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# Democratising Forest Governance Challenges Old and New

SHARACHCHANDRA LELE, GEETANJOY SAHU

Sixteen years after the Forest Rights Act, 2006, only three states have recognised a significant number of community forest resource rights, and only one of them (Maharashtra) has enabled their operationalisation. While the outcomes in Maharashtra have been impressive, violations abound elsewhere. Even where recognised, state agencies refuse to let go of their monopolies. Despite the recent upsurge of interest at the central level, democratising forest governance in India remains an uphill task.

In an era when the environmental discourse is more focused on heat waves and floods, water scarcity and landslides, carbon emissions and air pollution, the question of forests has been pushed to the background in the public's mind. Except, of course, if you are a forest-dweller struggling to eke out a living, confronted by departmental logging in good forests, a free-for-all in degraded forests, whimsical plantation policies and rampant diversion of lands of great material and cultural importance to mining and dams. A new spectre looming on the horizon, mostly unbeknown to the dwellers, is the possibility of carbon forestry or "restoration" projects more generally becoming the latest form of green displacement, aggravating the expanding displacement impact of tiger reserves, whether tigers are present or not.

To put matters in perspective, India has approximately 250 million forest-dependent people (World Bank 2005) living in about 1,70,000 forest-fringe villages (FSI 2020). The minimum area of forests within the customary boundaries of these villages (excluding the North East) is 34.6 million hectares (ha) (CFR-LA 2016). The COVID-19 pandemic showed that agriculture and forests remain the safety net for India's poor and returning migrant populations (Hughes et al 2022; Saxena et al 2021). And yet, official logging in villagers' customary forests continues (Zumbish 2022), even as ecologists criticise the forest departments for replacing natural forests with plantations (Puyravaud et al 2010). While more than 1,00,000 people have already been displaced by the creation of protected areas (Lasgorceix and Kothari 2009-Annexure 3), the National Tiger Conservation Authority (NTCA) had no reservations in asking that the relocation of 64,801 people residing in the core areas of tiger reserves be expedited (NTCA 2024). Over 3 lakh ha of forest land has been diverted for "developmental" purposes, including almost 60,000 ha for mining, over the past 15 years (Press Trust of India 2023). Simultaneously, India has committed to sequestering 2.5 giga tonne CO<sub>2</sub> equivalent (GtCO<sub>2</sub>e) in its forest sector as part of its commitment at the Paris summit. While it earlier hoped to attract international funding through the REDD+ mechanism, it is now banking largely on its Compensatory Afforestation Fund (Lele and Krishnaswamy 2019). Still, it has more recently also launched a "green credit scheme" (Roy and Bhan 2024) to increase funding for carbon forestry.

In this context, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, commonly known as the Forest Rights Act or FRA, acquires enormous significance. Notwithstanding the misleading portrayal

Sharachchandra Lele ([slele@atree.org](mailto:slele@atree.org)) is a distinguished fellow and leads the CFR Central India initiative at the Centre for Environment and Development, Ashoka Trust for Research in Ecology and the Environment, Bengaluru. Geetanjay Sahu ([geetanjay.sahu@tiss.ac.in](mailto:geetanjay.sahu@tiss.ac.in)) teaches at the School of Habitat Studies, Tata Institute of Social Sciences, Mumbai.

of the FRA by conservationists and foresters as a law deleterious to forest conservation (Singh 2021; Jha 2024), and notwithstanding the narrow focus of the political establishment on the Individual Forest Rights' (IFR) provisions that only provide tenurial security for pre-existing cultivation/habitation on forest lands, the larger significance of the FRA lies in its provisions for community forest rights (CFRs), through which it seeks to democratise forest governance in the country. It does so by giving the gram sabha (the general body of a village or hamlet) collective access rights (Sections 3[1][b]-[d])—often called community rights—and management rights (Section 3[1][i])—often called community forest resource rights or (CFRRs)—over a well-defined forest resource and making the gram sabha the basic unit of decision-making about these forests. This change has multiple implications: it gives the village the authority to protect its forests from outsiders, regulate forest use by insiders (Section 5), decide on what silvicultural practices to adopt (Section 5), and autonomously organise the sale of non-timber forest products (NTFPs) (Section 3(1)(c)). Moreover, it then requires that any diversion of that forest for other (“developmental”) purposes, or its use for so-called “compensatory afforestation” for diversion done elsewhere or for carbon forestry, or any imposition of a stricter “wildlife conservation” regime (Section 4[2]) on that forest must have the free, prior, informed consent (FPIC) of the relevant gram sabha.

In contrast, prior to the FRA, forest governance took almost no cognisance of forest dwelling communities and displayed a distinct colonial hangover (Lele 2024). All authority over forest lands in almost all landscapes outside Schedule 6 areas rests with the state forest departments, including silvicultural decisions (logging and planting), while villagers at best exercise some “access privileges.” Although the forest departments in most states have implemented a joint forest management (JFM) programme since the 1990s, the “jointness” or participatory nature of this programme is only notional (Lele 2014). Even where NTFP collectors were organised into so-called cooperatives, these marketing cooperatives are again controlled by forest departments (Lele et al 2015) or by other arms of the state government (Lele and Rao 1996). When forests are designated as wildlife sanctuaries, tiger reserves, or national parks (protected areas), the privileges of forest dwelling communities there are automatically extinguished, and they become the focus of eviction or “voluntary relocation” schemes, leading to enormous social hardship (Lasgorceix and Kothari 2009; Pathak et al 2014). When forests are diverted for mining, dams, or roads, communities using those forests for centuries have no say in the matter (Kohli and Menon 2014). They are not even entitled to a share in the huge amount of funds paid to the government by the “development agency” in the name of “net present value” (NPV) of the forests destroyed. Indeed, forest diversion represents a double whammy, as forest lands elsewhere become the target of “compensatory afforestation” (plantation) in two times the area diverted, thereby excluding those communities from their use (Deshpande 2023). Thus, by correcting these “historic injustices,” the FRA seeks to bring about a sea change in forest governance in India (Sarin 2014; Lele 2019).

It has been more than 16 years since the FRA came into effect (1 January 2008) and 15 years since the first community forest rights title was recognised in Mendha Lekha village of Gadchiroli in Maharashtra. What progress has been made in implementing CFRR provisions and democratising forest governance? A civil society network published a “promise and performance” report eight years ago (CFR-LA 2016; Kumar and Rao 2017; Sahu et al 2017). We review progress since then along three lines: the recognition of CFRs, their operationalisation in forest conservation/regeneration, and NTFP-based livelihood enhancement, and the wider restructuring of forest governance. In each case, we briefly mention the factors that influence progress. We then present a brief analysis of the factors that might explain the progress or lack thereof along all these lines. We do not aim to be comprehensive, but rather to highlight major trends and concerns.

### CFR Recognition

At the outset, we note that officially reported data on community rights recognition (reported monthly by the Ministry of Tribal Affairs [MOTA]) remain highly unreliable, aggregate, and often hugely exaggerated (CFR-LA 2016-Section II; Mokashi and Lele 2021). We therefore parsed these data using data from presentations in recent meetings at MOTA to clarify the extent of CFRR recognition, with varying degrees of precision. We then compared these parsed datasets with the potential number of villages that should get CFR rights recognition and the minimum area that should be recognised using GIS-based results from Lele et al (2020a) for four states (Maharashtra, Jharkhand, Chhattisgarh, and Madhya Pradesh), extending it to Odisha, and using the simple census-based estimates from CFR-LA for other states (Table 1, p 42).

Even allowing for the approximate nature of the CFR potential estimates, we can see that Chhattisgarh and Maharashtra are by far the “best performing” states in terms of the percentage of CFR potential area recognised and villages covered. However, even they are only at 36% and 24%, respectively, in terms of potential area recognised. Odisha is the third-best performing in terms of the fraction of villages covered (10%) but poor in the area recognised (2%), whereas Jharkhand, Gujarat, and Karnataka have barely made a dent (2%), and major forested states such as Madhya Pradesh, Rajasthan, West Bengal, Telangana, and Andhra Pradesh are basically at zero CFRR recognition. These findings are corroborated by other studies (such as Sarangi 2019; Sahu 2020a; Thatte and Patel 2023). Thus, even in quantitative terms, CFRR recognition has progressed significantly only in three states—Maharashtra, Chhattisgarh, and Odisha—and in a few pockets of Gujarat and Karnataka, leaving a very large fraction of the forest dwelling communities bereft of their rights to manage their forests.

Where recognised, the quality of CFRR titles varies, where “mission-mode” implementation is adopted. In Maharashtra, the administration has blindly followed village revenue boundaries, thereby generally excluding forests outside these boundaries, although, in some cases, communities have claimed them under PESA (Gedam 2024). Arbitrary reduction

**Table 1: CFRR Title Recognition in Peninsular Indian States with Large Forested Areas (Sorted by the Extent of Recognition)**

State	Estimated CFRR Potential*	CFRR Area Recognised	Notes/Caveats
Maharashtra	50,045 square kilometre (sqkm) in 17,252 villages	11,769 sqkm (24%) in 5,071 villages (29%)	Potential from Lele et al (2020a); Title data from tribal department for 2019, after removing Section3(2) rights and multiple titles per village
Chhattisgarh	53,842 sqkm in 11,445 villages	19,421 sqkm (36%) in 4,307 titles (42%)	Potential from Lele et al (2020a); CFRR data as presented to MoTA, 5 April 2024
Odisha	52,081 sqkm in 32,581 villages	1,170 sqkm (2%) in 3,495 villages (10%)	Potential following Lele et al (2020a) method; CFRR title data as presented to MoTA, 5 April 2024
Jharkhand	21,175 sqkm	420 sqkm (2%)	Potential from Lele et al (2020a); titles contain no CFRRs, only CRs and Section 3(2)
Karnataka	24,284 sqkm	~350 sqkm	Potential based on CFR-LA (2016); title data based on parsing by authors
Gujarat	12,731 sqkm	~200 sqkm	Potential based on CFR-LA (2016); title data based on parsing by authors
Madhya Pradesh	57,948 sqkm	~5 sqkm	Potential from Lele et al (2020a); only 4 CFRRs in Jhabua district
Telangana	13,714 sqkm	0 sqkm	Potential based on CFR-LA (2016); title data based on parsing by authors
Andhra Pradesh	11,241 sqkm	0 sqkm	Potential based on CFR-LA (2016); title data based on parsing by authors
West Bengal	5,869 sqkm	0 sqkm	Potential based on CFR-LA (2016); title data based on parsing by authors
Tamil Nadu	7,811 sqkm	0 sqkm	Potential based on CFR-LA (2016); title data based on parsing by authors
Rajasthan	25,650 sqkm	0 sqkm	Potential based on CFR-LA (2016); title data based on parsing by authors and Thatte and Patel (2023)
Kerala	8,938 sqkm	Data unclear	Potential based on CFR-LA (2016); title data based on parsing by authors

of claim areas and conscious denial of rights in mining and wildlife areas have also been noted (Thatte and Patel 2023). In Chhattisgarh, many titles have glaring errors, mainly due to a top-down process led by the forest department (Mokashi and Lele 2021). Claims in potential mining areas remain pending (Shalini Gera, pers.comm.). Similarly, in Odisha, our analysis of available data shows that, in many districts, there has been a tendency only to recognise “*gramya jangal*” within village boundaries, excluding larger adjacent forests.

**Forest Conservation and Livelihoods: Major Gains Where Enabled**

Maharashtra was not only the earliest state to recognise community claims but also the only state to enable the operationalisation of community rights for livelihood enhancement. The process began with granting Mendha Lekha village (Gadchiroli district) control over issuing transit passes for the bamboo that they decided to harvest on their own and burgeoned into several hundreds of villages selling bamboo themselves and more than 1,100 villages opting out of state-supported *tendu patta* (leaf of *Diospyros melanoxylon*) marketing to do it on their own (Sahu 2021; Singh 2022). Multiple gram sabha federations for *tendu patta* marketing have been formed, generating higher incomes and a sense of greater autonomy among villagers (Sahu 2020b; Date and Lele 2023; Prateek and Gupta 2024). These have been functioning since 2017, with initial support coming from grassroots csos (Sahu 2020b), but subsequently, several federations are functioning independently. In the case of bamboo sale, villages tend to operate singly, and the village of Panchgaon (Chandrapur district) has become an exemplar of highly beneficial, sustainable, democratic, and equitable management of bamboo-rich forests for livelihoods for a decade now (Sahu et al 2019; Das and Tyagi 2019).

Most of the NTFP-based livelihood enhancement initiatives have, not surprisingly, taken place in areas where forests were in good condition and productive. But at least in a few villages such as Payvihir (Amravati district, Maharashtra), the creative use of MGNREGA and other funding sources has

enabled villagers to invest heavily in degraded forest regeneration even while generating substantial wage incomes—enough to reduce outmigration (Pinjarkar 2014). Villages in Gondia district of Maharashtra have also used government funds for the desilting of tanks situated in forest lands and increased agricultural productivity (Lopes 2022).

The rapid decentralisation/liberalisation of NTFP marketing and the ability to access and deploy government funds for various CFR management/regeneration activities has been the direct result of multiple executive orders issued by the Maharashtra government (Sahu et al 2019), including some prompted by a never-before interventionist stance adopted by the state governor. The governor’s office forced the liberalisation of *tendu patta* marketing (at least in scheduled areas) from the “nationalisation” laws of the 1970s and gave gram sabhas the option of doing it on their own or via PESA gram panchayats. In parallel, the setting up of “district-level convergence committees” has enabled the flow of government funds to CFR gram sabhas, including MGNREGA, watershed development, animal husbandry schemes, etc. In 2022, the government passed a remarkable order allowing CFR gram sabhas (as against multi-village gram panchayats controlled by the state government) to be designated as “implementing agencies” for MGNREGA (Planning Department 2021). It remains to be seen how rapidly gram sabhas take on this role.

The economic gains from the autonomous sale of NTFPs have encouraged the forest dwelling communities in these regions to actively protect, regenerate, and conserve the recognised community forest areas. For example, hundreds of villages in the Vidarbha region of Maharashtra and Kalahandi and Nayagarh districts of Odisha have framed rules and regulations for using forest resources sustainably. More importantly, these rules have been framed collectively, keeping customary practices of forest management as well as being open to new ideas (about managing *tendu patta* bushes: Date et al 2023). Several studies and preliminary reports have observed that gram sabha-driven forest conservation rules, created through an inclusive and participatory process, have reduced forest fire, illegal NTFP harvesting and tree felling, and wildlife

hunting in the recognised community forest areas (Sahu 2020b; Ghosh 2022).

Unfortunately, in other states, there has been little adoption of the lessons from Maharashtra. The only pockets outside where significant livelihood gains from CFRs have occurred are in Shoolpaneshwar Wildlife Sanctuary, where the sale of dried bamboo has generated substantial income (Kukreti 2018; Manthan 2022). After a prolonged struggle in Odisha, rights to sell tendu patta independently of the state monopoly have been granted in a few districts of Odisha, but the results are unclear (Sahu, 2023). State (forest department) monopoly (directly or through state-controlled “cooperatives”) remains the norm.

### Violations

The gains to villages in eastern Maharashtra from CFR rights recognition have further escalated demands for these rights in other states. But as mentioned earlier in the paper, only Chhattisgarh and Odisha followed suit in the last six years or so, and that too with several distortions. The denial of rights to the vast majority of forest dwellers in peninsular India has multiple consequences. First, the forests continue to be either de facto open access and therefore degraded or under strict forest department control and then subject to logging at the cost of ecosystem health and local needs. Second, these forests continue to be the playground of the forest department, which spends enormous sums of public money on afforestation programmes with dubious results or carries out plantations for “compensatory afforestation” (afforestation that compensates for forest diversion to non-forest uses elsewhere), both resulting in limiting local communities’ use without their prior consent. The recent draft Green Credits Rules (although eventually shelved) were also silent on the question of community rights and consent (Hinduja 2023).

Third, local communities continue to face the pressures of displacement from either conservation or infrastructure projects (mining, dams, highways, etc). The number of protected areas in India increased by 72% between 2000 and 2023, with the number of tiger reserves going from 27 to 57, and the paradigm of wildlife conservation continues to assume the eviction of local communities—as the NTCA letter mentioned at the beginning of the paper epitomises. Legally, both the FRA and the amended Wildlife Protection Act (in their Critical Wildlife/Tiger Habitat provisions, respectively) require that, even in protected areas, the rights of forest dwellers be recognised, the possibilities of coexistence be explored, and that relocation be considered only when the impossibility of coexistence has been established (Lele et al 2020b). In practice, however, forest departments refuse to consider CFR claims in protected areas and cloak evictions in the language of “voluntary relocation” (Fanari 2019), but they do not recognise rights or compensate for the forest access lost. Critical tiger habitats were notified in December 2007 (just before the FRA came into effect) without following the due processes laid down. Critical wildlife habitats are now being notified in a similar manner, with incorrect interpretations of law and

facts (such as assuming villages adjacent to but not *within* protected area boundaries do not have rights) (Monitoring Committee 2020).

In the case of displacement of forest dwelling communities and loss of rights due to infrastructure projects, the situation has worsened dramatically in spite of the very clear judgment of the Supreme Court. In 2013, in the Niyamgiri hill mining case, the Court clearly stated that the recognition of forest rights under FRA and PESA (Panchayat [Extension to Scheduled Areas] Act 1996) is mandatory before diversion can be considered and that rights-holding gram sabhas must then consider whether these rights, including their right to safeguard their customs, traditions, and resources, would be violated by the proposed diversion; the views of the gram sabhas must then be placed before the Ministry of Environment, Forest and Climate Change (MOEFCC) before the final decision regarding clearance for the forest diversion is taken (Menon 2015). Accordingly, the Forest Conservation Rules were amended in 2014. Unfortunately, this judgment and the amended rules have been observed only in the breach: of 125 applications for forest clearance for mining more than 100 ha after 2014 perused by Lele and Gupta (2021), none had completed community rights recognition, resulting in frivolous “consultations” (see also Choudhury and Aga 2020). Instead, the central government has repeatedly diluted the procedure, first by moving it from Stage I to Stage II of the clearance process, and then in the amended Forest Conservation Rules of 2022, removing it altogether from the central committee’s due diligence and asking states to ensure “settlement of rights” under the FRA before final orders for diversion. The complete violation of FRA (and PESA) in the proposed massively destructive Great Nicobar Project is just the most recent example (Alvares 2024). Similarly, the procedures under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013, have also not been followed (Worsdell and Shrivastava 2020).

Even where rights have been recognised, conflicts with the FDS continue. In Maharashtra, Chhattisgarh and Odisha, the forest departments continue to work through the non-statutory and now-illegal JFM committees (which they control) instead of recognising and working with the CFR Management Committees of the gram sabhas. They also insist that their working plans and the proposed timber-felling activities in them will prevail in forests where communities have received CFR rights, contrary to the FRA rules. This has set off conflicts in multiple locations in Chhattisgarh, as communities oppose timber felling on the grounds of ecosystem health and NTFP productivity (Zumbish 2022). Even in Maharashtra, there has been a backlash from the bureaucracy: continuation of JFMCs, forcing villagers in Yavatmal district to auction tendu patta through PESA gram panchayats even though the governor-led amendments allowed FRA gram sabha-led marketing, making working capital support hard to get, and arbitrarily freezing gram sabha accounts simply on allegations of mismanagement (Date and Lele 2022).

Note that all these are cases of violation of the FRA (and other laws). The FRA rules put the onus on the district-level committee

(DLC) to ensure that all rights (not claims) have been recognised (Rule 12(B)(3)). Therefore, incomplete recognition, especially 16 years after the act came into effect, constitutes a violation, and “lack of awareness” or “lack of claims” is not an acceptable excuse (since the rules also put the onus of awareness building on the DLC). Consequently, all the certificates issued by the collectors under the Forest Conservation Rules to the effect that the rights recognition process is complete, when, in fact, CFR rights (or other rights) have not been recognised or have been partially/incorrectly recognised, are violations. As are all attempts at so-called “voluntary” relocation, when either rights are not recognised or processes laid down in FRA, PESA and RCTLARR are not scrupulously followed. The continued functioning of JFMCs, the refusal to shut them down, and transfer their funds to gram sabhas, the insistence on following older working plans when management rights have been ceded to gram sabhas, and the refusal to amend earlier acts that brought valuable NTFPs under state ownership, are also conscious violations of the FRA.

### Explaining (Non-)Implementation

What explains this rather limited progress in recognising and enabling community control over forests in most parts of India and the consequent continuous violation of rights in all forest land-related matters? An examination of the roles being played by four main actors in policy implementation—the bureaucracy, the political arm, civil society, and the judiciary<sup>1</sup>—reveals the complexity of and increasing challenges in implementing such a radical act.

At the outset, one must acknowledge that conceptual criticisms aside (Savyasaachi 2011), the FRA has two major kinds of limitations: simplification of the context and the absence of clarity on what happens after communities gain control of their forests. The non-implementation of FRA in the northeast of India reflects the first limitation: in a context where communities already have constitutionally guaranteed rights over their lands, including rights to shifting cultivation, what FRA adds and whether it will undermine the existing rights is unclear (Choudhury 2014). Similarly, how exactly FRA applies in situations of pre-existing private (but inequitable) usufruct or ownership rights as in the Western Ghats (Srinidhi and Lele 2001) is unclear. Even the Himalayan context is complicated by the existence of van panchayats, prior-recognised grazing rights, *shamlat* lands, civil soyam lands, and so on. The provisions for recognising the grazing rights of nomadic pastoralists are also not adequate (cfp 2021). But as this paper shows, even after limiting ourselves to forested central/peninsular India, where, complex histories notwithstanding, the context much better matches the implicit assumptions in the act,<sup>2</sup> we are still faced with a huge gap between potential and actual rights recognition.

The lack of clarity about the post-rights governance structure is also no doubt significant (Lele 2019). What happens to JFMCs, working plans and minor forest produce federations are just the most obvious post-rights questions. In a world where communities control 80% or more of the forested landscape, the role of the forest department itself has to be completely

rethought. It may have to be split into multiple agencies operating at different scales, and the structures through which agencies are held accountable have to be spelled out as well.<sup>3</sup> Eventually, the colonial construct called the Indian Forest Act itself would have to be replaced. Space would have to be made in the Wildlife Protection Act for community-led management of protected areas. But none of this comes in the way of rights recognition, nor, if the state is so inclined, in dealing with the most obvious post-rights questions. The JFMCs can be dissolved with executive orders, working plans can be replaced with CFR management plans, and NTFP sales can slowly shift to gram sabhas and the state-controlled federations wound up in (say) five years.

Coming to civil society as an actor who could support FRA/CFR implementation, one must recognise that civil society has been divided quite sharply over the FRA. On the one hand, a large network of pro-Adivasi and pro-rights groups mobilised into a campaign that led to the passing of the act and continued to work subsequently at both the grassroots and the policy level. No doubt, this network became somewhat diffused post-2006, as some groups focused on IFRs and some on CFRRs. It is also possible that, for many grassroots groups, engaging in the more tedious work of rights recognition over many villages over many years was more challenging than banding together for a one-time campaign (Gupta and Chowdhury 2024). Nevertheless, the pockets in which rights (especially CFR rights) have been recognised are largely those where pro-FRA groups have mobilised communities and facilitated claim-making, and have also handheld them through the post-rights process, be it in Maharashtra (Gupta and Lele 2020), Chhattisgarh, or Odisha.<sup>4</sup> Moreover, one needs to factor in the shrinking space and resources that such rights-oriented groups have had to contend with in India over the past decade (Srinath 2024). Thus, their overall contribution has to be applauded.<sup>5</sup>

On the other hand, many pro-conservation groups have lobbied hard against FRA (Sahgal et al 2005), including a core group that petitioned the Supreme Court case challenging its constitutional validity (*WP 109 (Civil) of 2008*). Over the past few years, however, some groups have withdrawn from this petition, and others have openly supported FRA, especially CFR rights recognition (Bawa et al 2020), either acknowledging it as the right of forest-dwellers and/or seeing it as the last remaining bulwark against the biggest threat to forests, namely diversion.

Thus, the blame for non-implementation has to be apportioned squarely between the bureaucracy and the political wing of government. When it comes to the bureaucracy, the problems are fairly well known (Sahu et al 2017). The state tribal departments, which are the nodal agencies for FRA implementation, are extremely weak, with limited staff and resources, no exposure to or training in forest-related matters, and are still operating in the paradigm of “mainstreaming the backward tribals,” rather than thinking about granting rights (material or cultural) for autonomous development. The revenue officials (sub-divisional magistrates and collectors) may generally hold greater power in the administration and specifically in the FRA-related committees, but even they tend to

defer to the forest department officials because “forest rights is a forest-related matter.” And forest officials are generally vehemently opposed to the CFR rights provisions because they see FRA as a simple win–lose proposition: granting control to communities over their customary forests would severely reduce the department’s power and resources. The strong opposition of the MOEFCC to the FRA drove the government to make the MOTA the nodal agency for implementing the act. The fact that retired Indian Forest Services officers’ associations in three states filed writ petitions in their respective high courts challenging the FRA, simply confirms the foresters’ opposition.

This is not unexpected. A state agency that was assigned complete authority over 24% of the country’s land (including arrest powers) for approximately 150 years and a service that had, over time, gained control over policymaking (in the central MOEFCC), over research (by controlling the Indian Council for Forest Research and Education), and over funding (by generating funds from timber felling, then from conservation projects, and now controlling the Compensatory Afforestation Fund Management and Planning Authority) was unlikely to cede this power overnight, that too to “backward” Adivasi or other communities. That the MOTA tried to push for implementation till about 2016 was itself perhaps remarkable. That it has failed and eventually ceded some of its authority to MOEFCC by issuing joint communiques that are clearly authored by the latter, has as much to do with the opposition from the forester lobby and state forest departments as with political apathy and the power of the development lobby.

The political system itself has been generally apathetic or even averse towards community rights. Little empirical work has focused directly on explaining this phenomenon, but one may hazard some guesses. First, the interests of forest-dwellers, especially Adivasis, and the ideas of local self-governance that are key to redressing historical injustice hardly figure in the mainstream political discourse. Even those representing them through reserved constituencies talk the language of mainstream development: agriculture, industry, and urbanisation. Second, such “development” means infrastructure, including mines and dams that typically come at the cost of forests, and political leaders (along with their corporate backers) often have vested interests in these “development projects” and would not want forest-dwellers to exercise the Niyamgiristyle veto on their projects. Third, as the experience with panchayati raj legislation shows, the state political establishment is quite hostile to the idea of devolving power to local self-governance units, and the bureaucracy, with its own colonial hangover, supports continued non-devolution.

In this context, the progress in the three outlier states of Maharashtra, Chhattisgarh, and Odisha has to be explained through a combination of special circumstances and a temporary perception of political gain: the state’s interest in countering left-wing extremism (Maharashtra), belated realisation of the political value of CFR rights leading to political commitments made in state elections (Chhattisgarh), and a very strong civil society network working on tribal rights (all three states). However, the electoral shifts in Odisha and Chhattisgarh

states in 2023–24, where governments that had portrayed themselves as champions of FRA, including community rights, lost power, point to a weak correlation between state support for FRA (or PESA) and electoral gains.

Finally, the judiciary has been a major letdown. The failure of the Supreme Court to quickly deal with and dismiss the constitutional challenges to the FRA has been compounded by it allowing the case to be diverted towards questions of implementation quality. The core concept of “historical injustice” has never seen the light of day in court. In general, it is well known that the judiciary’s environmental concerns are limited to simplified ideas of wildlife or forest conservation, bereft of or decoupled from questions of environmental and social justice (Sahu 2014). Not surprisingly, all attempts to enforce CFR recognition through high court petitions have hardly made any progress: witness the long-pending appeal against cancellation of Ghatbarra’s CFR rights in Chhattisgarh, the focus on “scientificness” but not on rights recognition in interpreting critical wildlife habitat provisions in the *Vanashakti* case,<sup>6</sup> or the cursory responses and delays in cases against the denial of tendu patta marketing rights in Jabalpur district,<sup>7</sup> and the illegal imposition of the Van Mitra Portal in Madhya Pradesh.<sup>8</sup>

### Future of Democratic Forest Governance

The democratisation of an essentially colonial forest governance system was never expected to be straightforward. The FRA itself, enacted during a unique political phase that saw other rights-based legislation such as NREGA, RTI, Right to Information, and Right to Food, is still a blunt and limited instrument of such democratisation, as it treads on multiple toes: centralised governance institutions set up under the Indian Forest Act, 1927, the Wildlife Act, 1972, and the Forest Conservation Act, 1980, not to mention discourses of development and conservation that remain opposed to forest-based decentralised governance (Anonymous 2012; Lele and Menon 2014). Add to that a new political dispensation in 2014 that strongly favours “development-as-economic growth” and further centralisation of power, and the FRA would seem to be doomed. Indeed, even the supposedly constitutionally protected rights of northeastern states appear to have been undermined for the sake of “national security” and “infrastructure” in the latest Forest (Conservation) Amendment Act, 2023 (Bijoy 2023).

In that context, it is curious to observe new moves to promote CFR rights, along with PESA. Jharkhand belatedly launched *Abua Bir Dishom* in 2023, a mission-mode programme for FRA implementation, although results are not yet visible. Odisha’s *Mo Jangal Jami Yojana* is continuing in spite of a changed regime. MOTA itself has, after years of somnolence, started taking a keen interest in promoting CFR rights, with big budgets and many directives to states. Whether these will lead to genuine devolution of control over forests remains to be seen. The tendency to convert any policy meant to restructure governance into a “scheme” under which citizens become “beneficiaries” runs very deep in the thinking of the state.<sup>9</sup> Neither does the rapid expansion of tiger reserves and the escalation in forest diversion that is happening in the background, augur well.

Nevertheless, there is room for hope, as there is an unmistakable groundswell of community mobilisation. For instance, in Gadchiroli district of Maharashtra, gram sabhas have invested enormous amounts of energy to build institutions with the mindset of “rights-holders,” not “beneficiaries,” institutions that help generate local employment, create competitive incomes, and conserve forests. Their newly-found sense of empowerment is visible in the wider political space where they are collectively pressurising electoral candidates. Villagers from other states are visiting these sites and getting

inspired by their examples, and taking up similar activities at home. Communities inside some protected areas in Karnataka and Chhattisgarh are demanding a greater say in protected area management and ecotourism rather than talk about relocation. Perhaps these communities can leverage the emerging discourse of eco-restoration, even while developing broader visions of autonomous development, going beyond “jangal” into “jal” and “jameen,” and even into co-ownership of infrastructure projects to carve a new pathway towards democratic development.

NOTES

- 1 The fifth actor is of course the forest dwelling communities themselves, but given their level of marginalisation, mobilising them to get the act passed has been through or with the help of civil society groups, not independent, and given the complexity of the act, their claiming of rights has to be either with the help of civil society groups or government officials.
- 2 Of no prior legally-recognised management rights, village communities having customary boundaries in the forest, and the practice of shifting cultivation being quite limited, if at all (primarily by the particularly vulnerable tribal groups [PVTGs]), making “forests” reasonably distinct from “agriculture.”
- 3 Indeed, spelling out the post-rights recognition arrangements was the mandate given to the Joint Committee but its report fell on deaf ears (Joint Committee 2010).
- 4 In other pockets in these states, “mission-mode implementation” pushed by the state has resulted in rights on paper, often faulty ones.
- 5 The role played by more prominent non-governmental organisations (NGOs) is perhaps somewhat ambivalent, as they have focused on showing claim numbers to their donors but not empowering communities to claim and work independently in the post-recognition phase.
- 6 *Vanashakti v State of Maharashtra* (WP (Civil) 131/2014 in Bombay High Court).
- 7 *Mahagramsabha Roriya & Ors v Union of India & Ors* (WP (Civil) 18600/2021 in Jabalpur High Court).
- 8 *Ram Kali Mavasi v Union of India & Ors* (Civil) 1127/2021 in Jabalpur High Court).
- 9 For example, giving ₹15 lakh as funding support for CFR management to gram sabhas sounds fine, but the DAJGUA scheme limits “the first 1,000 gram sabhas.” Institutional change would mean existing statutory funds such as CAMPA are restructured to flow to communities across the board.

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