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Forest Rights Act, 2006: Empowering Indigenous Communities through Recognition of Traditional Forest Rights

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Abstract:

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, informally called the Forest Rights Act (FRA), represents a significant structural break with Indian environmental, human rights and constitutional property regimes. For over a century, colonial laws severed organic links between tribal and other forest-dwelling communities and their traditional forested ecosystems, characterising them as encroachers and unlawful holders of state property. By providing for the formal recognition, recordation, and vesting of Individual Forest Rights and Collective Forest Rights over community and individual forest lands that historically were ancestral lands of these populations, the landmark FRA seeks to rectify a long and multifold historical injustice. This qualitative socio-legal study analyses the implementation framework of the FRA by addressing its dual constitutional objectives of structural community empowerment and decentralised ecological conservation. Through a combination of qualitative analysis of the provisions of the FRA and empirical information on ground-level implementation reports from across India, this paper identifies the major systemic, institutional, and operational constraints that continue to undermine the law's transformative potential. These include severe bureaucratic resistance within the forest department, structural impediments and evidential challenges for non-tribal traditional forest dwellers in making claims, and the conflict of the FRA with corporate resource extraction interests and other major environmental laws. Ultimately, the article offers an integrated set of legal, institutional and operational recommendations to bridge the gap between its progressive text and flawed implementation so as to achieve for India's forest dwellers both socio-legal justice and substantive self-governance over their traditional environments and livelihoods.

Key Words: Forest Rights Act; Indigenous Communities; Historic Injustice; Gram Sabha; Community Forest Resources; Democratic Decentralisation; Environmental Jurisprudence; Socio-Legal Justice; Resource Extraction; Bureaucratic Resistance.

Research Objectives and Methodology:

1. Research Objectives The core purpose of this extensive socio-legal research work is to assess the effectiveness of the 2006 FRA in fulfilling its twin objectives of rectifying historic injustice and decentralised environmental governance. To this end, the following operational objectives

serve as the research guide: First, an evaluation of the historic, legal and ecological background and colonial and post-colonial forest management policies that have led to systemic dispossession and alienation of indigenous communities from their ancestral lands; Secondly, a rigorous textual analysis of the statutory framework of the FRA for Individual Forest Rights (IFR), Community Forest Rights (CFR) and Community Forest Resources (CFR). Thirdly, an identification and classification of the major institutional, procedural and systemic constraints responsible for differentiated, and often negative, outcomes in claims' recognition across various Indian states and the implications thereof for claims' rejection rates. Fourthly, a detailed exploration of the interaction, tension and collision between the FRA and major environmental laws that are often deployed in a way that directly frustrates community empowerment rights or impedes their access to their resource bases, particularly in context of industrial and mining land acquisition and diversion; Finally, the development of a set of practicable, operable legal and policy interventions to simplify verification processes, remove evidentiary barriers and strengthen Gram Sabhas/village councils as instruments of community-led environmental governance and sustainable development.

2. Methodology This study utilises a dogmatic and qualitative research methodology to combine close formal legal analysis with empirical insights from field implementation of the FRA. The principal legal base for this research is a thorough text-based analysis of primary legal materials, principally the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and its attendant rules, and significant judicial precedents from the Indian Supreme Court and various High Courts. This is complemented by a study of the existing academic and non-governmental literature, which comprises studies on political ecology, socio-legal issues, human rights, and detailed field assessments. Drawing on qualitative analysis of statutory provisions, and implementation progress on the ground from forest-rich States such as Odisha, Madhya Pradesh, Jharkhand and Maharashtra, this research makes broad generalisations about the patterns of implementation that affect forest governance throughout the country.

Introduction:

Historically, the symbiotic relationship between India's indigenous forest India's tribal peoples and their ancestral forest ecosystems was one of systemic dispossession. Even prior to colonisation, forest-dependent communities had managed local ecology and biodiversity through informal contexts, long-standing customary laws, and collective norms for forest habitat management. The politics of colonisation, however, through the enactment of the Indian Forest Act (1878), and its later reformulation in 1927, radically reconfigured this relationship by taking all forest land under permanent state ownership for the imperial extraction of resources.¹ The act penalised normal household activities of firewood gathering and nomadic farming, and criminalized practices of cyclic management of crops as trespass on "wasteland" acquired as state property.

In the early post-independence period, the colonial-era restrictive institutional framework persisted in the post-colonial state in order to propel state-led industrialization. Conservation policies instituted in the mid- to late twentieth-century (through the Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980) paid great reliance on an exclusionary "pristine

¹ See The Indian Forest Act, 1927, No. 16, Acts of Parliament, 1927 (India).

wilderness model of preservation,² which preached the necessity of impermeable human-nature boundaries, resulting in mass eviction, often with state and police brutality, which further impoverished already- vulnerable tribal communities and the existing overexploitation of wilderness.

In light of the mounting field evidence of such failures, the Centre for Science and Environment's re-evaluation of policy at the start of the new millennium led to the passage of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This legislation significantly incorporates the realisation that community forest use rights on their traditional lands remained unrecognised during forest reservation and resulted in a dynamic historic injustice to the community-based stewards of the forest.³ By (re)narrating environmental integrity in terms of human rights-based individual and community rights in the decentralised polity, the FRA ranks as a long-overdue legislative initiative on the patchy ecology-people relationship in the country.

New framework for Forest governance: The FRA, 2006:

A Departure from old norms. In India, for a long time, management and control over forest resources was consolidated with the centralised state forestry departments and treated as state property. However, the FRA 2006 represents a landmark departure by creating a legal architecture for decentralising forest governance. It returns resource rights and ecological control to the people from the state's bureaucracy, and recognises forests not merely as sources of revenue, but as indispensable to the survival of Forest Dwelling communities. It, for example, defines four categories of individual and community rights under Section 3(1) of the Act to protect the manifold lives and livelihoods of forest dwellers:

- (a) 'individual forest rights' to use land held for habitation or cultivation by the forest dwelling Scheduled Tribe (FDST) members, or Other Traditional Forest Dwellers (OTFDs);⁴
- (b) 'customary rights' over community and individual resource use;
- (c) 'rights over Minor Forest Produce' (MFP), or non-timber forest produce (NTFP), as well as to 'shared use of grazing lands';⁵
- (d) 'community forest resource rights' over areas they have traditionally managed for conservation and sustainable use⁶

² See Wildlife (Protection) Act, 1972, No. 53, Acts of Parliament, 1972 (India); Forest (Conservation) Act, 1980, No. 69, Acts of Parliament, 1980 (India).

³ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, pmbl., No. 2, Acts of Parliament, 2007 (India) [hereinafter FRA, 2006].

⁴ Id. § 3(1)(a).

⁵ Id. § 3(1)(c).

⁶ Id. § 6(1).

The combining of individual titles with community management rights makes the FRA a mechanism for democratic decentralisation and ensures that people who manage forests are able to manage and conserve them independently.

Adjudication and realisation of rights Under Forest Rights Act, 2006, :

A three-tier decentralised mechanism has been established; at the heart of the adjudication process for the recognition of rights has been local communities. This process is:

1. Gram sabha (1st tier): Each village level assembly holds inquiries within local jurisdiction, whereby individual as well as communal claims are examined and approved by the villagers in person. The Gram Sabha will map out the corresponding areas of land on local maps and prepare a record of it and forward a resolution to this effect to sub-divisional authorities.

2. Sub-Divisional Level Committee (SDLC) (2nd tier): A three-person committee (forest officer, revenue officer, tribal welfare officer) to work under a chairperson who will be the SDM. This SDLC will pass the claims after ensuring statutory compliance and forward it to the higher level.

3. District Level Committee (DLC) (3rd tier): headed by the district collector, will pass the claims of the SDLC and ensure the formal registration of legal title deeds on the records of land revenue.⁷ These registered claims would then act as legal proof for financial institutions

. Legal safeguards in this procedure are the provision that a claim shall not be rejected by DLC without providing the concerned persons or community an opportunity to provide further proof of their claim. This process for determination of forest rights is the only legal means available for their declaration. Hence any declaration of an area as reserved or protected forest without undertaking the above process under the FRA shall stand nullified by the Executive action. In terms of this law the traditional uses of lands and occupation by forest-dependent population will constitute proof of the existence of rights on lands, and this also de-links the proof of rights from documentary records and grounds the same on the factual occupation and utilisation of lands.

Challenges in Implementation Through FRA:

A well-designed and important law for empowering the marginalised, the ground implementation has been a challenge. Several factors influence the progress:

- **Institutional resistance of forest departments:** The forest department continues to hold on to the belief that forests are theirs and the new Act may compromise its authority.
- **Data gap and poor implementation capacity at village level:** Not many gram sabhas have the capacity to undertake field-based investigations and spatial mapping that is crucial for validating community resource rights claims.
- **Evidentiary and procedural issues:** The Act requires, for community resource rights a proof of historical traditional usage and sustainable use. In practice, these are difficult for some categories of community, and are open to interpretations that can be detrimental to the community. This becomes particularly severe for OTFDs and community-based rights. For OTFD, the Act says "at

⁷ See id. § 6(5).

least three generations or seventy-five years, whichever is less, have been primarily dependent on forests for livelihood at any point of time".⁸

- Uneven progress across the country: Some states, like Odisha and Maharashtra, have seen good progress; others, like Uttar Pradesh, West Bengal, etc., are lagging behind in effective implementation.

- Political will and administrative will: The success and the speed of the implementation of the Act are largely dependent upon the political commitment of the state and central governments, as well as the will and cooperation from their administrative machineries at different levels.

It is essential that this Act, which gives a right to forest dwellers, is taken up as a matter of policy by various states, in consultation with the affected communities, and then its smooth and equitable implementation through the existing institutional framework. There must be enough support of technology and human resources at ground level, so that it can fulfil its mandate and empower marginalised communities that have long been the custodians of India's forest resources.

Jurisprudential Evolution and Judicial Interventions:

As a symbol of the body's participation, the judiciary has been more to represent the contradiction in the national debate by the body over the issues of how best to reconcile environmental protection and human rights. On one hand, the Supreme Court of India issued a significant and groundbreaking ruling on Niyamgiri, re-establishing the high dignity of the Gram Sabha's power in controlling whether or not projects would violate the people's cultural and religious rights.⁹

One such example is where a large mining company wanted to mine bauxite from a hill that was sacred to the Dongria Kondh tribe. The Supreme Court held that Gram Sabhas, or village assemblies, had the primary right to decide in any mining project whether or not it would infringe upon their community welfare and religious rights and thus raised the village council from an administrative agency to a legal person having the right to foreclose corporate development over the rights to the village.

On the other hand, the judiciary has given judgments that have instilled major fear and uncertainty among forest-dwelling communities. It is in this context that the tension manifested itself in a contentious 2019 order of the Supreme Court directing state governments to unilaterally evict millions of forest-dwellers whose claims had been rejected under the Act.¹⁰

⁸ Id. § 2(o).

⁹ See *Orissa Mining Corporation v. Ministry of Environment & Forests*, (2013) 6 S.C.C. 476 (India).

¹⁰ See *Wildlife First v. Ministry of Forest, Environment and Climate Change*, Writ Petition (Civil) No. 50/2008, Supreme Court Order dated Feb. 13, 2019 (India).

The result of this eviction order was a wave of protests nationwide, and it was opposed by human rights groups. It was observed that the majority of the rejections were the result of administrative failures, lack of legal support and the action of District Level Committees without affording the claimants a hearing. As a result of all these, the Supreme Court of India, a few months after its order, stayed its own order and directed states to reconsider each rejected claim under a more objective process of hearing. This back-and-forth illustrates the systemic tangle between the state-centric conservation model and the human-rights-based model of forest governance.

Conclusion:

The Forest Rights Act, 2006 is still one of the significant legislative steps towards attaining socio-legal justice and empowering indigenous tribes and communities. While establishing individual tenures and community rights over forests and natural resources, it not only questions the conventional colonial conservation policies but also establishes an effective link between ecology and people's right to natural resources. The Act ultimately makes indigenous ecological practices sit comfortably with statutory authorities and opens a way to productively integrate ecological knowledge with modern legislation.

Achieving the FRA's vision, however, will mean overcoming very serious institutional inertia, making the gap between design and implementation of the law thinner through a broad-based administrative overhaul. Administrative changes necessary are: boundaries mapping should happen in electronic format, reducing errors caused by manual input; the documentary requirements should be made more modular for OTFD applicants and an independent monitoring agency should keep a close eye on the functioning of the District Level Committees.

More importantly, state agencies should accept the Gram Sabhas not only as an advisory body, but largely as a primary institution of self-governance. It is only when these structural bottlenecks are overcome that India will be able to overcome the past imbalances and ensure livelihoods and dignity of its forest-dependent people on a sustainable basis.
