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Undoing Historical Injustice

Reclaiming Citizenship Rights and Democratic Forest Governance through the Forest Rights Act

India's forest lands are an arena of intense conflicts today. These conflicts are rooted in the historical–political processes by which huge swathes of ecologically diverse lands, inhabited by culturally diverse communities managing them for multiple uses and values, have been legally (mis)classified or recorded as 'forests' and brought under unifunctional and centralized forest management. Even in areas where customary tenures and community resource management systems are constitutionally or legally protected, forest laws, aided by Supreme Court orders that transcend judicial boundaries into the legislative and executive domains, are continuing to overrule them. The official conceptualization of 'forests' as unifunctional land-use systems primarily for sustained timber production was inherited from colonial rule. With post-independent India failing to review this colonial forest policy in light of the new mandate of an independent, democratic nation, and instead continuing with the policies of state appropriation of the commons for commercial exploitation with even greater vigour, state–community conflicts related to forest land intensified manifold. The policy

of exclusionary conservation initiated in the 1970s compounded the survival crisis of forest-dwelling communities, and the recent attention to environmental services, including carbon markets threatens to further aggravate the problem.

The government's flagship Joint Forest Management (JFM) programme emerged in the 1990s in response to civil society and grassroots pressures to restore community stakes in the country's forests. JFM, however, has reached an impasse due to its skirting around critical issues of tenure, the livelihood functions of land classified or claimed to be 'forest', and the resource rights and customary management institutions of indigenous forest-dwelling communities (see Chapter 1 in this book). Instead of addressing these issues, JFM has been used as an instrument to extend forest boundaries to additional settled and rotational cultivation, and grazing/pasture land by claiming such land to be state 'forests' and indeed, evicting forest-dwellers.

Finally, the multiple orders issued by the Supreme Court under the ongoing Godavarman public interest litigation (PIL) case[1] have further narrowed the ecological focus to protecting *trees* and forest *land* (rather than forest ecosystems) through centralized administrative control. The cumulative impact of these processes on the citizenship and survival rights of many already marginalized Scheduled Tribes (STs) and other forest-dwelling communities have been devastating. Matters reached a flashpoint in 2002 with the Ministry of Environment and Forests (MoEF) ordering large-scale evictions of forest-dwellers (MoEF 2002), in many cases from their ancestral lands, by treating them as illegal 'encroachers' on state forests.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA for short) emerged as a legislative means to centre-stage the critical issue of forest-dwelling communities' citizenship and resource rights in the arena of forest land classification and its exclusionary management. This chapter traces the origins and basis of this historic Act, and its potential and constraints. Finally, the experience with implementation of the Act from 2008 till 2011 and the challenges ahead are summarized.

The next section of the chapter delineates the legal construction of state forests during the colonial and post-independence periods, highlighting state appropriation of the commons and the entrenchment of private property rights. This is followed by an analysis of post-inde-

pendence forest and wildlife conservation policy and law, including the emergence of JFM, culminating in the Godavarman PIL orders effectively re-writing forest law. Included in this analysis is an examination of the large-scale declaration of constitutionally protected tribal land as state forests under a colonial forest law and how due legal process even under that law for recognizing rights was bypassed. Attention is then given to the FRA's potential to create a new rights-based framework for democratic forest governance and early trends in its implementation. The concluding section examines the potential and limitations of the new law in the context of globalization and the continuing extension of the state forest boundary through legally ambiguous means facilitated by Supreme Court orders.

Legal Construction of 'National' Forests

Myths and Assumptions

One of the most vociferous criticisms of the FRA while it was being framed was that it would lead to destruction and privatization of state forests in the country through their distribution among the country's tribal minority. The ahistorical assumptions underlying this criticism are that the national forests are clearly defined, are legally constituted, are really 'national' in nature, and all consist of real forests. All these are questionable assumptions. Due to the poor condition of the country's land records, for instance, forest and revenue land records do not tally. In 2003, whereas the recorded forest area (RFA) according to the MoEF records was 77 million ha, according to the land-use records maintained by the Ministry of Agriculture, it was only 67.87 million ha (FSI 2005: 1). This implies that as much as 9.13 million ha of land is disputed between the revenue and forest departments. As discussed later in this section, a lot of this land is under cultivation or other uses with little forest cover on it but it continues to be treated as legal forest by the MoEF.

Similarly, day-to-day discourses on 'forest' management seldom question the legality or rationality of the premises and processes by which the 77.47 million ha of RFA, representing 23.57 per cent of the country's geographic area, has been assembled. As much as 17.6 per cent of this area consists of unclassified forests under diverse owners and tenures which are not even legally notified as forest (FSI 2005: 5). A

large part of this consists of shifting cultivation lands in the Northeast governed by customary tenures protected by Schedule VI or other provisions of the Constitution. Even in the case of the 51.6 per cent of the RFA stated to be Reserved Forests (RFs) and 30.8 per cent that is Protected Forests (PFs), the required legal process of settling the rights of existing users has yet to be completed in most tribal areas in central India despite these being governed by Schedule V of the Constitution. Thus, a major contradiction in the current approach to forest conservation is its focus on protecting *land* that has often arbitrarily been (mis) classified as (legal) forest, instead of focusing on real *forests*.

A brief look at how the national forest estate has been assembled will help understand the three major roots of the problem: a) classification of the country's notified or 'recorded' forest land has been done without following due process of law, often in violation of constitutional provisions for safeguarding tribal cultures and rights; b) significant areas of this land never had, or should not have (from the point of view of biodiversity conservation),[2] or are ecologically *incapable* of supporting forests, and c) centralized and unifunctional tree-focused forest management has been superimposed on these lands, irrespective of their pre-existing multifunctional uses, customary tenures and rights, thereby disenfranchising their residents of their basic citizenship and livelihood rights.

Legal Construction of Indian Forest Boundaries during the Colonial Period

Historically, cultivated lands and the uncultivated commons in many of the country's forested landscapes were managed as an integrated resource base by diverse communal resource management traditions and institutions[3] under notional control of different rulers. Most of these systems rested on customary boundaries defining communal property rights regulated and enforced by traditional community institutions (Agarwal 1996; Guha 1989 and 2001; Sundar 2001). The system of revenue administration introduced during colonial rule delegitimized many of these systems by instituting private property rights for land under settled cultivation to facilitate revenue collection. This was combined with the declaration of large areas of the non-privatized commons as state property in areas under direct British rule. Community or

common property rights in such areas were divested of legal protection under the new statutory regime unless specifically included in the record of rights prepared during revenue or forest settlements. State appropriated commons, termed 'the wastes'[4] by the colonial government due to their not yielding land revenue, were either categorized as 'forests' or revenue 'wastelands'. While good forests were selectively reserved for commercial exploitation, large areas of other common land were arbitrarily declared state forests through blanket notifications without any vegetational or socio-economic surveys. Rather than identifying forests, the objective was to assert state ownership over non-private lands. All uncultivated lands, including those under permanent snow and alpine pastures in British Kumaon, for example, were declared state-owned 'District Protected Forests' through a blanket notification in 1893. Under the Assam Forest Regulation, 1891, vast areas of uncultivated land considered to be 'at the disposal of the government' were categorized as 'unsettled forests', and recorded as 'unclassed state forests' despite these having little woody growth even at that time (Upadhyay and Jain 2004). The legal designation of such land as state forests has not been reviewed till today.

In areas such as Himachal Pradesh and British Kumaon, early forest reservation was accompanied by extensive forest 'settlements' involving the recording of customary rights of users. Many tribal forested areas, however, were reserved without a forest settlement process. In part, this was due to the high costs and difficulties of surveying them, their low potential of generating land revenue, and the regularity of tribal rebellions against external interference in their relatively autonomous governance systems. Concerted efforts were also made to stop the widespread practice of shifting cultivation by the use of force and declaring it illegal.[5] Settlement of rights only occurred sometimes with those who had permanently occupied land, resulting in the exclusion of the majority of shifting cultivators. Many tribal areas where shifting cultivation was practised lay in the territories of the nominally sovereign princely states where land administration lagged behind the British-ruled areas (Kumar 2008).

Colonial efforts to impose private-property-based land revenue administration and restrict customary forest access were met with over 150 tribal rebellions. While many were suppressed brutally, in other areas, the colonial government was compelled to either recognize

diverse community tenures or keep them outside the ambit of regular land and revenue administration. Many tribal areas were declared excluded (in the Northeast) or partially excluded and brought under direct administration through the Governor or an agent of the Crown to enable continuation of their customary resource use and governance systems.

Due to historical discussions on forestry being primarily focused on forest reservation, a relatively less discussed aspect of the colonial period is that substantial, generally less valuable, forest areas were set aside for community use in the revenue settlements of villages. The record of rights of these had extensive recording of community rights. Revenue settlements in the Central Provinces and Berar (undivided Madhya Pradesh after independence) for example, included extensive forests for *nistar* (Garg 2005).[6] Settlements in Odisha provided Gramya jungles, Khesra forests, and so on for community use. In the Damin-i-Koh hill tract in the Santhal Parganas, the Santhal Pargana Protected Forest Rules even recognize shifting cultivation rights of the Paharias (Rao 2005).

In other cases, the tenants of *zamindar*s, princely states, and private forest-owners not only enjoyed both customary and legal rights to use of common land and forests but local forest management was also left in the hands of traditional community institutions (Sarin *et al*. 2003). The most famous example is, of course, that of Van Panchayats in British Kumaon. Here, in response to violent protests against forest reservation, provision for Van Panchayats was made under the Scheduled Districts Act of 1894, till today almost the only example of legally demarcated and notified community forests managed by communities.[7]

A less well known, but perhaps more dramatic, example is that of the erstwhile Chhota Nagpur region (present-day Jharkhand). Here, in response to the repeated tribal rebellions throughout the nineteenth century, a series of legislations was enacted, culminating in the Chhota Nagpur Tenancy Act (CNTA) of 1908. Besides providing for the creation and maintenance of land records, the CNTA also created a special tenure category of '*Mundari khuntkattidars*' (considered to be the original settlers of the land among Mundas) and restricted the transfer of tribal land to non-tribals. Most significantly, the CNTA provides for the recording of various customary community rights in land and 'jungle or wasteland', such as the right to take produce and to graze cattle, as well as the right to

reclaim 'wastes'. The colonial land revenue laws in Chhota Nagpur were perhaps unique in India in the extent to which community rights in common land and other resources were recognized (Upadhyay 2005). The Santhal Parganas Tenancy Act, 1949 has similar provisions and, between them, the two Acts still cover the whole of present-day Jharkhand.

In the Western Ghats of Karnataka (which include parts from the erstwhile Bombay Presidency, Mysore princely state, Coorg princely state, and Madras Presidency), a combination of different physical and social geographies resulted in the settlement of rights taking a different turn. Significant areas of forest were assigned to individuals or groups of households within the landowning class or a subset of this class, although with much local variation in names (*soppinabetta, kumki, haadi, bane*), in extent of area and rights granted, in the nature of survey and demarcation, and in administrative arrangements (Srinidhi and Lele 2001). With the exception of Uttara Kannada, where the soppinabettas were demarcated within PFs (because virtually all the non-agricultural land had been taken over in the British forest settlement process), these forest tenures were recorded in the revenue settlement and administered by the revenue departments.

At the end of colonial rule, thus, a complex and wide diversity of tenurial regimes, both customary and legally recognized, still prevailed in British Indian provinces, Indian princely states, and other territories in British India. Within each of these land tenure systems, there were a large number of categories of tenancies and land and forest rights that were recognized by the owners or intermediaries. The nature and extent of these rights, as well as the extent to which these were recorded varied widely. In areas where revenue and/or forest settlements had been done, records of rights had been prepared. Most revenue settlements provided for substantial areas of common land and forests for local use. Most hilly and forested tribal areas left partially or fully excluded from normal revenue administration, however, had not been surveyed and, despite the colonial protection provided to tribal governance systems in them, had poor or no records of customary rights of their inhabitants.

Post-Independence Expansion of the Forest Estate

Instead of enabling indigenous forest-dwelling communities to claim restitution of their lands forcibly appropriated during colonial rule,[8]

post-independent India did the opposite. Contrary to the general impression of massive diversion of forest land to other uses since independence, the *net* area of state forest land increased by 26 million ha between 1951 and 1988 (from 41 million hectares to 67 million hectares), largely as RFs in which there are limited or no rights (Saxena 1995 and 1999).[9] This was done by 'vesting' in the state diverse categories of non-private land of the ex-princely states and zamindars by a stroke of the pen without surveying their vegetation/ecological status, and declaring them RFs, PFs, or 'deemed' state forests irrespective of their existing users or uses.

As this expansion of the national forest estate was mostly done using the Indian Forest Act (IFA), 1927, it is useful to look at its key provisions. Chapter II to V of IFA clearly provide that no forest or land should be so notified unless the existing rights of individuals and communities have been fully enquired into and taken into account. Sections 3 and 29 allow only land that is government property or where government has some proprietary rights to be declared PF or RF. Sections 7 and 29 require an inquiry into pre-existing rights of villagers before such declaration. Sections 6, 21, and 31 specify that a vernacular notification of intent is essential. All these sections were violated in the creation of new RFs and PFs in most tribal areas after independence.

In Odisha and Madhya Pradesh, the addition of Section 20A through an amendment to the IFA was used to circumvent the requirement of settling pre-existing rights by declaring the vested forest land as 'deemed' RFs or PFs. However, in each case it was mentioned that such declaration (as RF or PF) shall be subject to recognizing the existing land rights and usage customs of individuals and communities. Unfortunately, this was never done in either of the two states. Thus, village forests and common land, with extensive recorded rights, were simply 'vested' in the state and handed over to either the revenue or forest department fairly arbitrarily.

Due to difficulties in dealing with the different types of land tenure records at the time of the vesting of private forests in the state, and the fact that in many cases there were no proper land survey records (especially in the erstwhile princely states), the process of forest settlement in them is still far from being complete. In many tribal areas, forest settlement is yet to be undertaken even 60 years after independence.[10] The rights of *podu* (shifting) cultivators as well as settled cultivators on

land with slopes above 10 degrees were simply ignored in both Odisha and Andhra Pradesh.[11] Despite this, over time, state forest departments have de facto extinguished the pre-existing rights of forest-dwellers and established their exclusive legal jurisdiction over such 'forest' land.

While zamindari abolition freed tenant cultivators in the plains from landlord oppression, declaration of zamindari forests as state forests often illegally deprived them of their forest rights.[12] In poorly surveyed hilly forested landscapes, it threw millions of predominantly tribal forest-dwellers in the clutches of a far more oppressive zamindar—the Forest Department (FD), which declared even their unsurveyed cultivated lands and settlements as state forests. In the process, large numbers of the most vulnerable STs and other forest-dwellers were disenfranchised of their customary resource rights without even their knowledge and labelled 'encroachers' and thieves on their ancestral lands. Even in areas with good records of rights, there was a near wholesale reclassification of legally recognized community land and forests into 'national' forests, a fact which has escaped serious questioning to date.

The cases of Madhya Pradesh and Jharkhand illustrate the post-independence processes by which state forest boundaries were expanded across the country with drastic impacts on people's land and forest rights.[13]

Conversion of Nistari Land and Forests into 'National' Forests in Madhya Pradesh[14]

Revenue settlements in the princely states constituting undivided Madhya Pradesh were carried out in 1910. These included preparing a record of (private property) rights and a *nistar patrak*, which recorded usufruct rights in common land. Common land areas were classified as *nistari van*, *malguzari/zamindari van*, revenue *van*, *bade jhad ke jungle*, *chhote jhad ke jungle*, *ghas, charnoi, charagah*, among others (all representing different types of common forests or grazing land) and settled on a similar basis in all villages. Provision was also made for common *gothan, khalihan, kabristan, shamshan*, land for skinning hides, playgrounds, padav, bazaar, etc. In the malguzari and zamindari villages, these common land areas were controlled by the malguzars and zamindars while in the *ryotwari* villages their control was with revenue officials (Garg 2005).

After independence, Madhya Pradesh's Abolition of Malguzari and Zamindari Act vested all proprietary rights in such estates with the state free from all encumbrances. Under this, 94,78,000 hectares of common nistar land controlled by malguzars and zamindars was handed over to the revenue department. In 1958, these same lands were notified as Undemarcated Protected Forests and transferred to the FD. The said notification clarified that, pending the settlement of rights under Section 29 of the IFA, existing rights of individuals or communities in such land shall not be abridged or affected in any manner except in so far as they may be modified by the state government from time to time. The revenue department, however, made no changes in its records and, in 1959, declared the same land as '*dakhal rahit bhoomi*' (land free from all encumbrances) and set it aside for nistar rights of the people, similar to those in the earlier nistar patrak, as per the new Madhya Pradesh Land Revenue Code, 1959 (Garg 2005).

While the revenue department recorded community uses of these lands in great detail, a notification entrusted the FD to manage the same land as state PFs. During demarcation of the PFs, 12,37,000 hectares of scattered or poorer quality forests was left undemarcated and marked orange on the maps (known as 'Orange Areas'). With the focus on increasing food production at that time, under instructions from the state government and without changing the status of the land to revenue land, the revenue department granted pattas and leases to an estimated 10,00,000 landless Scheduled Caste (SC) and ST families for cultivation, under the Government of India's Grow More Food Scheme.

Several surveys and settlement procedures for settlement of rights in the Orange Areas have taken place over the years. In 1966 and 1988, the FD undertook surveys. Simultaneously, a survey and settlement process under the Land Revenue Code was undertaken by the revenue department around 1968. Joint surveys by both departments were also conducted with further surveys in 1990 and 1994. This has resulted in total confusion regarding the exact legal status as well as the total area of lands that were once malguzari and zamindari forest land originally set aside for meeting the bona fide requirements of the local population (Garg 2005).

This confusion about the legal status of 12,37,400 hectares of Orange Areas that continue to be recorded as both revenue and forest land has been the cause of immense conflict between the two departments. It

has been particularly disastrous for the people distributed land under various government schemes by the revenue department but whom the FD now treats as 'encroachers' on forest land.[15] The situation got further complicated after the enactment of the Forest Conservation Act (FCA), 1980, and even more so after the Supreme Court order of December 1996.

In 2003, Ekta Parishad, a non-governmental organization (NGO) in Madhya Pradesh, filed an intervention application (IA) with the Central Empowered Committee (CEC) pleading early resolution of the matter:

> … as the fate of about ten lakh families who are predominantly tribal people is hanging in uncertainty due to the negligence on the part of the states to resolve the contentions on the Orange Areas and its boundaries and jurisdiction. That the difference and erroneous interpretation of the forest boundaries especially in the light of the Supreme Court order dated December 12th, 1996 in C.W.P. No. 202 of 1995 relating to the definition of forest, is resulting in totally exploitative steps to evict tribals who are validly staying in their lands. This is affecting both the sustainability of forests and people who are dependent on them.

The matter has continued being shunted between the CEC and the Supreme Court without any resolution. In response to an inquiry under the Right to Information Act, the otherwise proactive CEC informed Anil Garg on 8 February 2012 that it did not have copies of the notices it had issued to the state governments of Madhya Pradesh and Chhattisgarh and that it had not made any recommendations in Ekta Parishad's application no.196 of 2003 filed before it. In the meantime, the FD is undertaking demarcation of the Orange Areas and people are discovering new 'forest' boundaries cutting through their fields and homes (Khanna 2008).[16]

Madhya Pradesh's case indicates the totally arbitrary basis on which almost 9.5 million hectares of common lands and nistari forests with extensive recorded rights were reclassified as 'national' state forests by a stroke of the pen after independence. While the legally recorded community rights in the land seem to have evaporated into thin air, the new rights granted to cultivators by one government department continue to be ignored by another. Massive destruction of the forests on these lands took place during the period of their transfer from private owners to the state and much of what remained was destroyed either through converting them into open access forests with the two departments

locked in a jurisdictional dispute, or through distributing the land to the landless.

Dilution of Legal Community Rights in Jharkhand[17]

The extensive rights recognized under the CNTA and the Santhal Parganas Tenancy Act (SPTA) in Jharkhand have similarly been progressively diluted with the various changes in the law and land revenue system, creating conflicts over access to, and control over, common land and forests.

Zamindari abolition in undivided Bihar was effected by the Bihar Land Reforms Act, 1950, which provided for the 'vesting' in the state of all land, estates and interests (other than *raiyati* lands), abolishing all intermediate tenures, and the transfer of all land recorded in the names of zamindars and other tenure-holders to the state.[18] After the abolition of zamindari, there remained basically two categories of non-raiyati land in this region—'Mundari khuntkattidars' and 'vested'. This significantly altered the land tenure system in Jharkhand (Upadhyay 2005).

The CNTA and the original land records recognized both community rights and settler rights on *gair mazrua* (gm) or *parti* land (traditional common land in pre-independence revenue records of present-day Jharkhand), subject to certain restrictions. However, legal ambiguities in the process of the vesting of such land in the state have eroded these rights and effectively dispossessed many cultivators who have been occupying such land for years, but who have no legal proof of their possession. For instance, families that had been settled on gm land by a zamindar or Munda, but who had only *hukumnama*s or rent receipts as proof of possession, could not get their names recorded during revision surveys. The 'vesting' of gm lands has also led to the erosion of community rights in such land, which has given rise to conflicts between the state, which now claims the sole right to settle or use such land, and local communities, who regard these lands as their traditional common land for their own use—rights that were confirmed in the original land records throughout the region. The revision land revenue settlements, in the few districts where these have been completed, have surreptitiously reclassified *'gair mazrua khas'* land as *'anabad Bihar sarkar'* (uninhabited Bihar government land) without recording or upholding existing user and settler rights recognized under the CNTA despite it still being in force. The government can now legally dispose of gm land without seeking permission from the local community

and without a land acquisition process. Because of this, people settled on gm land cannot claim compensation for such acquisition, nor can the local community claim compensation for loss of access to such common land (Upadhyay 2005).

In the same fashion, over 20,000 sq km of land in undivided Bihar, most of it in Jharkhand, has been notified as PF after independence through nationalization of a category called Private Protected Forests (PPF), land which was zamindari land on which tenants had extensive rights under the CNTA. Several records indicate that acquisition of these lands and their classification as PF violated legal procedures laid out in the IFA (Vasan 2005).

To summarize, through the 'vesting' of the non-private lands of princes, zamindars, and intermediary tenure-holders with the state after independence, land with a complex diversity of customary and legal common property tenures and land-uses were converted either into revenue 'wasteland' or state forest land and brought under centralized management by large bureaucracies. Forest boundaries were arbitrarily defined in poor correlation with the ecological characteristics of the land; even legally recognized rights were eroded, diluted, or extinguished, often without following due legal process, and community resources reclassified as 'national' forests. The requirement under Section 4 of the IFA is that while declaring the state's intention to reserve an area as forest, a settlement officer should be appointed to settle the claims of its pre-existing occupants and users. This requirement was often dispensed with. Many of these lands have still not been surveyed, and the land and forest rights of their pre-existing occupants and users remain unrecognized. Large numbers of their predominantly tribal inhabitants were converted into 'encroachers' and thieves on their ancestral lands, with even their unsurveyed villages notified as state 'forests'. In many cases, these lands are yet to be finally notified as RFs under Section 20 of the IFA. Hence, their legal status as state 'forests' is highly problematic (Sarin 2005a).

Post-independence Forest Policy and Law

1952 Forest Policy and Commercial Forest Exploitation

The 1952 national forest policy reflected a continued contempt for local rights and livelihoods by stating that 'the accident of a village being

situated close to a forest does not prejudice the right of the country as a whole to receive benefits of a national asset.'[19] And while the policy talked of the benefits derived from this asset in environmental terms, in practice, the focus of state forestry in the first three decades after independence was on commercial exploitation of the forest resource for industry and urban markets.

This form of forestry changed the nature of the forest itself through replacement of multi-species forests by commercial plantations. This further deprived forest-based communities of their livelihoods while simultaneously destroying rich biodiversity under the rubric of 'scientific' forest management. During the 1970s, even important NTFPs were nationalized. In 1976, by when most multi-species forests had been exhausted, the National Commission on Agriculture (NCA) announced that: 'Production of industrial wood would have to be the raison d'être for the existence of forests.' As pointed out by Saxena (1999: 12), 'the entire thrust of forestry during the first four decades after Independence was towards the production of a uniform industrial cropping system, created after clear felling and ruthless cutting back of all growth, except of the species chosen for dominance.' Forest Development Corporations set up for raising commercial plantations turned themselves (in the words of Dr Salim Ali and Mrs Indira Gandhi) into Forest Destruction Corporations and clear felled huge tracts of rich natural forests without ensuring their replacement. Forest-based industries were given bamboo or trees for pulpwood at throwaway prices and they promptly exhausted these resources. FDs did not spare even the sacred groves protected by communities for generations. The plywood industry was provided access to giant wild mango trees, which yielded fruits famous for pickles worth hundreds of rupees every year for local communities, for as little as 60 rupees (Gadgil 2008).

This transformation of the forest landscape brought local communities in perpetual conflict with forest departments. A wave of protests against commercial fellings and replacement of natural forests by commercial monocultural plantations swept the country during the 1970s in Uttarakhand (the Chipko movement), Bastar, Jharkhand, and other areas. Unfortunately, the changes in the legal regime that occurred during the 1970s and 1980s did not quite address these concerns.

Centralization of Control with Growing Environmental Concerns

While local communities were thus demanding forest and environmental management focused on supporting local livelihoods, elite environmental concerns found expression in two new central laws in the 1970s.

The Wildlife (Protection) Act (WPA), 1972, adopted the Western exclusionary approach to wildlife conservation, namely, the setting aside of large tracts of land where little or no human presence is to be permitted. For this, the Act requires all legal and customary rights in national parks to be extinguished while severely restricting them in wildlife sanctuaries. More remarkably, it vests unfettered authority with the state to declare any area a protected area (PA) without any process of public consultation or the right for affected people to file their objections. PA managers are empowered to stop the exercise of rights from the day of the preliminary notification by providing alternatives till rights are settled. With little awareness among forest-dwellers about provisions of the law, the inaccessibility of judicial recompense for the average non-literate villager living in such areas, and the immense powers and authority enjoyed by forest officials, de facto extinguishment of even legally recorded rights in most PAs has been the order of the day. In practice, even notional alternatives have not been provided for the loss of rights despite the fact that the final settlement of rights yet to be completed in over 60 per cent of the PAs. In any case, the WPA provides for settling only 'recorded' rights despite the fact that in most tribal areas, where most PAs are concentrated, few customary rights are recorded. It is next to impossible for the affected people to seek any legal remedy as all decisions related to PAs must now be approved by the Supreme Court and the National Board of Wildlife.

The Forest Conservation Act (FCA), 1980, enacted after forests had been moved from the State to the Concurrent List in 1976, made central government permission mandatory for diverting even small parcels of forest land to non-forest uses irrespective of the diversity of contexts across the country. The FCA froze legal land use for land declared 'state forests' through the highly deficient processes described above. Initially considered applicable only to finally notified RFs and PFs, over time its mandate was extended even to lands with preliminary notifications where rights are yet to be settled, in addition to 'any area recorded as

forest in the government records' despite the notoriously poor quality of government records. The word 'forest' has been used generically for recording even community grazing and other common land and customary community land.

Although the FCA has nothing to do with the settlement of rights, it brought even the ongoing slow and inefficient forest survey and settlement processes for forest land vested in the state after independence in different states to a near halt. The Odisha government, for example, had identified 276,000 acres of forest land being cultivated by STs and other landless people for settling in favour of the cultivators in 1972. Enactment of the FCA before the plan could be implemented left the forest land cultivators in the lurch (Kumar *et al.* 2005). Even the recognition of existing rights started being treated as diversion of forest land to non-forest uses requiring central clearance and compensatory afforestation (CA). In so doing, the FCA prevented any remedy to the several million forest-dwellers who had been cast as illegal occupants of their ancestral lands due to the faulty settlement process described earlier. The Forest Advisory Committee (FAC) constituted by MoEF for advising on diversion of forest land under the FCA has no accountability to the local people whose land and forests it is empowered to permit for diversion and is not required to take legally recognized rights into consideration.

Impact of the Godavarman Public Interest Litigation

Matters were further complicated by the Supreme Court order of December 1996 under the Godavarman PIL, which extended application of the FCA even to all lands conforming to the dictionary definition of forest, irrespective of ownership. All such 'forest' land now has to be managed in accordance with working plans/schemes prepared by FDs and approved by the MoEF.

State FDs have been identifying such 'forest-like land' to bring them under their management control with little discussion about the legal processes to be followed, the livelihood impacts on people dependent on such land or how their legal rights under other existing laws or constitutional provisions are to be dealt with. Under the Santhal Pargana Tenancy Act (SPTA), for example, traditional village heads are legally empowered to settle scrub village forest land in the name of ryots (Rao

2005). The interim court order has effectively overruled this without the state legislature amending the law.[20] The situation is even more contradictory in the Northeastern states where community rights and customary tenures enjoy constitutional protection.

Proactive Interlocutory Applications (IAs) filed by the amicus curiae in the case have led to further interim court orders with drastic impacts on the rights and livelihoods of impoverished tribal and other forest-dwellers.Besides staying regularization of even eligible pre-1980 'encroachments' (Order dated 23 November 2001) and de-reservation of forest land or protected areas, irrespective of whether these have been finally notified after due settlement of rights (Order dated 13 November 2000 in WP(C) 337/95), the Court has also stayed the 'removal of dead, diseased, dying or wind fallen trees, drift wood and grasses, etc.' from all National Parks (NP) and Wildlife Sanctuaries (WLS) (Order dated 14 February 2000). Although the last order was directed at FDs to prevent them from using the removal of dead and dying trees as a cover for unauthorized felling from PAs, the MoEF and the CEC interpreted it to mean that 'no rights can now be exercised' in PAs and have banned the collection and sale of all NTFP from them. This is despite people having legally admitted rights in many finally notified PAs.

In one stroke, between three to four million of the poorest forest-dwellers, who were living inside PAs long before their notification as forests or PAs, were deprived of their basic citizenship rights and access to critical livelihood resources, without due legal process or any scientific studies substantiating that all collection of forest produce is harmful to wildlife habitats or biodiversity. In Odisha's infamous 'starvation deaths' tribal region, some PA managers have been refusing permission for gram sabha meetings for information dissemination, entry of health workers and in one case, even the delivery of public distribution system (PDS) rations to villages inside PAs.[21] Impoverished tribals have been driven to giving their children in bondage and resorting to large-scale distress migration (Anonymous 2004; Rao 2004). While the Court's focus on holding the executive accountable for protecting forests and wildlife may be laudable, its orders have totally overlooked, and in fact reinforced, the even more grave failures of the executive in enforcing the constitutional protection to tribal rights and governance systems in the same areas. With state FDs being the principal respondents in the PIL, the affected PA-dwellers have had little representation in the

ongoing court proceedings. As mentioned earlier, in 2003, Ekta Parishad had filed an intervention application (IA) with the CEC, pleading early resolution of the Orange Areas and their boundaries and jurisdiction affecting the tenurial rights of about ten lakh predominantly tribal families. In February 2012, the CEC informed the petitioner that it had made no recommendation on the matter. Dominated by strong supporters of an exclusionary approach to conservation, the CEC assisting the Court has no representation of either the constitutional authority or the ministry responsible for tribal affairs (Sarin 2005b).

The bringing of community land with diverse tenures and livelihood functions under the FCA's purview has confused their management objectives, diluted or erased legal and constitutionally protected community rights, created jurisdictional conflicts between forest and revenue departments and panchayats and traditional community institutions, while being difficult to enforce. As pointed out by the CEC itself in its recommendations to the Court on dealing with 'encroachments' on forest land, 'In respect of deemed forest area, unclassed forest and areas recorded as forest in government records, which are not legally constituted forests, the provisions under which an offence can be booked are not clear' (CEC 2002).

Court orders under this PIL have reshaped forest management in the country, effectively re-written the law, and also significantly changed centre–state–local relations concerning land-use. Despite land being a state subject, due to land under diverse owners, tenures, and uses being brought within the extended forest boundary by Supreme Court orders, the MoEF is now responsible for enforcing their management in accordance with forest 'working plans' without having any legal jurisdiction over them. While court proceedings in this PIL have tended to negatively equate all references to the rights of forest-dwellers with 'encroachment', both the MoEF and the court have been increasingly liberal in permitting the destruction of rich forests and tribal and wildlife habitats for mining, industry, and hydro projects (CSE 2011; Khanna 2008) (see also Chapters 6 and 7 in this book). The biggest beneficiary of the Court's orders has been the forest bureaucracy, as their powers to control land and forest use have been extended to areas hitherto outside their domain. This is particularly ironic, given that Godavarman filed the original PIL against the mismanagement of forests by the department.

Dissonance Between Tribal and Conservation Laws

The Indian Constitution continued protection for the partially excluded and excluded tribal areas through Schedules V and VI of the Constitution under Article 244. Any government interventions in the scheduled areas need to be in harmony with the constitutional provisions and other policy directives for safeguarding the culture, resource rights, and livelihoods of tribal communities. Schedule V of the Constitution empowers the state governor to withhold the application of any laws considered detrimental to tribal interests from Scheduled Areas.[22] Article 338 (9) of the Constitution requires that the National Commission for Scheduled Castes and Scheduled Tribes (now bifurcated into separate commissions for SCs and STs) must be consulted by the Union and state governments on all major policy matters affecting SCs and STs.

Yet, massive legal expansion of the national forest (and revenue 'wasteland') estate in Schedule V areas after independence has violated all the above constitutional provisions. Due to the poor recording of tribals' customary rights and tenures, Schedule V areas bore the brunt of the post-independence spree of state takeover. The state has been the biggest violator of the spirit of the Constitution by 'vesting' huge areas of customary tribal land in itself as state forests PAs, or 'wasteland', without recognizing ancestral rights of the tribals and extending all its coercive laws to them. At best, rights only over land under settled cultivation were recognized, largely leaving out shifting cultivators and nomadic and extremely vulnerable pre-agricultural hunting-gathering communities. The poor recognition of communal tenures in Indian statutory law[23] has decimated their economies and cultures. Instead of withholding or adapting the Land Acquisition Act (LAA), IFA, FCA, and WPA to accommodate the tribals' customary tenures and governance systems, their indiscriminate use even in Schedule V areas as if these are the only laws applicable to them, has progressively negated even the hard-fought-for rights tribals gained during colonial rule.

Deprivation of their customary resource rights, holistic land-use systems without rigid forest-non-forest boundaries and a rich diversity of resource management institutions has been accompanied by tribals being labelled 'encroachers' on their ancestral lands. Millions have been displaced without any compensation or rehabilitation due to not having legally recorded rights.

Seventy-six per cent of Odisha's Schedule V areas have been declared state property—50 per cent as forests and 26 per cent as revenue wasteland, while the vast majority of the tribals have been left legally landless. Land with over 10-degree slopes were left unsurveyed simply because the cost of surveying them was too high or because shifting cultivators were considered ineligible for a grant of land titles as they did not occupy the same piece of land continuously for 12 years (Kumar 2008). Hundreds of tribal villages on land declared to be state forests have never been surveyed, depriving them of access to basic development facilities and citizenship rights.[24] A similar situation prevails in Andhra Pradesh where over 60 per cent of Schedule V areas have been declared RFs without following the due legal process.

Implementation of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) has met the same fate. PESA makes the gram sabha (the body of all adult voters of a self-defined community) 'competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution' (Clause 4d). Every gram sabha is also empowered to approve the plans, programmes, and projects for its social and economic development before their implementation, besides being endowed with ownership of minor forest produce (MFP). PESA effectively mandates gram sabhas to undertake community-based management of their customary forests. Yet, despite PESA being applicable to entire Schedule V areas, the MoEF claims exclusive jurisdiction over forest land within them and has continued to enforce its unilateral interpretations of PESA in the absence of any other agency forcefully protecting tribal interests. Similarly, ownership of MFPs has not been granted to gram sabhas on the ground that the Act has not 'defined' MFPs.

A Frame for Resolving Tribal–Forest Conflicts and MoEF's 1990 Circulars

In his 29th report (1987–9) to the President of India, the commissioner for SCs and STs brought the disquiet prevalent in tribal-forest areas to the government's notice and recommended a framework for resolving disputes related to forest land between tribal people and the state. This was discussed and approved by a committee of secretaries and in

a conference of state forest ministers. Based on the commissioner's recommendations, the MoEF issued a set of six circulars on 18 September 1990.[25]

Only the first of these related to regularizing pre-1980 'encroachments' on forest land. The second circular required resolution of disputed claims over forest land arising out of incomplete or faulty forest settlements. Instead of penalizing villagers for the government's own failures, the third circular required recognition of *patta*s, leases, or grants issued under due legal authority by the revenue department for land also recorded as forest land. The fifth circular required conversion of an estimated 2,500 to 3,000 'forest villages',[26] created by FDs themselves in the past for ensuring availability of bonded labour for forestry operations, and old habitations to revenue villages. On paper, the land is recorded as 'forest'; on the ground, these are legally constituted villages. However, their residents have no titles to their land, cannot obtain domicile certificates or benefit from development programmes as other departments cannot work on forest land. Their residents remain at the FD's exclusive mercy for most of their basic needs.

No state government took any meaningful action on these circulars.[27] The MoEF only pursued enforcement of the circular related to 'encroachments' without emphasizing the distinction between 'encroachers' and those with disputed claims and pattas. Indeed, the ministry admitted the same in an affidavit filed in the Supreme Court in July 2004, where it stated that 'the state/UT governments could not maintain a distinction between the guidelines for regularization of encroachments and the settlement of disputed claims of tribals over forest lands… the state/UT governments have mixed up the whole issue.' Not surprisingly, all forest-dwellers with long-pending disputed claims have become equated with 'encroachers' on forest land in the public mind reflected in the vitriolic attack on the FRA by elite wildlifers, conservationists, and the MoEF itself. Unfortunately, the Supreme Court displayed the same bias in the *Godavarman* case hearings with its orders effectively negating the MoEF's 1990 circulars. Interestingly, although the 1990 circulars highlighted irregularities in the notification of forests, they did not question the fundamental anomaly in the declaration of constitutionally protected tribal areas as state forests.

Joint Forest Management (JFM): De-concentration of Administration Rather Than Devolution of Control

The JFM programme in the country was the result of a herculean effort by a handful of proactive bureaucrats within the MoEF and outside to bring about the issuance of the 1 June 1990 circular asking states to implement JFM. It was initially welcomed by many activists (including this author) as a progressive shift from centralized forest management to a collaborative approach, which recognized the importance of satisfying local livelihood needs and making villagers partners in sustainable forest management. In hindsight, the narrow focus of the 1990 JFM guidelines is evident from the fact that at that very time, a committee of secretaries was deliberating the 18 September 1990 circulars dealing with more fundamental issues of non-recognition of rights and disputed claims over forest land. Only historians may be able to shed light on how five of the six September 1990 circulars, other than the one on regularizing pre-1980 'encroachments', got ignored by the MoEF while JFM became its flagship programme, attracting huge donor funding.

In the early years, several innovative initiatives were taken in Haryana, West Bengal, and Gujarat to evolve state-specific JFM frameworks through establishing field-based learning loops, process documentation, and multi-stakeholder state-level working groups. Due to being based on a more holistic community-based natural resource management approach developed in Sukhomajri, the work in Haryana, in particular, generated rich learnings (Sarin 1996a and 1996b). These attempted to tailor JFM to recognizing socio-economic and gender-differentiated forest dependence within communities combined with developing autonomous, inclusive, and democratic community institutions to function as the FD's JFM partners. Haryana's benefit-sharing model included access to water for irrigation, fodder grasses, bamboo, and bhabbar grass for strengthening existing livelihoods instead of the mechanical timber-sharing formula used in West Bengal. Analysis of inter- and intra-community conflicts arising out of exclusion of existing users, pre-existing rights, and usage patterns of forest land and gender and equity concerns were integrated in the development of JFM agreements in Haryana (Sarin 1996b).

Early FD responses were reticent and most forest officers had to be cajoled into giving collaborative management a try. This, however,

changed dramatically once donor agencies started funding large JFM projects. The role of NGOs in evolving JFM frameworks started getting marginalized with the forestry establishment reasserting its supremacy in defining JFM parameters. The December 1996 Supreme Court order requiring management of all forests in accordance with MoEF-approved working plans came in handy for countering demands for greater devolution of management authority to JFM groups. The centrally sponsored National Afforestation Programme (NAP) introduced in 2002 (see NAEB 2002) negated most of the diversity of JFM frameworks developed by different states. The NAP created a standard two-tier structure of Forest Development Agencies (FDAs) and JFM Committees (JFMCs) for implementing JFM across the entire country, including in the Northeastern states where FDs own little land. Although pretending to be federations of JFMCs, the FDAs are structured such that all office-bearers are forest officials. The member-secretary-cum-joint account holder of *all* JFMCs under the NAP had to be the forest guard who *nominated* most JFMC office-bearers (NAEB 2002) despite many state JFM orders providing for more democratic frameworks.[28] In one stroke, the NAP restored almost total FD control over JFM, even in states which had provided for self-governing local institutions like the Hill Resource Management Societies of Haryana or the Tree Growers Co-operatives in Gujarat (Shah 2003).

The imbalance in power between communities and the department, lack of genuine participation in decision-making or preparation of JFM micro-plans, the lack of departmental accountability to villagers—essentially of JFM using 'community participation' as an instrument for achieving predetermined FD objectives, have been identified as major limitations of the official JFM approach by several studies (Sarin *et al.* 2003; see also Chapter 1 in this book). That JFM's 'success' at any given time is dependent on the availability of external funds has also been noted. Sustainability of improvements in forest conditions observed in many areas after the end of external funding remains doubtful as JFMCs enjoy no clear authority or tenurial security over their JFM forests. In Gujarat and Odisha, the FD permitted paper companies to harvest bamboo from JFM forests while most states have failed to honour their benefit-sharing commitments to the villagers (AKRSP (I) 2004; Bera *et al.* 2011; Sarin *et al.* 2003; Vasundhara 1998).

Slowly, however, grassroots protests against JFM started bringing far more fundamental issues to the fore. Enclosure of even community

grazing and panchayat land for JFM plantations drew protests from livestock-herders. Conflicts resulting from land under shifting or settled cultivation being forcibly brought under JFM started being reported from tribal areas (Samata and CRYNet 2001). The FD supporting more powerful members of JFM groups to evict poorer so-called 'encroachers' on forest land, or getting JFM members to attack villagers challenging corruption by FD staff, started opening up the Pandora's box of questions related to unrecognized pre-existing rights and JFM being used as an instrument for converting disputed lands under multiple uses into state forest land (Diwan *et al.* 2001; PUDR 2001; Sarin *et al.* 2003).

In Andhra Pradesh, for example, a 1987 government memo required regularizing adivasi rights over 77,661 acres of RF land under cultivation since before 1980. After initiation of the Andhra Pradesh World Bank-funded Forestry Project, in 1995, a new memo of the FD overruled the 1987 memo and directed that the adivasis' lands be brought under joint 'forest' management. Among the Bank project's phase-I achievements, the FD proudly claimed it had retrieved 37,000 ha of forest land from 'encroachments'. Field investigations by adivasi youth of the Andhra Pradesh Adivasi Aikya Vedike revealed that several impoverished podu cultivators were cheated of their cultivated lands by the FD first encouraging them to plant trees on their land and then claiming that it was forest land to be brought under JFM. Instead of removing 'encroachments' on forest land, this was a cynical use of a 'participatory' programme to illegally convert adivasis' land into state-owned forest land.

A strong recommendation by the Steering Committee on Environment and Forests for the Eleventh Five-Year Plan to democratize JFM by launching a 'Mission Village Forest' under Section 28 of the IFA (GoI 2007: 80–3) was totally ignored by the MoEF. The idea of developing a different framework for working with traditional village institutions in the Northeast instead of extending the standard JFM framework to them has met the same fate. Instead, Section 28 of the IFA was abused by surreptitiously bringing even Uttarakhand's autonomously managed historic Van Panchayat forests created under the Scheduled Districts Act of 1874 under the IFA's purview by revising the Van Panchayat rules under a World Bank-funded forestry project (Sarin *et al.* 2003).

Brutal Evictions as the Last Straw

The last straw came with MoEF's circular of 3 May 2002. This circular cited the Supreme Court's concern over growing forest encroachments in its 23 November 2001 order and asked all states and UTs to summarily evict all forest 'encroachers' within five months. The Court order only directed the Union and state governments to report the steps they had taken to prevent encroachments and removal of post-1980 ones; the Court had refrained from ordering the removal of encroachments prayed for by the amicus as the petitioner. But the misguided circular led to a spate of brutal evictions across the country, including the use of elephants to destroy the huts and crops of impoverished tribals during a drought year, which in turn led to an uproar of protests (CSD 2003). As the constitutional authority for STs under Article 338 (9), the chairman of the ST Commission wrote to the prime minister objecting to not even being informed, leave aside being consulted by the MoEF and the CEC (which had made draconian recommendations for eviction of forest 'encroachers' to the Court), in a matter drastically impacting an estimated 10 million tribals. The MoEF was compelled to issue a clarification order in October 2002 that the 1990 circulars remained valid and that not all forest-dwellers were 'encroachers'. Despite this, by the MoEF's own admission in Parliament on 16 Augist 2004, between May 2002 and August 2004, evictions were carried out from 1,52,000 hectares of forest land. The Court itself has remained silent on the issue of an early resolution of disputed claims over forest land and the non-settlement of rights over vast areas classified as forest, while staying the regularization of even pre-1980 occupations without its permission.

In February 2004, just before the parliamentary elections, the MoEF issued two new circulars: one titled 'Regularisation of the rights of the tribals on the forest lands' that extended the cut-off date for regularization for tribals to December 1993 (instead of October 1980 under the first 1990 circular) and the other titled 'Stepping up of process for conversion of forest villages into revenue villages'. These were promptly stayed by the Supreme Court in response to an IA filed by the amicus that these were in violation of court orders staying both regularization and de-reservation of forest land. The Court's stay on the conversion of forest villages into revenue villages was particularly ironic as this has

been the Government of India's stated policy since the 1970s. In its July 2004 affidavit to get the Court's stay vacated, the MoEF admitted that during the consolidation of state forests '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' and that 'It should be understood clearly that the lands occupied by the tribals in forest areas do not have any forest vegetation'. It further asserted that its February 2004 circulars 'do not relate to encroachers, but to remedy a serious historical injustice' and that '(this) will also significantly lead to better forest conservation'. The Court has still not vacated the stay on the MoEF's 2004 February circulars.

With forest rights becoming a major national political issue due to the evictions, an informal alliance of grassroots movements, rights activists, and academics came together under the umbrella of the Campaign for Survival and Dignity (CSD). Together with left-wing political parties and other rights movements, the CSD undertook nationwide political mobilization with mass protests, rallies, public hearings, and conventions aimed at members of Parliament, state legislatures, and political parties. With a new central government in 2004 having made a commitment to stop forest evictions, the initial demand of the CSD and other mass movements was for the implementation of the 1990 circulars of the Ministry of Environment and Forests. However, this soon transformed into a demand for a comprehensive law for the statutory recognition of pre-existing rights, not only over cultivated lands but also over customary forest resources, and for the empowerment of village assemblies to protect, conserve, and manage such resources. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, (referred to hereafter as the FRA), was an outcome of this prolonged struggle by grassroots movements for remedying a historical wrong through forest tenure reform.

The Forest Rights Act, 2006: A Game-changer

> AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in 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 ecosystems…*
>
> Preamble of the FRA, 2006 (emphasis added)

The FRA represents a milestone in Indian legislative history with Parliament acknowledging the historical injustice done to India's tribal and other traditional forest-dwelling communities during the consolidation of state forests. By declaring that rights recognized under the Act include 'responsibilities and *authority* for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime… while ensuring livelihood and food security', the FRA questions the very basis of current state-controlled, exclusionary forest management. In doing so, it also lays the foundation for democratization of forest governance. For the millions treated as 'encroachers' on their forested ancestral lands, it implies restitution of their citizenship rights and a right to live with dignity.

Key Provisions of the Act

The Act has three major provisions: (a) the rights that may be claimed in all categories of forest land, including PAs; (b) the authorities and procedures for receiving and verifying the claims; and (c) the empowerment of right-holders and/or gram sabhas for conservation of forests, wildlife, and biodiversity and their natural and cultural heritage.

Rights to be Recognized Under the Act

The Act specifies 13 claimable rights providing individual and/or community tenure. Claimable rights over forest land include land under occupation, land disputed between forest-dwellers and the FD due to faulty forest settlements, land for which other government departments have issued pattas not recognized by the FD[29] and through the conversion of forest/unsurveyed villages into revenue villages. Claimable community forest rights include rights to nistar (usufructs); NTFPs; waterbodies; community tenure over customary habitat in the case of pre-agricultural communities; seasonal resource access for nomadic and pastoral communities; other traditional rights; and, most importantly, the 'right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting

and conserving for sustainable use'. Simultaneously, the FRA protects all existing customary rights and rights recognized by state laws or Autonomous District Councils in Schedule VI areas in the Northeast.

Authorities and Procedures for Vesting of Forest Rights

The hamlet or village gram sabha (the assembly of all resident adults) is the authority for initiating the process to determine the nature and extent of forest rights claimed under the Act. This is a major departure from typical bureaucracy-controlled procedures and is designed to ensure transparency and accountability in the claim-making process. The claims verified and approved by the gram sabha are to be consolidated, examined, considered, and approved by committees at the subdivision and district levels consisting of representatives of the revenue, tribal, and forest departments and three elected local-government representatives at those levels. A state-level monitoring committee chaired by the chief secretary and with similar multi-departmental and political representation is to monitor implementation of the Act in each state. Although represented in the higher-level committees, forest officials must share decision-making authority with the elected representatives and officials of other departments.

The nodal agency for the law is the Ministry of Tribal Affairs (MoTA). This has ended the MoEF and FDs' exclusive hegemony on forest land, potentially liberating forest-dwelling communities from the unfettered control over their lives and livelihoods by an oppressive forestry establishment. Further, due to the FRA being an outcome of a prolonged struggle and mobilization by an informal alliance of grassroots movements, the organized sections of its intended beneficiaries are better informed about it, demanding its implementation compared to other top-down laws framed by benevolent lawmakers.[30]

Empowerment to Protect and Conserve

The rights recognized by the Act over community forest resources, combined with the power to protect adjoining forests, wildlife, and biodiversity and to prevent destruction of cultural and natural heritage, reinforce the empowerment of gram sabhas to manage community resources also mandated by the Panchayats (Extension to the Scheduled

Areas) Act, 1996. By creating space for statutory community forest governance (in contrast to FD-controlled JFM), the FRA challenges the forest bureaucracy's hegemonic control over the country's forested landscapes.

The FRA is also unique in making wildlife authorities accountable for decisions related to the relocation of communities from protected areas. The modification of recognized rights in protected areas is permitted only in 'critical wildlife habitats' identified within them through a transparent and consultative process. Relocation from such habitats can take place only after all rights have been recognized; it has been established that co-existence could lead to irreversible damage to threatened species or their habitats, and with the free and informed consent of the concerned gram sabhas. A resettlement package must ensure a secure livelihood and be acceptable to the concerned communities, and land allocation and the development of facilities in the new location must be complete before relocation.

Limitations of the FRA

A major limitation of the FRA lies in the ambiguities and shortcomings in the wording of the final Act due to intense contestation by wildlife conservationists and the forest bureaucracy during its formulation, leaving room for contrary interpretations. The most problematic among these is the differentiated eligibility of ST and Other Traditional Forest Dweller (OTFD) claimants. The requirement that OTFDs must prove continued residence in the area for three generations equated with 75 years has disadvantaged them severely. Seventy-five years ago, many of the concerned areas were under princely states or zamindars where no survey or demarcation of land had been undertaken because of which even the government has no records of that period. Equally forest-dependent OTFD claimants are largely being left out of the FRA's purview due to their inability to produce documentary evidence being demanded in support of 75 years of residence. Simultaneously, they are also not being able to claim regularization of pre-1980 occupation of forest land permitted under the MoEF's 1990 circular as the FRA is assumed to have superseded them.[31]

The second major limitation of the FRA is that it is applicable only to forest land. Because of the arbitrary manner in which customary

community land has been categorized as forest or revenue land, there are large areas with similar ambiguity about people's rights which are categorized as revenue wasteland. In the absence of a law like the FCA, such lands are even more vulnerable to allocation to other users without respect for existing rights than forest land. Yet the affected people cannot claim recognition of their rights over such land under the FRA. In Odisha, for example, many of the land claims filed are turning out to be for revenue land despite their contiguity with similar land classified as forest.

Thirdly, the FRA only deals with the recognition of rights, saying little about post-recognition governance arrangements and the application of existing forestry/conservation laws or the role of the forest bureaucracy in them. While many consider this a weakness, this actually leaves room for evolving culture and region-specific plural governance systems through dialogue and negotiations with relevant authorities by rights-holding communities post the recognition of rights.

Rules for Implementing the Act

The rules finally notified by MoTA on 1 January 2008, a year after the Act was passed by Parliament, list the procedures, powers, and responsibilities of the authorities specified under the Act, the types of evidence acceptable in support of the claims and a clear procedure for dealing with petitions against rejection of claims. However, the rules failed to provide clear procedures for recognizing the rights of special groups such as transhumant pastoralists and pre-agricultural communities for whom the gram sabha-based claim-making process is unsuitable or to emphasize the distinction between claims for land under occupation and claims based on disputes arising from faulty forest settlements or for which pattas or leases had been issued by other government agencies (for which there is no upper limit for the area which may be claimed). The biggest shortcoming in the rules was a lack of clarification on the procedure for activating hamlet-level gram sabhas as defined in PESA in Schedule V areas or that in other areas with panchayats, the gram sabha had to be of the village. Instead, by requiring the gram panchayats to call initial gram sabha meetings (when the FRA does not even mention gram panchayats), the rules created the impression that the gram sabha for initiating the process of recognition of rights had to be that of the panchayat that has multiple villages in many states.

Dynamics of FRA Implementation Till Date

After over four years of implementation, the FRA has a long way to go before being able to undo the historical injustice to forest-dwelling communities. The intensity of bureaucratic and political resistance to the radical mandate of the FRA became evident in the concerted efforts made to stall the implementation of the Act even after it was passed unanimously by both houses of Parliament in December 2006. Finally brought into force on 1 January 2008, many state and non-state actors have attempted to undermine the FRA by ignoring it or subverting it through wilful misinterpretation. The Prime Minister's Office (PMO) exhorted the states to start time-bound implementation as soon as the FRA came into force, without ensuring that potential claimants and the officials responsible for implementation were fully informed about the law's provisions. Instead of clearly requiring hamlet or village gram sabhas to receive claims, at the PMO's behest, the Panchayati Raj minister wrote to all chief ministers on 15 February 2008 to get panchayats to call gram sabha meetings on the 28th of the same month to elect forest rights committees (FRCs). The states were expected to constitute the sub-division-, district-, and state-level committees and to make villagers and government officials aware of the Act's provisions during the few intervening days.[32]

Not surprisingly, the FRA's implementation had a disastrous start. Neither the villagers nor the officials who participated in the initial gram sabha meetings were informed about the Act's provisions or the role of the FRCs elected during those meetings. In one village in Odisha, only elderly people had shown up for the gram sabha meeting as they thought the meeting was about old age pensions. The school teacher deputed to conduct the meeting constituted an FRC from among the assembled elders without ensuring the required two-thirds quorum.

Since neither the rules nor the Panchayati Raj minister's letter clarified which gram sabha had to be called, practically all states that initiated implementation on the central directive ignored the Act's requirement of making hamlet-level gram sabhas in scheduled areas the initiating authority, using the much larger panchayat gram sabhas instead. Odisha was one of the few states to clarify early that revenue village *palli sabha*s, instead of multi-village panchayat gram sabhas, would be the initiating authorities under the Act. In areas where there

are strong grassroots movements, such as Odisha, and some parts of Gujarat, Madhya Pradesh, and Maharashtra, they were successful in persuading the state governments to permit hamlet-level gram sabhas in scheduled areas where demanded by the villagers. Despite its large scheduled area and tribal population, Andhra Pradesh refused to permit hamlet gram sabhas during its first phase of implementation, thereby considerably disadvantaging adivasis living in remote hamlets of large multi-village panchayats. FRCs of large and heterogeneous panchayat gram sabhas are dominated by non-tribals who have often rejected the claims of their adivasi residents.

Similarly, statements from the PMO, the Ministry of Tribal Affairs, and the office of the President of India till 2009 referred only to the individual land rights claimable under the FRA, ignoring the diverse community forest rights and gram sabha empowerment also provided for. Statements of the central government also conveyed the impression that the FRA was meant only to recognize the rights of STs and not those of other traditional forest-dwellers, despite the law providing otherwise. Till recently, the nodal Ministry of Tribal Affairs provided poor leadership. The ministry has been monitoring only the number of claims received, rejected, or accepted, without any attention to compliance with gram sabha-centred procedures or to the diversity of rights claimed.

Taking a cue from the central government, the states started implementation with a primary focus on recognizing only individual land rights of STs, with an almost blanket rejection of claims by other traditional forest-dwellers. While some states are yet to begin or have been slow starters, others, which had upcoming state elections, initiated rapid, time-bound, and haphazard implementation with the intent of gaining electoral benefit. The tight time schedules for completing implementation initially prepared by Chhattisgarh and Andhra Pradesh (both had upcoming assembly elections) made it impossible to follow the democratic procedures laid down in the FRA. Chhattisgarh, with one of the largest forest-dwelling tribal populations, refused to distribute or accept claim forms for community forest rights and permitted lower-rung field officials to accept, reject, modify, or reduce individual claims as they liked, throwing all specified procedures to the wind. West Bengal similarly vested effective control over receiving and verifying claims in government officials instead of elected FRCs (see Joint Committee, 2010, and their Chhattisgarh trip report at http://fracommittee.icfre.org/

TripReports/Chhattisgarh/Chhattisgarh%20visit%20note,%20NC%20Saxena%20_FINAL_.pdf; also Council for Social Development, 2010).

Odisha took the lead in issuing several circulars explaining the correct procedures to be followed, although the majority of the implementing field officials as well as villagers remain unaware of them till today. The rules permit rejected claimants to appeal, but this has been denied in most states. In almost all states there has been little generation of awareness or dissemination of information about the law's provisions among potential claimants or implementing officials. Members of most FRCs remain unaware of their role and most government officials and elected panchayati raj representatives involved with implementation are poorly informed about the law. Chhattisgarh's government spent millions on publicizing rice distribution at Rs 3 per kg but did not spare even a penny for publicizing the FRA.

Many states have not ensured one-third women's representation on FRCs and have issued titles in only men's names instead of in the names of both spouses. Most states are rejecting oral evidence permitted by the rules while illegally demanding other forms of evidence.

Almost across the board, the focus of implementation has remained only on one of the 13 claimable rights—that of rights over forest land under occupation with all other rights, even over land, being ignored. Community forest rights continue largely being ignored with some recent achievements. Diversion of small areas of forest land for community facilities, requiring a different procedure, has been reported as recognition of community rights creating a false impression of such rights being recognized.

State FDs in practically all the states continue attempting to obstruct proper implementation of the law. They have unilaterally been rejecting claims without authority, or demanding evidence not required by the rules. Even before the FRA had come into force, forcible evictions and/or plantations on cultivated forest land were undertaken in many states to prevent cultivators from claiming rights over the land. This continues to date. Grassroots movements continue reporting widespread use of JFM committees for forcible evictions for plantations. In many areas, JFM committees have been made into FRCs with the forest department controlling the claim-making process through them. FDs have also been spreading misinformation about the FRA—that it is not applicable to reserve forests and protected areas and that only

STs are eligible for claiming rights. By delaying the FRA's coming into force, over 30,000 sq kms of forests under Project Tiger were hurriedly notified as Critical Tiger Habitats without following the specified legal process on the unfounded assumption that these could be kept out of the FRA's purview. The villagers living within these critical tiger habitats are now being pressured—illegally—to relocate without recognizing their rights, proving that co-existence will lead to irreversible damage, or obtaining their free and informed consent, all required under the FRA. Central and state governments even attempted to declare implementation complete by the end of 2009, despite the law having no such provision.

Grassroots Assertion of Rights and Its Impacts

Grassroots movements have maintained sustained pressure for the proper implementation of the FRA and have been challenging and protesting the illegalities being committed. In states and regions where such movements have a strong presence, mobilization and awareness among communities has been spreading, with the widespread filing of both individual and community claims. Through networking, experience-sharing, media coverage, and political mobilization, this awareness is beginning to reach new and distant areas and has had important impacts.

The arbitrary time-limit imposed on the implementation of the FRA has been withdrawn, and some states that had stopped accepting claims have re-opened their processes. In some states, inquiries into reasons for the excessive rejection of claims have been ordered, and attention is finally also being given to the recognition of community forest rights. Using the FRA as a weapon, sustained protests are being organized against the Ministry of Environment and Forests for continuing to divert forest land to non-forest uses, such as mining and dams, without recognizing forest rights. A significant milestone resulting from this was the denial of forest clearance in Odisha by the MoEF to mine bauxite in the sacred hill of the Dongria Kondh community for the benefit of Vedanta Alumina Ltd. The Supreme Court's judgement in the case challenging the MoEF's denial of final forest clearance has held that the gram sabha 'functioning under the Forest Rights Act read with Section 4(d) of PESA Act has an obligation to safeguard and preserve the traditions

and customs of the STs and other forest dwellers, their cultural identity, community resources etc., which they have to discharge following the guidelines issued by the Ministry of Tribal Affairs vide its letter dated 12.7.2012'. The Court has directed the MoEF to take the final decision regarding forest clearance for bauxite mining in the Niyamgiri hills based on the gram sabhas'decision whether the mining would affect their right to worship their deity, Niyam Raja, which is a right which has to be preserved and protected.

Also in Odisha, villagers resisting the allocation of their forest land to POSCO for a major steel plant have rejected the forest clearance granted to the company by the MoEF on the grounds that their forest rights have not been recognized.

The growing political importance of the FRA finally compelled the MoEF to undertake the first important complementary reform in the procedure for diverting forest land under the Forest Conservation Act, 1980. On 30 July 2009, the ministry issued an order to all state governments that no permission for forest diversion would be granted without evidence that the process of recognition of rights in the concerned forest area had been completed. Gram sabha resolutions certifying the recognition of the habitat rights of pre-agricultural communities and CFR rights, and giving informed community consent for use of the forest for a non-forest purpose, must now be attached with each application for forest diversion. The MoEF, however, has blatantly been violating its own order in permitting the large-scale diversion of forest land. Accepting most of the substantial recommendations lobbied for through the National Advisory Council (which advises the central government on policy matters), the Ministry of Tribal Affairs has issued new guidelines in July 2012 and amendment rules in September 2012 to ensure that implementation conforms with the law's provisions. Key changes include withdrawal of the arbitrary time-limit imposed on implementation of the FRA, several other procedural improvements, a specific focus on recognition of community forest rights and clarifying the gram sabhas' powers to issue transit permits for NTFPs and preparing their own conservation and management plans for CFRs.

Many developments have taken place in different states also. In Gujarat, with close to 90 per cent of claims being rejected initially without informing the claimants of the reasons for rejection or providing them with an opportunity to appeal, two NGO members of the Gujarat

Adivasi Mahasabha, a network of grassroots organizations working with forest-dwellers, had filed a PIL case in the state's High Court against the illegalities committed in the recognition of rights. The High Court judgement of 3 May 2013 has directed the state government to withdraw all earlier instructions which violated the amended FRA rules and to effectively treat all rejected claims as pending and review them strictly in compliance with the amended rules of September, 2012. In other states, rejected claimants have also mounted challenges, and rectifications are beginning to be made.

In response to grassroots protests and the observations of a couple of high-level committees, authorities in Andhra Pradesh found in January 2011, that as many as 71 per cent of the villages/habitations with a forest interface had been left out of the first, hurried phase of implementation of the FRA; fresh claims have been invited from both new and old villages for a second phase of implementation. The state has also permitted the reconstitution of FRCs at the hamlet-level in place of those formed for large, multi-village panchayats.

The most significant change has been in the recognition and assertion of community forest resource (CFR) rights. With MoTA now exhorting states to prioritize the recognition of community forest rights, the first breakthrough came in Maharashtra. Mendha and Marda villages in Gadchiroli district of Maharashtra were among the first in the country to receive CFR titles. Now, an estimated 1322 villages in the Gadchiroli and three other districts have received CFR titles for a forest area of over 625,890 acres. Despite the FRA defining bamboo as a non-timber forest produce over which the villagers have ownership and disposal rights, the Maharashtra FD insisted that under the Indian Forest Act, 1927, bamboo was classified as timber, which the gram sabha could not harvest and transport outside the village. The central Minister of Environment, the state's chief minister and forest minister, and other high-ups needed to go personally to the village to force the Maharashtra FD to hand a transit passbook over to the gram sabha, after firmly conveying to the department that the FRA of 2006 over-ruled the Indian Forest Act of 1927. Once authorized, the village earned, in 2011, about Rs 10 million from the harvesting and sale of bamboo, with a large percentage of the money going to villagers as wages. This provides a glimpse of the FRA's potential for enhancing livelihoods and incomes of forest-dwelling communities by restoring their control over forest resources.

Other villages in Gadchiroli district had to contend with illegal conditions being inserted in their CFR titles including that the FD will not be obstructed from implementing its working plan in the CFR areas, which effectively negates the CFR right. Second, most of the other CFR areas are leased to a paper company for bamboo harvesting and the lease had not been revoked despite the recognition of CFR rights and the villagers' demands. However, with persistent struggle and lobbying, more villages have been issued transit permits to transport their bamboo harvests from CFRs to the market with some having undertaken bamboo harvesting. The recently amended FRA rules now empower gram sabhas to issue their own transit permits. During 2013, 18 villages spread across Gadchiroli, Gondia, and Amravati districts have also asserted their right to harvest and sell tendu leaf from their CFRs—an experience which will be monitored by groups from several states to evolve their own strategies for tendu leaf next year.

Inspired by the Mendha experience, on 20 June 2012, Jamgudi village in Kalahandi district in Odisha also harvested bamboo, which had flowered in its CFR area, becoming the first village in the state to do so. With the central minister of Tribal Affairs writing to the state chief minister to instruct concerned authorities to permit the villagers to transport their harvested bamboo outside the village, several other villages in the district which have also received their CFR titles are also planning to harvest their bamboo after the monsoons.

The Soliga tribal community in Karnataka has received community titles over three of the five forest ranges within the core area of the BRT Tiger Reserve, covering a number of forest and cultural rights. The community has also restarted NTFP collection earlier banned by the Karnataka FD (although they still have to deal with the department's resistance). In Uttar Pradesh, land titles have been awarded to the tribal residents of a forest village (which the Uttar Pradesh FD had been trying to evict) in the core area of another tiger reserve and the process of converting it into a revenue village has started.

In response to grassroots mobilization, implementation of the FRA is finally being extended to non-tribal majority districts in Gujarat and Himachal Pradesh only now, five years after the FRA came into force. The pastoral Maldhari community in the Kutch district of Gujarat has challenged the FD's working plan for the Banni grassland misclassified

as forest and is in the process of filing a collective community claim for the entire 2,500 sq kms of their customary pastureland.

Even where the state governments are not being responsive, communities have started asserting their CFR rights. In about 30 villages in the north of West Bengal, the local movement has initiated community institution-building by encouraging the gram sabhas to elect forest governance committees, which are evolving rules for regulating forest use. The gram sabhas have sent notices to the relevant authorities informing them of the constitution of their forest governance committees under the FRA rules for asserting their powers of protection and management. In the Nilgiris in Tamil Nadu, 59 gram sabhas have put up boards outside their demarcated CFRs and banned the Tamil Nadu FD and police from entering them without permission from the gram sabha. The Masinagudi panchayat in the Nilgiris in Tamil Nadu has challenged the legality of the notification of the Mudumalai Critical Tiger Habitat. In most of these areas, in confrontations with departmental staff it is the foresters who have had to back off due to the FRA.

In Jharkhand, grassroots groups have rejected JFM and are demanding restoration of their common property rights under the CNTA and SPTA. Eighteen panchayats mobilized by the Jharkhand Jungle Bachao Andolan in Ranchi district of Jharkhand state filed CFR claims, to reclaim their recorded rights over large forest areas under the CNTA. These forests were vested in the Jharkhand FD by executive fiat after independence without due legal process. The district collector agreed to approve their claims but the Jharkhand FD raised spurious objections. Angered by this, all 18 panchayats have decided to assert their authority over their CFRs on the grounds that their rights stand recognized from the day the FRA came into force.

In Uttar Pradesh, activists and tribal leaders have been made members of the State Level Monitoring Committee and instructions have been issued that panchayat pradhans cannot be the chairpersons of FRCs so as to prevent the elite from sabotaging the claims of the poor. The state government has issued orders for converting several hundred unrecorded *taungya* villages into revenue villages and 4833 individual titles have already been issued in 29 taungya villages spread over five districts of the state. The activists have identified the illegal transfer of

over 30,00,000 ha of common land to the FD after independence and are planning to reclaim the same through the FRA.

As awareness about the law and flaws in the initial implementation processes is spreading, demands for re-doing it properly are growing. Many poorly constructed FRCs have been reconstituted and arbitrarily rejected claims are being reviewed. Women's groups are attempting to increase gender-sensitivity of the claim-making process and to ensure that women have a stronger voice in post-recognition management of CFRs.

Although uneven across the country, grassroots assertion of rights under the FRA is beginning to spread. In areas with strong movements, day-to-day rent-seeking and harassment by forest staff has declined. If the FD continues with illegalities, the villagers are now able to implead the nodal tribal departments to take action. Many sub-divisional magistrates and district collectors as chairs of Sub Division Level Committees (SDLCs) and District Level Committees (DLCs) have also started exerting pressure on the FD to follow the law. It remains to be seen how state governments bent upon violating the law's provisions will respond to grassroots assertion. This time, however, the law is on the villagers' side with a perceptible shift in the balance of power between villagers and the forest bureaucracy.

Where to From Here?

Born out of outrage at the sheer brutality of FD evictions of the country's most vulnerable communities from supposedly state forest land, the movement for the FRA has brought the entire edifice of the Indian forestry establishment under scrutiny in a manner never witnessed since the advent of colonial forestry. Although by no means a panacea for the multitude of conflicts and contradictions plaguing India's forested landscapes, especially in the context of the emerging threats posed by globalization, the FRA has sown the seeds for a comprehensive re-examination of the official definition/construction of forests and their boundaries, and the very rationale of current state-controlled, centralized and uni-functional forest management. It has generated the imperative of democratizing forest governance through fundamentally changing the balance of power between local communities and the forest bureaucracy. Through restoring citizenship rights and dignity to

India's indigenous forest-dwelling communities, the FRA can ensure greater livelihood, cultural, and ecological security. By so doing, the new law has the potential of reshaping people–nature relationships that have been badly ruptured since colonial rule, at least in remote and ecologically fragile areas where community cohesion remains strong. This can facilitate restoration of plurality in ecological governance rooted in multi-functional land-uses and values based on indigenous biodiversity knowledge. The fundamental questions of who owns the country's forests and, by whom and for what objectives they should be governed and managed within the country's democratic and constitutional framework, have come centre-stage for the first time.

The rationality of multi-functional community land being kept under centralized state control for uni-functional 'forest' management for the benefit of distant elites is no longer tenable. Prudent extraction for livelihoods by local communities is unlikely to result in the type of systematic forest and biodiversity destruction which has been taking place under the rubric of official 'scientific' forest management.

But major challenges remain. These emanate both from the limitations of the FRA discussed earlier and the external challenges to its implementation. While people are claiming their rights on land already classified as forests, the state forest boundary is continuing to be extended through legally questionable means. The MoEF guidelines now require that non-forest land used for compensatory afforestation must be notified as PF or RF and the records mutated in the name of the FD. The guidelines specifically recommend bringing the few surviving community lands as well as disputed land like Madhya Pradesh's Orange Areas under FD control through notifying them as state forests.

Simultaneously, pressures generated by globalization and the race for a higher rate of economic growth have increased the rate of diversion of forest land for mining, dams, and other development projects. Although it is illegal under the FRA to evict people from forest land till their rights have been examined, and despite MoEF's July 2009 order requiring recognition of rights and community consent before any diversion of forest land, the MoEF has been permitting diversion of such land through the non-transparent and undemocratic process permitted under the FCA. Once gram sabha rights to protect and manage their CFRs are formally recognized, the present process for diverting forest land will no longer be tenable.

Finally, there is the risk posed by the Government of India signing international agreements related to climate change and carbon sequestration, which have major impacts on people's forest rights without any democratic or consultative process. The pressure from industry for the allocation of forest land for dams as well as industrial and mining projects, also remains very high. Although people with recognized rights will be in a stronger position to challenge such impositions, scattered and less organized communities will find them harder to resist. These threats and challenges cannot be addressed till forest management is grounded in holistic natural resource governance by democratic local institutions with secure land and forest tenures.

Notes

1. *T. N. Godavarman Thirumulpad vs Union of India* W.P (C) No. 202 of 1995

2. Large areas of natural grassland ecosystems have been destroyed by the plantation of exotic tree species in them due to their being classified as forest land and handed over to tree-focused FDs (Sarin 2005a).

3. This still applies to large parts of the Northeastern states.

4. This is a highly misleading and unfortunate term for the uncultivated commons which remains in official use till today. For policy-makers remote from rural realities, the term 'wasteland' triggers the perception of land actually lying waste. Millions of rural livelihoods dependent on such lands continue being destroyed due to their allocation to other uses without taking their existing uses and users into account.

5. The Reserve Forests of north-west Bengal were shifting cultivation land of tribal communities who were initially pushed off their lands and later converted into bonded labour for forestry operations under the *taungya* system (Ghosh 2006).

6. The term nistar means usufruct rights for meeting local households' own needs.

7. Mandated to strengthen the Van Panchayats under the World Bank-funded UP Forestry Project, the state FD revised the Van Panchayat Rules first in 2001 and again in 2005. Despite vehement protests by Van Panchayats, the new rules have reduced their autonomy and made them akin to Joint Forest Management Committees with a forest official now the member secretary-cum-joint-account-holder of every Van Panchayat.

8. South Africa, for example, passed a law after the end of apartheid which enables indigenous African communities to claim restitution of their lands forcibly appropriated during apartheid.

9. Although 4.3 million hectares of forest land was diverted to non-forest use between independence and 1980, this was only a fraction of the 26 mha declared to be state forests after independence, often without due legal process.

10. Settlement officers for settling the rights of tribals in over 100,000 ha notified as RF under Section 4 of the IFA decades ago have been appointed in Andhra Pradesh only recently. The Odisha FD is being unable to provide maps of reserve forests to gram sabhas during implementation of the FRA as these simply do not exist.

11. See Kumar (2008) for an excellent investigation of the process of disenfranchisement of shifting cultivators in Odisha.

12. See Ghosh (2007) for how the forest rights of tenants in south-west Bengal were illegally extinguished.

13. For examples of similar arbitrary conversion of diverse kinds of land into state forests without due legal process in other states, see Sarin (2003) and (2005a).

14. This case is largely based on Garg (2005).

15. One of MoEF's September 1990 circulars (see section 2.5) required conversion of such leases, pattas, and grants issued by the revenue department under due legal authority into a legal title—but the circular was never implemented.

16. Section 3 (i) (g) of the FRA now provides for a right to conversion of such pattas, leases, and grants on forest land into titles but this right has also been ignored during implementation to date.

17. Jharkhand's case is largely based on Upadhyay (2005).

18. However, *bhuinhari* and *mundari khuntkattidari* tenancies were exempted from the ambit of this Act by a 1954 amendment.

19. See http://www.apforests.gov.in/Forest%20Policy-1952.htm.

20. For examples of illegal cancellation of land titles based on the Court's 1996 order in Jharkhand and Maharashtra, see Sarin (2003).

21. Personal interview with the staff of a centrally funded health NGO who were being prevented from delivering basic health services to the villagers living inside the Sunabeda wildlife sanctuary. When they complained to the district collector, she told them that even her staff were being prevented from delivering PDS rations to the villagers. She herself had to complain to her senior to get the PA manager to stop preventing the delivery of essential services to the villagers living inside the PA.

22. Prior to independence, no law could be extended to partially excluded areas (equivalent to present Schedule V areas) without the approval of the Agent of the Crown. The Indian Constitution reversed this provision and, to date, no state governor is known to have exercised her/his power to withhold any law detrimental to adivasis from Schedule V areas. Interestingly, K.C. Deo,

the present Minister for Tribal Affairs, has written to all governors of states with Schedule V areas to exercise their power and prevent the transfer of tribal land to private companies for mining.

23. The apparently constitutionally protected communal tenures under customary laws, even in Schedule VI areas, are easily overruled by statutory laws and Supreme Court orders.

24. According to the 2001 Census, Odisha had 623 settlements on forest land with a total population of 74047, out of which over 50000 were STs. These are not 'forest villages' created by the FD but either unsurveyed villages, which have been classified as forests or settlements of the lakhs of those displaced by large dams and other projects without any rehabilitation who have moved to forest land. Residents of such villages are often unable to obtain voter identity cards or domicile certificates to prove their Indian citizenship as these can only be issued by the revenue department, which has no jurisdiction over forest land.

25. Circular No. 13-1/90-FP of Government of India, Ministry of Environment and Forests, Department of Environment, Forests and Wildlife dated 18 September 1990 addressed to the secretaries of FD of all states/ UTs. The six circulars under this were:

1) FP (1) Review of encroachments on forest land.
2) FP (2) Review of disputed claims over forest land, arising out of forest settlement.
3) FP (3) Disputes regarding pattas/leases/ grants involving forest land.
4) FP (4) Elimination of intermediaries and payment of fair wages to the labourers on forestry work.
5) FP (5) Conversion of forest villages into revenue villages and settlement of other old habitations.
6) FP (6) Payment of compensation for loss of life and property due to predation/depredation by wild animals.

26. Unofficial estimates suggest their number to be much higher.

27. Only the Maharashtra government issued detailed guidelines and partially implemented these circulars in 2002 after sustained protests against evictions by adivasi movements.

28. In 2009, NAEB revised its operational guidelines for the NAP which generally retain the same structure and have added a stat-level FDA with all division-level FDAs in the state as members. Although the revised guidelines state that different states can use their own JFM guidelines but still provide for the forester/block forest officer to be the member secretary of every JFMC. Totally ignoring the FRA, they aim to promote formation of JFMCs in every forest fringe village in the country (NAEB 2009).

29. As mentioned earlier, about a million families in undivided Madhya Pradesh alone stand to benefit from secure tenures over their cultivated lands under this provision.

30. Given the political economy of law-making and the compromises that had to be made in the enacted version of the FRA, the law has a number of ambiguities and limitations. For critiques of the law, see, for example, Bhullar (2008); Saravanan (2009).

31. In Odisha, some sympathetic government officials are attempting to regularize pre-1980 forest land occupation by OTFDs displaced by development projects under the MoEF's 1990 circular although such regularization requires approval of the Supreme Court.

32. This was despite the fact that during 2007, the PMO, together with the MoTA and MoPR, had prepared a schedule for the Act's implementation in which four months had been allocated for disseminating information about the FRA among the villagers and training government officials of different departments prior to initiating implementation. (Information obtained from MoTA under RTI).

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