Forest Rights Act: Towards the End of Struggle for Tribals?

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Introduction

Tribals, who are a continuously neglected lot, are the Forest Dependent People (FDP) in India. Their deprived condition was recognised by the framers of Indian Constitution; hence they were identified for special protection by notification as 'Scheduled Tribes' through the Constitution (Scheduled Tribes) Order, 1950. At present there are about 700 tribes listed under this Schedule. Among them there are 75 Particularly Vulnerable Tribal Groups (PVTGs), whose living standard falls much below the Human Development Index (HDI) (GoI 2011). Overall, this means that there are 8.2 per cent citizens in India whose standard of living is much below the national average (Census of India 2011). Incidentally, Indian tribals form the largest chunk of the tribal population of the world.

In terms of their rights, the struggle against external forces became more intense and challenging during the colonial regime, as during the pre-British or pre-modern forest administration, forests were in the domain of kings and their kingdoms. The local people used to inhabit, cultivate, graze their cattle and earn their livelihood from forest resources without any restrictions or impositions (Guha 1983). However, with the advent of the British, the tribals were looked upon as 'encroachers' on their own land. They became illegal in the eyes of those who in actuality had usurped control over the forests illegitimately, using force and power (Bijoy 2008). Saxena (2006) terms this trend as a virtual war against the tribals since colonial times to the present regime.

The Twenty-Ninth Report submitted by the Commissioner for Scheduled Castes (SCs) and Scheduled Tribes (STs) gives an account of the excess violations committed against the tribals. The report precisely states that 'the criminalisation of the entire communities in the tribal areas is the darkest blot on the liberal traditions of our country'. It further iterates the perpetual harassment, evictions and atrocities being faced by the tribals (GoI 1992).

Introduction of the Forest Rights Act (FRA) is seen as a radical departure from the earlier state-monopolistic forest acts in the country (Ghosh 2006) that had direct implications on the lives of the tribals. In this context, this paper attempts to assess the hardships and struggle that tribals had undergone before, finally succeeding in getting favourable legislation enacted for them by the Government of India. At the same time, through

a critical review of literature, it looks into the status of implementation of the much talked about 'pro-tribal' Act.

For this, two significant states, Chhattisgarh and Gujarat, have been selected for analysis. The wisdom behind the selection of these two states is that Chhattisgarh is still catching up with the development process compared to Gujarat, which is generally considered a developed state in India. Chhattisgarh is plagued by governance challenges due to insurgency in the very areas where the Act needs implementation. On HDI indicators, Chhattisgarh, with an HDI value of 0.358, has the dubious distinction of being the Indian state with the lowest HDI value, while Gujarat at 0.621, is considered as medium – the national average HDI value is 0.47 (GoI 2011). Besides, Chhattisgarh has 7.7 per cent of the country's forest cover, while Gujarat has only 0.46 per cent. When the proportion of forest cover to geographical area of the respective states is compared, Chhattisgarh has a considerable 41.42 per cent, while Gujarat has only 7.62 per cent. The share of the population of tribals in Chhattisgarh is 32.5 per cent, while tribals in Gujarat account for 14.9 percent (Census of India 2001) of the total population.

Further, tribals in Chhattisgarh and Gujarat are poor and mainly landless, just like a majority of their counterparts are elsewhere in the country. They are engaged in small-time farming, pastoralism and nomadic herding. They live mostly in forest villages, especially in Chhattisgarh (Kumar 2009). These villages are set up by the Forest Department (FD), and some are as old as 80 to 90 years. Chhattisgarh has 425 such villages, while Gujarat has only 199 (GoI 2012a). Natural differences in terms of forest, population and human factors, viz. economic infrastructure, governance, etc., make it interesting to understand how two states that are contrasting in so many ways deal with a sensitive Act such as the FRA.

The paper is organised into seven sections. Besides the introduction in the first part, the second and third sections trace the Forest Acts that have been enacted in India and which have affected the lives of the FDP, in particular, in the context of the two states chosen for this study. Section four traces the evolution of the FRA and the triggering incident which led to this movement. Section five defines the FRA as it is in the Act, and the rules framed for its implementation. Implementation of FRA and its status as prevailing in the states of Chhattisgarh and Gujarat are discussed at length in the sixth section.

Forest Acts in India and the FDP

By the early nineteenth century, the colonial regime was controlling vast tracts of India's forest land (Gadgil and Guha 1992). This began a history of suffering for the tribals in every way, especially in respect of their right to livelihood, besides disturbing traditional forms of conservation and

management of system of forests (ibid.). This was also the time when centralised forest administration or planned forest management started taking roots in India. Between 1864 and 1865, the first Forest Act legislations were made. The enactment of the 1878 Act gave the colonial government immense powers to declare any forest land as 'government land', resulting in reservation of forests (Springate *et al.* 2007). During this process, the tribals agitated, protested and rebelled, only to be suppressed mercilessly (Sinha 2007).

There was also a sort of reprieve during this phase in the form of the Madras Presidency Act of 1882, which appeared to be concerned for the people and for settling their rights. However, the 1894 National Forest Policy (NFP) further reiterated the regulation of forest users' rights and privileges. In the same year, the Land Acquisition Act of 1894 came into force, whereby land could be compulsorily acquired for 'public purpose'. This Act proved to be draconian for the forest dwellers because ever since then, they have been displaced on the pretext of one or the other developmental project in various parts of the country (Springate *et al.* 2007).

The Forest Act of 1927 was a comprehensive legislation which had provisions for 'village forests' but did not implement these. This Act, however, only continued the British legacy. Even after India's independence, power remained centralised in a bureaucratic Forest Department (ibid.). The NFP of 1952 focused on protecting forest resources with centralised control, while exploiting its resources commercially by subsidising community rights through minor forest produce (MFPs) and depriving the livelihoods of the FDP (GoI 1952). By the 1970s, unrest in the forest areas started growing, following the *Chipko Andolan* ('hugging the tree' movement) and protests in Bastar. Creation of national parks and wildlife sanctuaries, following the Wildlife Protection Act 1972 (WPA), the high-handedness of the forest bureaucracy through the Forest Conservation Act 1980 (FCA), and the 1991 amendment to the 1972 WPA, further contributed to restricting the movements of the FDP (Springate *et al.* 2007).

The landmark 1988 Forest Policy was a slight shift from earlier legislations because it focused on conservation, subsistence needs and protection of rights, creating hope among the FDP (GoI 1988). In consolidation with this policy, on 18 September 1990, Government of India guidelines were issued for regularising encroachments and settling disputed claims over forest lands (Prasad 2003).

In 1987–88, the Commissioner of the SCs and STs, in his report to the Government of India, formulated guidelines to address the conflicts between the FDP and the FD. The report recommended conversion of all forest villages[1] to revenue villages, if they were not violating the FCA of 1927. It also identified the importance of people's participation in improving the forest economy (GoI 1992); however, the recommendations could

not materialise. Despite the SC and ST Commissioner's report, as well as a favourable 1988 policy, the problems of the tribals could not be solved due to the FD's bureaucratic mindset.

Provisions for FDP in Forest Acts Legislated by States Prior to FRA

Chhattisgarh

When the NFP of 1952 was criticised for dilution of rights of the community and extending the same to the private sector as gifts, the then government of Madhya Pradesh (Chhattisgarh was part of that state before it got bifurcated in 2001) recognised forest dwellers as owners of MFPs. This initiative was lauded as pro-forest-dwelling communities. However, this effort was rendered vain with the passing of the FCA 1980, since the forest jurisdiction was taken over by the Union government in order to contain fast-depleting forest resources (Samarthan 2010).

The Madhya Pradesh (MP) Forest Village Rules 1977 had a distinguishing feature related to the distribution of *pattas* (landholding documents) to forest village residents. Each of the families living in forest villages was to be allotted 2.5 hectares of land, and an additional 2.5 hecatres if there was more than one adult member in a joint family. Tribals were given preference over other communities. The *pattas* were valid for fifteen years subject to renewal. Specific forest produce laws such as, MP Tendu Patta (Vyapar Viniyaman) Adhiniyam 1964, MP Van Upaj (Vyapar Viniyaman) Adhiniyam 1969, MP Van Upaj for other than timber (Vyapar Viniyaman) Niyam 1969, had provided some relief to the forest dwellers by enhancing their livelihood prospects through extending rights to them to procure these forest produce, and by removing the unnecessary restrictions (ELDF 2005).

It is interesting to note that the government of Chhattisgarh in its forest policy recognised the traditional rights and concessions of entry into forest and use of the produce thereof by the people living in and around the forest areas. Such rights and concessions, popularly called '*nistar*',[2] also would cease, strangely enough, once the 'standard of living of the majority of people in the state improves'. This clearly shows the dubious intentions of the state towards the tribals. It forces one to think as to how an average standard of living for the entire state could be compared to that of tribals, who are acknowledged as being the poorest of poor sections among all the communities in the state as well as the country (GoC 2001).

Gujarat

The tribals in Gujarat received sympathetic attention in 1972 from the state government, when it decided to carry out massive regulation of forest land. This resulted in 10,900 hectares of forest land being distributed among 11,166 beneficiaries, followed by the distribution of another 21,082 hectares of land to 34,441 tribals. Such settlements continued until 1980

when the FCA was passed, which put a cap on such regulations. Yet, the old settlements continued in Gujarat until 2001, under the permissible provisions of the clauses in the FCA 1980 (Kumar 2009).

In 2004, the Ministry of Environment and Forests (MoEF), Government of India, released figures of encroachments by tribals in Gujarat. According to this, about 36,556.400 hectares of forest land was under encroachment; 14,416.860 hecatres of this land was cleared of encroachment by the authorities between May 2002 and March 2004. Yet a large chunk of the land was still under the occupancy of the people, projecting their dire dependency on it for their sustenance (ibid.).

It is remarkable to note that on the one hand, the government of Gujarat was showing generosity towards the tribals by regularising the so-called encroached land since the state was separated from Maharashtra in 1960, while on the other, it declared the tribal land as Reserved Forests[3] (RFs) and tried to afforest them in later years. Further, the tribals also had to suffer due to the developmental and irrigational projects that usurped almost 15 per cent of their land. This prompted the tribes to cultivate lands in the 'now' RFs, leading to them being labelled as encroachers on their own lands (DISHA 2012).

In sum, the condition of tribals' rights in Gujarat has been no different from that in any other state in the country. They were also victims of the one-sided demarcation process of forests – continuing the colonial legacy. The attitude of different regimes in the state could be termed inconsistent for their indifferent approach towards the plight of the tribals, and their rights were never respected. Instead, they were treated inhumanely by being subjected to physical beatings, indiscriminate and illegal arrests, foisting of false cases, and treatment as encroachers, offenders and culprits, when they were only earning livelihoods which was their justified right (Writ Petition 2011).

Furthermore, even the attempts to regularise forestland through the 1992 Government Resolution (GR) had many drawbacks in the form of the conditions laid for claims. Such requirements included: cultivation had to be before 1980; documentary proof of receiving benefits from government schemes; most of the land marked for regularisation had to be 8 acres and this too was to be adjusted with the claimants' revenue land if they had any. It was an uphill task for those who had no evidence to furnish and claim their rights on the lands they were cultivating (TFRA 2012).

Evolution of FRA

The immediate reasons that paved way for considering an Act such as the FRA by Government of India were the injustices against the tribals in various states, viz. Assam, Madhya Pradesh and Maharashtra. Attempts were made to forcibly evict them from their houses, farming lands and habitations, following the 3 May 2002 eviction orders issued by the MoEF. This

created a stir across the nation, leading to 'political liability'. The justification to protect forests and remove encroachers (in some instances of those who were cultivating land much before 1980) also came under severe criticism from all quarters. Hence, in October 2002, the MoEF had to issue a clarification order wherein it acknowledged that not all occupation of forest lands was illegal or an encroachment, and so they could not be evicted until their rights were verified (Springate *et al.* 2009).

The drafting of the Scheduled Tribes (Recognition of Forest Rights) Bill 2005 was entrusted to the Ministry of Tribal Affairs (MoTA). The ministry constituted technical resources groups consisting of other ministries, legal experts and civil society members, to render their expertise in shaping the Bill for legislation. It is important to mention here that the Bill had to cross several hurdles created by the MoEF, wildlife conservationists, as well as non-governmental organisations (NGOs) working for the environment. They were apprehensive that this Bill would cause severe damage to the forest cover and wildlife, and to the environment (Bhullar 2008).

To settle these differences between the pro and anti lobbies, the Bill was referred to a Joint Parliamentary Committee (JPC) in December 2005. Subsequently, after the JPC's recommendations were presented on 23 May 2006, it was again debated intensively by the conservationists. The JPC suggested certain changes: shifting the cut-off date to 1980; inclusion of non-STs; raising the land ownership ceiling from 2.5 to 4 hectares per family; and removal of penal provisions for forest dwellers (Ramnath 2008).

A Group of Ministers was asked to study the suggestions of the JPC, reach a consensus and resolve the crisis. However, by the time the group of ministers came up with a consensus Bill, it had already taken a revised shape. The new draft became the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006. Not surprisingly, it attracted criticism for not addressing the conservation and livelihood issues. More than that, it underwent severe condemnation for diluting the JPC's recommendations. Nevertheless, the Bill was approved and passed by the Parliament on 18 December 2006 (*The Hindu* 2006). The MoTA, which was to be the implementing agency, constituted a technical committee to frame the rules (MoTA 2007). Two committee members, namely Valmik Thapar, a tiger conservationist, and Mahendra Vyas, the secretary of the Central Empowered Committee, undertook the task of finalising the rules (Venkatesan 2008). In a nutshell, as perceived by Bose (2010), the FRA was the result of an intensively contended drafting process.

Understanding FRA[4]

The FRA provides for forest rights to those who are primarily residing in the forest or on forest land, or those who depend on the latter for livelihoods (bonafide livelihood needs). For other forest dwellers, they have to

have been residents of the area of their claim for 75 years. The law recognises three types of rights: (1) land rights; (2) right to use and collect; and (3) right to protect and conserve.

As far as land rights are concerned, the claimant has to produce all evidence of cultivating such land prior to 13 December 2005, according to Section 4(37) of the FRA. Those people will also benefit who have been cultivating others' land but have no documentary evidence. Besides, such lands will also be recognised that have *patta* or government lease but have been illegally taken away by the FD. Lands in disputed state with the FD or the Rural Development department will also be considered for granting rights as per Section 3(1)(f) and (g). However, all the above lands stand for rightful claim only if their size is not more than 4 hectares and have been under cultivation by the claimants themselves for their livelihood – Section 3(1)(a) and 4(6).

Usufruct rights or collection rights include non-Timber Forest Produce such as *tendu* (abnus) leaves, herbs and medicinal plants that are being traditionally collected – Section 3(1)(c). The right to use gives one access to grazing grounds, water bodies (Section 3), and traditional areas of use by nomadic or pastoralist communities that move with their herds as opposed to practising settled agriculture. The right to protect and conserve means that the FDP will have the right to protect and conserve under Section 3(1). Similarly, Section 5 also gives the general power to the community to protect wildlife in the forest.

The above rights are recognised under three procedural steps according to Section 6. The Gram Sabha (GS) or full village assembly (all available adult members) makes a recommendation as a first step; here the claims of cultivation on a particular land with the number of years are made. Then, the Forest Rights Committee[5] (FRC) that is constituted from the GS identifies the claimants and their cases. This is followed by ascertaining the validity of the claims; thereafter, the GS forwards the recommendations to the screening committee at *taluka* (intermediary administrative block) and district levels. The *taluka* and District Level Committees (DLCs) are constituted by six members, each with three government and three elected members – Section 6(6). There is also a provision for any citizen to appeal to the committee against false claims. If the appeal is upheld on being proved, such right is denied to the claimant. The right over the land recognised cannot be sold or transferred. There is a special clause by which forest land that is diverted for community purpose other than cultivation under community rights cannot exceed 1 hectare of land (for single-purpose use), and felling of trees should not exceed 75 trees per hectare.

There is also a provision for recognising community tenure on 'community forest resources', which are defined as common forest land within the traditional or customary boundaries of the village, or seasonal use of

landscape in the case of pastoral communities. These lands can fall under RFs, Protected Forests[6] (PFs) and protected areas, such as sanctuaries and national parks, to which the community had traditional access.

From the administrative point of view, the Act cannot be implemented in isolation from villages where the forest rights are allotted, because it requires coordination between other departments in the same jurisdiction; hence, the FRA specifically mentions the roles that are earmarked for such concerned departments. The main department, other than the MoTA, implementing this Act is the FD because the land claimed and allotted to the people is under its jurisdiction. The RD[7] has a role because it is the custodian of land records in the country. Finally, the panchayat (decentralised governance at village level) has a role in recognising the claims at the GS level and forwarding the same for settlement to the Sub-Divisional Level Committee (SDLC); and the DLC headed by the District Collector is the final authority to settle claims.

Clarifications and Amendments

Since the implementation of the FRA began in 2008, there has been ambiguity on several clauses/issues. Hence, from time to time state governments have been asking for clarifications from the MoTA. Following up on such queries, the ministry has been sending clarifications to the respective state and union territory authorities, and circulars to all other states. Comprehensive and latest amended rules of FRA 2006, notified on 6 September 2012, place FRC in a superior position for deciding the claims. They clarify that FD officials cannot reject claims by choosing to remain absent during the verification process. Rejection of claims cannot be solely made on the basis of 'satellite imagery' and other technological tools – there should be supplementary evidence and not just a replacement for the evidence prescribed in the rules; only FRC is eligible to receive, decide or reject forest rights claims, and no individual or committee of any official level, be it panchayat, block or forest range level, can do it. The rules also mention empowering the GS with more authority and autonomy over community-based forest resources/rights, while curtailing the role of the FD. The committee formed by the GS (which will prepare a conservation and management plan for community forest resources after forest dwellers' rights over such resources are recognised) can integrate the management plan so far made by the FD with its 'working plan'. The GS will approve all decisions of the committee pertaining to transit permits (a new rule provides for transportation of MFP by 'any appropriate means of transport' and the transit passes shall be issued by a committee constituted by the GS), use of forest produce income and modification of management plans.

Implementation of FRA

Following the enactment of FRA, the respective states have made suitable

provisions in accordance with its rules to monitor and implement the Act. The implementing agency is the Department of Tribal Affairs, Government of India; at the state level, this responsibility is vested with the SC and ST Development Department. In some states, there are other agencies responsible for carrying out this activity (for example, in Andhra Pradesh, it is the Tribal Development Department or TDD) (Sathyapalan and Reddy 2010).

Status in Chhattisgarh

In Chhattisgarh, the FRCs are said to have been formed in a hurry, by the end of February 2008, without informing the people. These FRCs were constituted at the panchayat level, with a few exceptions in Scheduled Areas[8] where they were formed at the village level. Chhattisgarh is found to be wanting on many counts. There are allegations of FRCs being converted from Joint Forest Management (JFM) committees, when they should have been constituted through GS meetings. Since the awareness level of the common people and the FRC members was inadequate, they were ignorant of their tasks; so the FD bypassed them. The State Level Monitoring Committee (SLMC) was also as good as non-functional (CSD 2010). Initially, GS meetings were called by the panchayat secretary, who was also functioning as secretary to the FRC – when actually an elected member from the village should have been its secretary instead of the sarpanch (village headman or village panchayat head); this meant that the panchayat office collected the claims instead of the FRCs (Singh 2010; CSD 2010). The Review Committee (GoI 2010b) also mentioned in its report that the implementation process in the state is under the control of FD and RD (Rural Development department) officials, and the people have no participation (Sharma 2010).

Issues that have prominently emerged in the implementation process in Chhattisgarh are 'wrongful rejections and blatant irregularities' at the GS level which were not verified at higher levels (ibid.). Moreover, it is increasingly observed that the villagers were coerced into agreeing to claim only that land which the FD wanted them to, which, in other words, means completely overriding the authority of the FRCs (Sinha 2010); in other instances, the claimants were not even informed about the status of their claims. Further, the villagers whose claims were rejected had to eventually lose their right to appeal. In continuing with its denial mode, the FD asked the FRCs in Chhattisgarh not to receive new applications after December 2009. This hampered the prospects of probable and deserving claimants (Saxena 2010). Misappropriations in terms of land allotment were done when only 1–2.5 hectares of land were given to the claimants; this, by their traditional landholding standards, was far smaller (Sinha 2010). The other issue that has put the claimants to inconvenience is not including the names of wives in the allotment order. Another issue is that of overlooking the underprivileged, such as the PVTG and nomadic tribes who are to be given priority over others in settling claims; this too was not practised

on the ground (Saxena 2010). All this forces one to think that the role of the TDD is restricted to only forwarding statistical information, when it is required to take the lead and perform (Sharma 2010).

From the livelihood perspective, community rights are very important for the FDP. However, in the initial stage of the implementation, the Chhattisgarh FD made the FRCs sign statements that they were not interested in claiming community forest rights but only in individual rights (Singh 2010). They were forced to retreat only after protests from various quarters in 2009, following which community rights were also recognised (CSD 2010). Yet, the FD officials continued to encourage infrastructural approvals such as school buildings, community halls, health centres, etc., under community claims because, according to the Act, land allotment for these kinds of claims is comparatively less than for that of forest community rights, and this could be allotted on unproductive land demarcated by the officials. The sad part of the story is that the administration as well as the community concentrates more on claiming individual rights than community rights for direct reasons (Saxena 2006). Hence, by July 2010, the status of the community claims in Chhattisgarh was: 287 approved in only five districts while the number of claims registered was more than 7,000; and districts such as Bastar, Dantewada, Bijapur and Jeshpur, which are tribal-dominated, were completely overlooked. The lucky few whose claims were approved are still awaiting the formal 'certificates' (Singh 2010).

Chhattisgarh is accused of gross violations of FRA. Some of them, as mentioned above, speak volumes of such acts. Despite repeated clarifications from the MoTA, the FD in Chhattisgarh is seen to be following the pre-1980 encroachment laws for considering claims. Besides, the number of areas for claiming the rights is also being limited by the FD (Sethi 2008). Such violations, in other words, mean blatant denial of the rightful claims of the people, as well as disrespect to the Constitution of the country for not honouring the Act enacted by a duly elected Parliament. Going a step further, the FD has forcibly undertaken plantation and afforestation programmes on the lands claimed by the community (Kothari 2011).

Regarding the relocation of communities from their habitation in wildlife areas, the one that hogged the headlines was the forceful movement of the Baiga adivasis from the Achana Kumar Tiger Reserve to another place in Chhattisgarh. This was in complete disregard to the amended WPA 2006 (Section 4[2] of the FRA also has a similar clause) as it laid down a requirement for a specific process in consultation and with the consent of the people in question to ascertain such needs for relocation, and to recognise tiger habitat's need to be free of human presence (Saxena 2010). Since the threat to wildlife such as tigers is serious and everybody's concern, this issue needs to be dealt in a sensitive manner – by convincing the people to move to other places and also by compensating for their sacrifice financially.

While implementing a welfare programme or a legislation, especially

in the rural areas, the biggest concern has always been the awareness level (or lack of it) of the beneficiaries. Time and again it has been proved that the outcome is proportional to the awareness level. The awareness could be either self-attained or gained through government or non-government agencies working with them. Given the poor literacy levels among the tribals (the main beneficiaries), this Act requires a great deal of awareness among them, which has not happened. According to the Review Committee (GoI 2010b), no extra effort was made by the authorities to reach out to the illiterate tribes and explain to them the benefits of the FRA. Hence, the awareness level is a major lacuna, which is further compounded by the 'language barrier'. Moreover, even the professional organisations in the state did not involve themselves to actively create an awakening (Sharma 2010). However, according to the MoTA's 'Status Report as on 30 November 2010', the FRA and follow-up rules were translated into the regional language and distributed to the GS and other stakeholders (GoI 2010a). On the other hand, members of NGOs working in these parts of the state expressed fears of being victimised by the repressive laws of the government that discourage them from speaking about people's rights which would be taken as speech against the government.

When it comes to evaluation, the state government claims that it has settled all individual claims. However, the figures suggest otherwise, because the overall impression of the implementation of the FRA in Chhattisgarh, according to CSD (2010), is of a highly undemocratic nature. Nevertheless, the Chhattisgarh government can be granted some reprieve for confining the implementation of FRA to fewer districts as the state is facing a major problem due to naxalism, and there is police action in 40 of its total 85 blocks (GoI 2010a). Interestingly, critiques have grilled the government for allowing the mining mafias to benefit even out of this insurgency – they accuse the government of handing over vast stretches of land to corporate houses after freeing such areas in the conflict zones (Majumdar 2010).

Status in Gujarat

The constitution of FRCs in Gujarat began in May 2008, mostly at the village level. Due to misinterpretation of rules, in the beginning, some of the claimants were not included under the FRA. Similarly, non-SA regions were also overlooked for implementing the FRA. However, the situation has now improved in both aspects after the government made efforts to correct the mistakes (GoI 2010b). A remorse that has continued to remain is accounted by the Review Committee (ibid.), according to which FRCs at the village level have government officials as its members; besides, it has pointed out that the main stakeholders including women were not represented adequately. The Gujarat FRA is reported to have been run down deliberately by undertaking a task to massively create new JFM with generous funding[9] to villages where they had not extended this programme

earlier; this seems to be a clear effort to divide the community. In some instances, the FRC members were appointed as JFM presidents in order to lure them away from the FRCs (CSD 2010; Meena *et al.* 2010).

When the government of Gujarat claimed that 'Vadodara district' had become the first district in the state to fully implement the FRA, the opposition in the state vehemently refuted the government's claim (DNA 2010); and the Review Committee (GoI 2010b) also came up with similar conclusions – that the FRA in the state is mostly unfulfilled. In fact, numerous issues have emerged since the Act started rolling. One important issue is the FD's role: reports from the field suggest that the FD's role appears to be dubious as it actively interferes in the field process. Moreover, it have been found to be deliberately blocking claims (CSD 2010). The examples of Sabarkantha and Banaskantha are ample evidence to prove the high-handedness of the FD. Here, even the claims of ex-servicemen receiving pensions or of those in other services were rejected, disregarding the clauses in the Act. In some cases, attestations of evidence have been rejected. For example, in Panchmahal, the claims were rejected on grounds of claimants not attesting their caste certificate. In another instance, the FD rejected claims even where more than two evidences (Kothari and Meena 2010) – oral testimonies, *panchanamas*,[10] physical evidence, earlier application/claim, court orders, etc. – that were mentioned as sufficient according to the Act, were enclosed with the applications (Writ Petition, 2011). The standard pretext for rejection by the FD is that the land lies in an eco-fragile zone or that it is a plantation. In some places, the claims have been rejected just in advance (Kothari and Meena 2010).

The other bodies involved in the implementation of the Act, such as the SLMC, DLC and SDLC, have also annoyed the claimants. The SDLC, in certain cases, insisted that the claimants should present a forest offence document (viz. documents like first information reports, penalty receipts, etc.) for making their claims, and if not found to be complying they threatened to reject the applications, when in truth this document is not really required as per the Act (Kothari and Meena 2010). Similarly, the SDLC and DLC rejected claims that were approved long ago in 1992 (Meena *et al.* 2010). Furthermore, the Gujarat government had agreed in 2004 to extend land rights to 60,000 farmers on 45,000 hectares of land. However, after the FRA, the same forest dwellers were asked to present their claims afresh (DISHA 2012); approval of claims prior to the FRA means going through a tougher procedure than the present one under the FRA to prove claims, and if the government had agreed on that earlier, it means they may have already gone through the gruelling procedure once before, and asking them to redo everything again appears to be nothing short of deliberate harassment to discourage prospective claimants. The overall impression created by the SLMCs, DLCs and SDLCs in Gujarat is that they liberally reject the claims sent to them by the GS/FRC for verification (GoI 2010b). A more

serious allegation against them is of allowing the FD to play a dominant role (Kothari and Meena 2010).

Presenting its version, the FD feels that 'satellite imagery' is the only scientific solution to treat as 'evidence all' because this will verify the truth over false claims made after fresh encroachments on forest lands (ibid). On the other hand, those fighting for the rights of the people claim that the Gujarat government's decision to verify claims with satellite imagery has many loopholes because the claimants' arguments cannot be recorded accurately if the plots are very small, or if the land is cultivated in tree-covered areas because these lands then show up as forest (Writ Petition, 2011)

FRA implementation in Gujarat is also marked by physical excesses against the tribals. The case of Hanuvat Pada in Dangs is one such incidence where the tribes cultivating their land for the past eight years were beaten up and asked to vacate the land even without giving them a mandatory notice under FRA Section 80 CA (Shrivastava 2011). The extent of harassment recorded in Dangs includes the FD digging pits in people's fields and indulging in eviction, besides threatening to frame the tribals under naxal activities (CSD 2010).

In what appears to be a gross violation of the Act, the Gujarat government imposed additional conditions to recognise rights over cultivated forest land: those who already owned revenue land, or who had already received *pattas* to some forest land under the earlier 1992 GR, were eligible to hold rights over a maximum of only 10 acres, including the land already in their name (ibid.). This means they are denied the 4 hectares of land which is the maximum ceiling for a household under FRA. The justification was that 10 acres is sufficient for livelihood. Job holders were also exempted; however, those with 'very small time jobs' were spared of this clause. Another blow came in the form of the announcement made by the state government in January 2009 that no title to individual lands would be given, and instead, the land would remain as forest land while the rights holders would be handed just a 'certificate of their rights' (CSD 2010).

According to livelihood experts, 'community rights' would have had comparatively better benefits through forest resources (collection and sale), pastoral lands for rearing cattle, other community claims, etc., for the FDP, but the people in Gujarat, like elsewhere, have fallen prey to attractions such as infrastructural benefits including community buildings, *anganwadis* (government-sponsored child care and mother care centres) and schools (GoI 2010b). Scholars working for tribals' rights sense a conspiracy in this by the FD – they accuse the FD of confusing the people into equating development rights under Section 3(2) of the Act (CSD 2010). Initially, community rights were claimed in Gujarat in only such areas where the Adivasi Mahasabha (NGO) had a presence; however, the government is now accepting claims elsewhere also after pressure was mounted on it by tribal rights activists (ibid.).

Following the negative developments in the implementation of FRA in Gujarat, civil society fighting for the cause of the FDP in the state filed a writ petition in the High Court against the state of Gujarat in 2011, on the broader grounds of illegal rejection of claims on a massive scale, allegations of tribals possessing only minimum evidence, treating 1980 as the cut-off date for deciding the claims, and not taking the elders' statements as evidence for verifying the claims.

In the midst of all the unfavourable review coming against government officials, Kothari (2011) gives an account of a benevolent Divisional Forest Officer posted at Dediapada and praises him for going out of his way to help the people in whatever way he could in procuring the documents necessary for claiming their rights legally. The FDP in Gujarat can only wish to have the services of such officers in their areas for curtailing their centuries-old miseries, and to lead a respectable and secure life as other citizens in the mainstream society do.

Awareness about FRA among the main stakeholders, that is the FDP, is still far from satisfactory in Gujarat. This is mostly because the people who could actively participate in creating awareness about the FRA dread to work freely for fear of being branded by the government as anti-national, anti-development or even as Maoists, in areas such as Dangs, where such outlawed groups have no presence at all (Tracking the FRA 2008). According to the government's claims, by 30 November 2010, the FRA rules were translated into regional languages and distributed to the GS and FRCs. Training for Panchayati Raj Institution (local bodies) officials, and SDLC and DLC members is also now being imparted (GoI 2010a).

Conclusion

Historically, the lives of tribals in India have been challenging. Sadly, this has continued all through the independent years of the country. This is evident from various indicators available to measure the standard of living of these poor FDP. A ray of hope appeared in the form of the FRA, that too after a prolonged and exhaustive struggle at all possible levels. However, as envisaged by pro-FRA enthusiasts, the outcome from the field does not suggest it has had a very positive impact yet, though the Act is in implementation since 2008 in various states. The stories across the states in different parts of the country suggest more or less similar kinds of hurdles faced by the FDP. A common cause has been the attitude of the FD. They are alleged to deny rights on every possible pretext. Another reason has been the ambiguity in the rules of the Act itself. Besides, lack of awareness levels, not only among the FDP whose case is understandable given their poor educational background, but also among the implementing staff and agencies, has further complicated the matter.

As far as the two states are concerned, the specific issues that have come up in the review have not been any different from the overall impression

of challenges that the FDP in various states in the country are facing. The comparative figures of approval and rejection of individual claims[11] and community claims[12] alike in Chhattisgarh and Gujarat present the state of implementation of the FRA in the respective states. If 44.04 per cent of individual claims were approved in Chhattisgarh, only about a quarter of the applications were approved in Gujarat, i.e. about 22.48 per cent. There is not much difference between the two states when it comes to approving community claims as well. Overall, the distribution of community claims in both the states can be termed poor. On working out the individual claims for distribution of land, Chhattisgarh accounted for an average of 2.49 acres, while Gujarat recorded an average of 1.12 acres.

When it comes to other issues too, both the states have a long way to go, be it in terms of creating awareness among tribals living in the interiors of forests, or keeping the panchayat secretary or FD officials at a distance from their over-indulgence in verification of evidence. Paradoxically, in both states, community claims have come to be identified more for claiming infrastructure-related benefits than proper and real means of livelihood. Respective FDs must be blamed for discouraging people from claiming the same for their own fears of losing authority over the forest land.

A deliberate attempt to present the cut-off date for claim under the FRA as 1980 was observed in both the states, while 2005 is the actual cut-off date. In addition to this, the maximum amount of land claimable is being decided by the local FDs in the respective states. This has seriously affected the progress of FRA implementation and led to a lot of confusion, especially in places where the role of NGOs is almost negligible. In complete disregard of the Act, the Gujarat FD has gone a step further and declared that the land given to claimants under the FRA would always remain as forest land, which means that the certificate of rights has nothing but ornamental value. Instances of large-scale rejection in violation of the Act are observed in Gujarat. This has led to a writ petition filed[13] in the Gujarat High Court against the implementing agencies by civil society members. Besides, physical harassment against the tribals has been recorded while evicting them illegally in Dangs, the only SA district in Gujarat.

On the other side, multiple committees, viz. SLMCs, DLCs and SDLCs, constituted at state, district and taluka levels to oversee effective implementation of the Act by examining the claims appear not to be playing any significant role. If they had been effective or sympathetic to the claimants, SDLCs or DLCs would not have ignored the outright rejection of claims for not having matched with the satellite imagery as happened in Gujarat, or would have objected to the announcement in Chhattisgarh to distribute (far less than 10 acres or less – maximum claimable land under FRA) whatever available forest land among the claimants irrespective of the size of land they actually claimed.

Overall, observation of implementation of the FRA in both the states

shows that the approach adopted remains the same with only a degree of variance. This is because no extra effort is made by the respective governments to see that tribals living in forest areas get their lands at the earliest. Instead hurdles are created, even to the extent of bypassing the Act itself in some instances.

Notes

1 Though they are not illegal villages, no revenue benefits accrued to those villages as they are not situated on revenue lands.

2 The concessions granted for removal from forest coupes on payment at stipulated rates, specified forest produce for bonafide domestic use, but not for barter or sale. The *nistar* rates are fixed by the FD for the special forest produce in consultation with the District Collector.

3 Any forest land or waste land or any other land, not being land for the time being comprised in any holding or in any village *abadi* (population), which is the property of government, or over which the government has proprietary rights, or to the whole or any part of the forest produce of which the government is entitled, and which is notified in the government gazette as 'reserve forest' under a relevant section of the Indian Forest Act. In such forest, most of the activities are prohibited unless allowed. (WCFSD 1999: 168–75)

4 *The Gazette of India Extraordinary* (2007, 2008, 2012).

5 Each village is to elect a committee of ten to fifteen people from among its own residents; they verify the claims and place them before the GS.

6 Any forest land, waste land, or any other land, which is not included in a reserved forest, but which is the property of the government, or over which the government has proprietary rights, or to the whole or any part of the forest produce of which the government is entitled, and which is notified in the government gazette as 'protected forest' under a relevant sections of the Indian Forest Act. In such forest, most of the activities are allowed unless prohibited. (WCFSD, 1999: 168–75)

7 Interestingly, the respective FDs and RDs are the disputing parties for several hectares of land in different parts of the country.

8 Scheduled areas and tribal areas are, in fact, the metamorphosed transplantation of the concept of 'partially excluded areas' and 'excluded areas' as contained in the Government of India Act 1935, which were regarded as culturally backward areas. Articles 15(4), 46, 244(1) and 339 provide for special concessions to uplift the tribal population for their welfare and protection in the SAs. Although Article 244(1) does not provide for a clear definition of Scheduled areas, it denotes those areas where the tribal population is predominant.

9 JFM in Gujarat is also funded by the Japan International Cooperation Agency (JICA), formerly Japan Bank of International Cooperation (JBIC).

10 A written account of some transaction, which has taken place in the presence of respectable persons (two or more than two).

11 Chhattisgarh: No. of Claims Received – 4,87,332; No. of Titles Distributed – 2,14,668; No. of Claims Rejected – 2,72,664. Gujarat: No. of Claims Received – 1,82,869; No. of Titles Distributed – 40,994; No. of Claims Rejected – 14,573. (GoI 2013)

12 Chhattisgarh: No. of Claims Received – 4,736; No. of Titles Distributed – 775; No. of Claims Rejected – Not Available. Gujarat: No. of Claims Received – 8,723; No. of Titles Distributed – 1,758; No. of Claims Rejected – 5,040. (GoI 2013)

13 Following FRA 2006 Amended Rules Notified on 6 September 2012, 'satellite

imagery' and other technological tools are clearly defined to be treated as just a supplementary evidence and not replacement for the evidence prescribed in the rules; only FRC is eligible to receive, decide or reject the forest rights claims and no individual or committee of any official level, be it panchayat, block, or forest range, can do it (*The Gazette of India Extraordinary* 2012).

References

Bhullar, Lovleen (2008), 'The Indian Forest Rights Act 2006: A Critical Appraisal', *Law, Environment and Development Journal*, Vol. 4, No. 1, pp. 20–34.

Bijoy, C.R. (2008), 'Forests Rights Struggle: The Adivasis Now Await a Settlement', *American Behavioural Scientist*, Vol. 51, p. 1775.

Bose, Indranil (2010), 'How Did the Indian Forest Rights Act, 2006, Emerge?', IPPG Discussion Paper, No. 39, University of Manchester.

Census of India (2001), Office of the Registrar General of India, New Delhi.

Census of India (2011), Office of the Registrar General of India, New Delhi.

Council for Social Development (CSD) (2010), 'Summary Report on the Implementation of the Forest Rights Act', *National/Current Situation*, September.

Daily News and Analysis (DNA) (2010), 'Gujarat Government Leads in Implementation of Forest Rights Act: Modi', Vadodara, 22 January; available at http://www.dnaindia.com/india/report_gujarat-govt-leads-in-implementation-of-forest-rights-act-modi_1338044 , last accessed on 14 April 2012.

Developing Initiatives for Social and Human Action (DISHA) (2012), 'Land Right Struggle, Gujarat, India'; available at http://www.disha-india.org/land_right.html, last accessed on 14 April 2012.

Enviro–Legal Defence Firm (ELDF) (2005), 'Incorporating Stakeholder Perceptions on Participatory Forest Management – The Law and Policy Context', Project No. R8280, UK Department for International Development.

The Forest Rights Act (TFRA) (2012), 'Current Situation – Gujarat'; available at http://www.forestrightsact.com/current-situation, last accessed on 14 April 2012.

Gadgil, M. and R. Guha (1992), *This Fissured Land: An Ecological History of India*, Oxford University Press, Delhi.

The Gazette of India Extraordinary (2007), 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006', Part II, Section 1, Ministry of Law and Justice (Legislative Department), New Delhi, January.

The Gazette of India Extraordinary (2008), 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007', Part II, Section 3, Sub-Section (1), Ministry of Tribal Affairs, Government of India, New Delhi, 1 January.

The Gazette of India Extraordinary (2012), 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2012', No. 23011/32/2010-FRA [Vol. II], Ministry of Tribal Affairs, Government of India, New Delhi, 12 September.

Ghosh, Soumitra (2006), 'India: The Forest Rights Act, A Weapon of Struggle', World Rainforest Movement; available at http://www.org.uy/bulletin/115/india.html, last accessed on 14 April 2012.

Government of India (GoI) (2013), 'Status Report on Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (for the period ending 30 June 2013)', Ministry of Tribal Affairs (MoTA); available at http://www.tribal.nic.in/WriteReadData/CMS/Documents/20130717031240063647 3MPRforthemonthofjune2013.pdf, last accessed on 25 July 2012.

Government of Chhattisgarh (GoC, 2001), 'Chhattisgarh State Forest Policy', Forest and Culture Department, Mantralaya, Raipur, 22 October.

Government of India (2011), *India Human Development Report 2011*, Planning Commission, New Delhi.

Government of India (GoI) (1952), 'National Forest Policy', Department of Environment, Forests and Wildlife, Ministry of Environment and Forests, New Delhi.

Government of India (GoI) (1988), 'National Forest Policy', Department of Environment, Forests and Wildlife, Ministry of Environment and Forests, New Delhi.

Government of India (GoI) (1992), *Report of the Commission for Scheduled Castes and Scheduled Tribes*, Commission for Scheduled Castes and Scheduled Tribes, Controller of Publication, New Delhi.

Government of India (GoI) (2010a), 'Status Report', Ministry of Tribal Affairs, Government of India, 30 November.

Government of India (GoI) (2010b), *Manthan*, Report by National Committee on Forest Rights Act (A Joint Committee of Ministry of Environment and Forests and Ministry of Tribal Affairs), December.

Government of India (GoI) (2012a), 'Development of Forest Villages', Ministry of Tribal Affairs; available at http://tribal.gov.in/index2.asp?sublinkid=456&langid=1, last accessed on 14 April 2012.

Guha, Ramchandra (1983), 'Forestry in British and Post-British India: A Historical Analysis', *Economic and Political Weekly*, Vol. 18, No. 44, pp. 1882–96.

The Hindu (2006), 'Rajya Sabha Passes Forest Bill by Voice Vote', New Delhi, 19 December, p. 1.

Kothari, Ashish (2011), 'Livelihood Issues: Not Out of the Woods Yet', *Frontline*, Vol. 28, No. 5, pp. 64–73.

Kothari, Ashish and R.L. Meena (2010), 'Status of Implementation', MoEF/MoTA Committee on Forest Rights Act; available at http://fracommittee.icfre.org/TripReports/Gujarat/Gujarat%20report%20(Revised-FINAL).pdf, last accessed on 17 April 2012.

Kumar, Shashikant (2009), 'Forest Legislation, Tribal Population and Planning in Eastern Tribal Belts of Gujarat', Paper presented at the conference on 'Population and Environment: Local and Regional Planning Challenges', XXVI IUSSP International Population Conference, Marrakech, 27 September – 2 October.

Majumdar, Sarajit (2010), 'Forest Communities Right to Livelihood', *express buzz*, 6 January; available at http://www.expressbuzz.com/edition/print.aspx?artid=YiprzxAgio=, 6 January.

Meena, R.L., Ravi Chellam, Ashish Kothari and Rakesh Dogra (2010), 'Consultations and Field Visits in Gujarat', MoEF/MoTA Committee on Forest Rights Act, 27–29 November.

Ministry of Tribal Affairs (MoTA) (2007), 'Order – Constitution of a Technical Support Group for Framing Rules under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006', 12 February.

Prasad, Archana (2003), 'Forest Encroachments: Guidelines and Implications of Recent Orders', *People's Democracy*, Vol. XXVII, No. 1, 5 January.

Ramnath, Madhu (2008), 'Surviving the Forest Rights Act: Between Scylla and Charybdis', Vol. 43, No. 9, pp. 37–42.

Samarthan – Centre for Development Support (2010), 'Recognition of Community Rights under Forest Right Act in Madhya Pradesh and Chhattisgarh: Challenges and Ways Forward', Final Report Submitted to UNDP – Bhopal, December.

Sathyapalan, Jyotis and M. Gopinath Reddy (2010), 'Recognition of Forest Rights and Livelihoods of the Tribal Communities: A Study of Western Ghats Region, Kerala State', CESS Monograph – RULNR Monograph, Centre for Economic and Social Studies, Hyderabad, November.

Saxena, K.B. (2006), 'Alternative Economic Survey, India 2005–06: Disempowering Masses, Development as Destitution', pp. 263–74; available at http://www.daanishbooks.com/product_downloads/c/aes2005_06_20_kb_saxena__35543.pdf , last accessed on 13 April 2012.

Saxena, N.C. (2010), 'Implementation of Forest Rights Act in Chhattisgarh: Report of Field Visit', MoEF/MoTA Committee on Forest Rights Act, 24–27 May.

Sethi, Nitin (2008), 'Government Data on Forest Land Encroachment Rattles Pro-FRA Lobby', *Times of India*, New Delhi, 10 December; available at http://timesofindia.indiatimes.com/india/Govt-data-on-forest-land-encroachment-rattles-pro-FRA-lobby/articleshow/3814776.cms?, last accessed on 14 April 2012.

Sharma, Supriya (2010), 'Chhattisgarh's 100 % Settlement Claim Hollow', *Times of India*, Raipur, 18 June; available at http://timesofindia.indiatimes.com/india/Chhattisgarhs-100-settlement-claim-hollow/articleshow/6061263.cms?, last accessed on 14 April 2012

Shrivastava, Sambhav Kumar (2010), 'Tribals Beaten Out of Forestland', *Down to Earth*, 16–30 September, p. 15.

Singh, Ajay Bhan (2010), 'Forest Rights Act 2006: Status of Implantation and its Potential in Livelihoods Improvement of Forest Dwelling Communities in Central Region', Workshop on 'Forest Rights Act 2006', Indian Institute of Forest Management, Bhopal, 21–22 December.

Sinha, Ashok Kumar (2007), 'Implementation of Forest Law: A Case Study in East Singhbum of Jharkhand', in Chittaranjan Kumar Paty, ed., *Forest Government and Tribe*, Concept Publishing Company, New Delhi.

Sinha, Rajesh (2010), 'No Welfare, No State', *Tehelka Magazine*, Vol. 7, No. 26, 3 July; available at http://www.tehelka.com/story_main45.asp?filename=Cr030710welfarestate.asp, last accessed on 14 April 2012.

Springate-Baginski, Oliver and Piers Blaike, eds. (2007), *Forests, People and Power: The Political Ecology of Reform in South Asia*, Earthscan, London.

Springate-Baginski, Oliver., M. Sarin., S. Ghosh., P. Dasgupta., I. Bose., A. Banerjee., K. Sarap., P. Misra., S. Behera., M. G. Reddy and P. T. Rao (2009), 'Redressing "Historical Injustice" through the Indian Forest Rights Act 2006: A Historical Institutional Analysis of Contemporary Forest Rights Reform', IPPG Discussion Paper, School of Environment and Development, University of Manchester, Manchester.

Tracking the FRA (2008), 'Stories About the Impact and Implementation of the Act from Across India', *Kalpavriksh*, No. 3, 29 July, pp. 1–11.

Venkatesan, V. (2008), 'On the Fringes', *Frontline*, Vol. 25, No. 4, p. 15.

World Commission on Forests and Sustainable Development (WCFSD) (1999), 'Our Forests Our Future', Report of the World Commission on Forests and Sustainable Development, Cambridge University Press, Cambridge.

Writ Petition (2011), *Action Research in Community Health and Development (ARCH), Rajpipla Social Service Society (RSSS) and Paryavaran Suraksha Samitee (PSS) vs State of Gujarat*, C/WPPIL/100/2011, Gujarat High Court, Ahmedabad.

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