statutory authorities for forest protection. This shift opens up a new era, writes C R Bijoy



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Forest Rights Act: Triggering the apocalypse of forest loss and fragmentation' by Praveen Bhargav, published in *The New Indian Express* on February 16, weaves an imaginary catastrophe gripping India's forests. The marauder, the article points out, is the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). However, the FRA, hailed as a historic flagship law incorporating inputs from across the country — from the forest-dwellers to the ecologists, and legal experts to seasoned administrators — was unanimously enacted. The author of the article is a trustee of Wildlife First, the main petitioner in the Supreme Court case WP (C) No.109/2008. It challenged FRA as being beyond Parliament's legislative competence and for constitutional violations. In February 2019, the court ordered the eviction of nearly 10 lakh people whose FRA claims stood rejected even while a case on FRA's constitutional validity is yet to be heard. The Union government scrambled and got the court to keep its order on hold. State governments wanted to review all the rejected claims as these were dropped without following lawful procedures, a tedious job taking up months if not years. The case remained in limbo till now. Wildlife First then filed another petition last year asking for an early hearing. The case is now posted for April 2.

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The facts

FRA does not grant any rights to anyone. It simply demarcates and titles forest lands occupied before 13th December 2005 that FRA recognised and vested on forest dwellers. Numerous government findings pointed to the denial of legitimate rights since colonial times without respite, despite forest laws requiring rights recognition while notifying forests.

The environment ministry confessed before the Supreme Court in the Godavarman case in 2004 that "record of rights did not exist due to which rights of the tribals could not be settled during the process of consolidation of forests in the country. Therefore, the rural people, especially tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihood," becoming "encroachers in the eyes of law".

The ministry admitted "that the historical injustice done to the tribal forest-dwellers... must be finally rectified". Therefore, the preamble of FRA pointed to "the historical injustice to the forest dwelling Scheduled Tribes and other traditional forest-dwellers who are integral to the very survival and sustainability of the forest ecosystem".

FRA does not parcel off any forest land to any forest-dwellers; nor does it permit more forests to become honeycombed. The government's Tiger Task Force declared in 2005: "in the name of conservation, what has been carried out is a completely illegal and unconstitutional land acquisition programme."

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Status of FRA

With the notification of FRA rules in 2008, the environment ministry affirmed in its 2009 Country Report to the FAO that FRA "assigned rights to protect around 40 million ha of community forest resources to village level democratic institutions. The fine-tuning of other forest-related legislations is needed with respect to the said Act."

By January 2025, only 20.6 lakh ha, or 2.9% of the 715 lakh ha forest lands, were titled for pre-2005 habitation and cultivation. And 57.1 lakh ha were titled as community rights, often overlapping with each other, resulting in this inflated figure. Community rights as minor forest produce collection, grazing, access to water bodies etc, actually require a flourishing forest. Together, only 15-20%, or lesser of the 40 million ha has been titled in 16 years. FRA also provides for 13 public facilities, such as schools, ration shops, anganwadis, drinking water etc up to 1 ha and felling of 75 trees per facility with Gram Sabha approval. The 4,526 forest villages and some forest fringe villages can utilise this provision.

Equating the existing forest rights recognition as forest destruction is false. FRA doesn't permit land use change. FRA violation by its officials or members of the statutory bodies is a punishable offence.

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Rights recognition

Usually officials take decisions behind closed doors. FRA instead has an elaborate, transparent democratic three-layered scrutiny: Gram Sabha's public scrutiny, then a sub-division level committee of representatives of the Revenue, Tribal Welfare and Forest departments along with three Panchayat representatives, and finally a similar district level committee. At least two pieces of evidence are ground-truthed through public verification. The claimant, the Gram Sabha and any government agency can appeal against the decisions of these statutory bodies. They leave little room for manipulation.

On satellite imagery

FRA does not allow satellite imagery as evidence to reject claims, but only as supplementary evidence to accept them. The Gujarat High Court too reaffirmed this in 2013. No satellite can detect the occupation of forest lands. The India State of Forest Report 2023 did not distinguish between natural forests from horticultural and tree plantations using satellite data. A barren land cannot indicate cultivation for sure. Neither does a green patch indicate no cultivation. Ground truthing alone can provide confirmation.

What ails the forests?

Forest land use has changed since it was colonised: felled and hunted for sport; replaced with commercial timber bearing trees preventing forest regeneration, and vicious tree plantations replacing groundwater recharging grasslands. Add to this, forest diversion for non-forestry purposes under the Forest Conservation Act, 1980.

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The result: invasive species take over, biodiversity lost; streams dead; wildlife and forest-dwellers pushed out, and increased human-wildlife conflict.

FRA empowers the best forest lived-in experienced and knowledgeable Gram Sabhas as statutory authorities for forest protection, conservation, regulation and management over the Community Forest Resource, the 'customary common forest land within the traditional or customary boundaries of the village'. This shift opens up a new era.

No law prevents forest diversion except FRA through its Critical Wildlife Habitat (CWH). The environment ministry issued guidelines under court pressure in 2018, but hasn't notified any yet. In hindsight, FRA should have made its Gram Sabhas the authority to initiate CWH notification.

Tailpiece

Amidst poor FRA implementation and bureaucratic resistance, especially from the Forest Department, the Tribal Affairs Ministry launched a nationwide saturation of forest rights as part of the Pradhan Mantri Janjatiya Unnat Gram Abhiyan (PM-JUGA) in September last year.

(C R Bijoy examines governance issues)

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