

NON-ACCESS TO COMMUNITY FOREST RIGHTS: A PATH TOWARDS ENVIRONMENTAL INJUSTICE

Kumar Kunal*

Abstract

The tribal and other indigenous communities had been living in forests in harmony with nature for centuries till outsiders began to encroach on their land and called these indigenous communities as encroachers on their own land. They were not just deprived of access to the customary rights over these forests and their resources but also evicted or displaced from time to time in the name of economic and industrial development. It was believed that Forest Rights Act (FRA), 2006 would undo the historical injustice meted to them by recognizing their rights over the forest and its natural resources. However, despite its good intention and potential, the Act has failed to achieve its desired objectives.

This paper is an attempt to highlight the importance of community forest rights in the socio-economic life of indigenous communities. It further explains the struggle and challenges faced by these vulnerable communities who suffer environmental injustice due to continuous deprivation of their customary rights over their land. This paper also points out how the lack of a positive attitude of the judiciary and indifference of state machinery in implementing the Act has further restricted their rights. Finally, the paper concludes with some recommendations in the form of policy and legislative reform for recognizing their customary rights over the forest and its resources as a way forward towards achieving socio-environmental justice.

Keywords: *Indigenous communities, Customary Right, Encroachers, Forest, Environmental justice*

* Research Scholar @ Faculty of Law, University of Delhi, New Delhi; Email: kkunal@law.du.ac.in

INTRODUCTION

On 13th Feb. 2019, the apex court passed an order for the eviction of scheduled tribes (STs) and other traditional forest dwellers (OTFDs) from forest land whose claim had been rejected under the Forest Rights Act, 2006.¹ This order of eviction suddenly made more than 11 lakh STs and OTFDs across 16 states as encroachers on their own land. The Supreme Court during a subsequent hearing on 28th Feb. 2019 put a stay order on its earlier decision after the central government moved the court to modify its former order. Though they got some relief due to this stay order but the attitude of the judiciary and government showed that these indigenous communities who have been residing within the forest land for hundreds of years have still not been considered as the rightful owner of their land and they still have to live in fear in fear of eviction. Even the passing of legislation in the form of the Forest Rights Act, 2006 has not been able to assure them of claim over their land. This was not the first time and chances are it is not going to be the last time when efforts are made to evict them from their ancestral land as they continue to suffer because of the indifference and apathy of the Indian government.

The life of indigenous people is so closely associated with nature that any step of separating the two is nearly impossible. The right of these communities over forest resources flows from the very fact that the forest is their home where they have been living for centuries and their ancestors have lived and died without any restrictions until the colonial rule came into existence. In *Kailas v. State of Maharashtra*², two of India's Supreme Court Judges, Justice Gyan Misra and Justice Markandey Katju, recognized the Adivasi people as the nation's 'original inhabitants' and strongly condemned the historical injustice administered to them. They also praised the Adivasi population for having managed to preserve their customs despite facing the atrocities and oppression suffered by them at the instance of the State.³

But the rights of these communities often come in conflict with the government and powerful corporations due to their urge for rich mineral resources in these forests. Forest provides livelihood to an estimated 275 million people who are among the most vulnerable, poor and marginalized sections of society.⁴ Most of them belong to the marginalized Adivasi communities

¹ *Wildlife First & Others. v. Ministry of Forest & Environment*, (2019) SCC 238.

² *Kailas & Othrs. v. State of Maharashtra*, (2011) 1 SCC 793.

³ Shamim Modi, *State – Adivasi Interface: Experience of an Adivasi Rights Organisation in MP*, in Yatindra S. Sisodia & Dalapati, Tapas K. Dalapati (eds.). *Development An Discontent In Tribal India* (Rawat Publications, 2015).

⁴ Arvind Khare, *Let's not miss the wood*, *The Hindu* (April 9, 2016) Available at: <https://www.thehindu.com/opinion/op-ed/lets-not-miss-the-wood/article7358626.ece> (Accessed on May 7, 2021).

that constitute roughly 8 percent of India's population. While 9 out of 10 tribal people live in and around forests, about 40 percent of those displaced due to development projects and mining activities are also Adivasis.⁵ A large number of those displaced don't even receive adequate compensation as their right over these lands was not established and therefore they were considered "encroachers".

The consecutive policies in India have continuously failed to recognize the forest-dependent communities and their rights to land and natural resources. They are termed as 'encroachers' in their land where they have been residing for ages. They are legally alienated from their land and the lands are handed over to the forest department for management. The control of the forest department over these high-value forest produce has further hampered the recognition of forest dweller's rights.

The Scheduled Tribes and Other Forest Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 had been appreciated by everyone when it was enacted because it recognized the rights of these communities over the forest and natural resources which have been traditionally accessed by them. This landmark legislation laid the foundation for democratic forest governance through the recognition of individual and community forest and resource rights.

It was believed that historical injustice that had been done to them will now be undone by this Act. However, despite its intention and potential, the implementation of FRA has failed to achieve the tasks and objectives it was meant to do. Even after 15 years of passing this act, implementation of the Act has been abysmal and half-hearted. Not only these Adivasis and other forest dwellers are unaware of their rights as per the provisions of the Act, the government too is reluctant to recognize it.

The present status of FRA's implementation within the country shows that the government has not been serious in its attempt at recognizing the rights of tribal groups and other forest-dwellers. The reason is obvious; the government systematically and deliberately attempting to divert these forest lands for mining, industrial corridors, and other mega projects. Since the enactment of FRA, more than thousands of hectares of forest land have been diverted for development projects which are in complete violations of the provisions of FRA.

The indigenous communities are not only exploited by the government and private agencies,

⁵ Oomen C. Kurian, *Impementing the Forest Rights Act: Lack of Political Will?*, Oxfam India Policy Brief, (Nov.2015).

they continued to be excluded from their land and forest rights. They have been continuously threatened to be evicted and dislocated from their ancestral land.

HISTORY OF FOREST RIGHTS ACT, 2006

To understand the movement that led to the enactment of FRA, it is necessary to understand the historical injustice done to the indigenous people since the colonial period. Before the British period, the use of forest areas and forest produce were regulated by local customary practice. When the British came they began to change all the rules and practices related to the forest area.

A. Colonial Period

During the colonial era as well as post-independence, the land classification of forest areas was done without recognizing the pre-existing rights of the tribal communities. The British faced maximum rebellion from Adivasis during the colonial period due to which the British made special provisions for the administration of tribal areas and enacted special laws such as Chota Nagpur and Santhal Parganas Tenancy Acts in Jharkhand. Van Panchayat, the oldest legally recognized community-managed forest institution, was created in states like Uttarakhand to prevent people's rebellion against the denial of forest access through the reservation. Further, large areas of customary common lands were also declared by the British as protected forests so that they could assert state ownership over these forest land rather than protect and exploit forests.⁶

The first attempt to have a comprehensive forest law passed by the British was the Forest Act of 1865 that extended the British Colonial claims over forests in India and gave them a monopoly over the Indian forest land. It was later replaced by the Indian Forest Act of 1878 that established a virtual State monopoly over the forests in a legal sense. This Act also attempted to establish the fact that the customary use of the forests by the villagers was not a 'right' but a 'privilege' that could be withdrawn at will.⁷

Later National Forest Policy of 1894 and the Land Acquisition Act, 1894 were passed to regulate the management of forest land. Finally, The Forest Act, 1927 was enacted that had nothing to do with conservation or management but mainly aimed to serve the British need for timber and

⁶ Madhu Sarin, *An Inquiry on the Status of Implementation of the Forest Rights Act – A Report*, Independent People's Tribunal 17 (Apr. 2017).

⁷ Suparna S. Mukherjee, *Indian Forest Act and Democracy: Effect on the Traditional Tribal System*, Liv 18 Mainstream Weekly (Apr.23, 2016) Available at: <https://www.mainstreamweekly.net/article6363.html> (Accessed on May 7, 2021).

other forest produce. It sought to override customary rights and forest management systems by declaring forests as state property and thus exploiting forests for their timber. The Act empowered the government to declare any area to be a reserved forest, protected forest, village forest, or private forest. The rights of the people living in and around the forest became completely dependent upon the forest settlement officer who could declare any area as a forest or protected area.

B. Post-Independence Era

When power was transferred to India, it was hoped that it will bring justice to the oppressed population. But after independence, the government at the national and state level went one step ahead of the British. Not only did they prefer to retain the oppressive colonial law but also converted all the forest resources as state property. Between 1951 and 1988, the government, instead of restoring people's rights, increased the area classified as state forest from 26 million to 41 million hectares. During this period 21.3 million people were displaced from their land because of development projects such as dams, mines, and industries without being rehabilitated or adequate compensation.⁸ National Forest Policy was passed by the government in 1952 which viewed forests as '*national assets*' and declared that the claims of communities living in and around forests should not override '*national interests*'. Forests were being destroyed for building roads, industries, irrigation projects and this was being justified in the name of national interests. Despite the constitutional provision of protection of tribal cultures and resource rights under the fifth schedule, 50 to 80 percent of their land was now taken by the government, leaving large numbers of Adivasi as landless. They were again labeled as '*encroachers*' on their land by their government. The forest-dependent communities were not only denied access to critical livelihood resources but even their recognized rights have been further diluted or taken away by the government.

When Wildlife (Protection) Act, 1972 was enacted, it allowed the government to declare any national park, wildlife sanctuary, tiger reserve, or community conservation area as a 'protected area'. Any claims of people had to be settled by Forest Settlement Officer. Later, National Forest Policy, 1988 was enacted to conserve biological diversity and maintain ecological balance. Section 4.6 of the policy highlighted the relationship between Adivasis and forests and the need to involve tribal communities in the management of forests. It was a drastic shift in the approach of

⁸ Ashish Aggarwal, *Implementation of FRA, Changing Forest Landscape, and "Politics of REDD+" in India*, 8 (2) Resources, Energy And Development, pp.131-148 (Jan. 1, 2011).

the government towards the management of forests as for the first time the government had taken an initiative to involve local communities in the management of forests.

The Public Interest Litigation (PIL) was filed by Godavaran⁹ in 1995 against illicit felling of timber from forests nurtured by his family for generations which have since been taken by the government. Since then 800 Interlocutory Applications were filed in this case. In reply to this, the Supreme Court directed the Chief Secretaries of 10 States including Odisha, MP, and Chhattisgarh, etc. the steps taken to clear the previous encroachment and their policies to prevent any further encroachment of forest land. Although there was no eviction order issued by the SC, the Ministry of Environment, Forest and Climate Change (MoEFCC) and the forest department used the reference of the SC to further evict ‘all illegal encroachers of forestlands’ before 30th September 2002.

This order created fear among tribals all over the country. Brutal harassment, sexual molestation of tribal people, extortion of money, and evictions from their land brought the whole tribal community and members of civil society of the entire country together in protest. The MoEFCC finally acknowledged that not all occupation of forest lands was illegal or encroachment, and so they could not be evicted until their rights were verified.¹⁰

The order of the Supreme Court also draws the attention of government and civil society members towards the importance of Sustainable Development and the need for balance between ecology and development to be maintained for the future generation. A Ministry of Tribal Affairs was formulated in October 1999 to focus on the condition of the tribal communities in India. The movement which involved a large number of grass-root organizations eventually led to the enactment of the Forest Rights Act, 2006. The nodal ministry for the Act was taken away from the MoEFCC and handed over to the Ministry of Tribal Affairs.

SALIENT FEATURES OF FRA

The preamble of the Act says that it “*recognize and vest the forest rights and occupation in forest-dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but*

⁹ T.N. Godavarman Thirumulpad v. Union of India & Ors. (1997) 2 SCC 267.

¹⁰ V.K. Sridhar, *Supreme Court: Mining, Forest Encroachments and Rehabilitation from Kudremukh National Park*, XII(1) Social Change And Development, pp. 62-76 (2015).

whose rights could not be recorded'.¹¹

The Act was aimed to undo 'historical injustice' and does not give any new rights but recognizes the pre-existing rights of the tribals and other forest dwellers over the forest and its natural resources. In all, FRA vests and recognizes 14 rights which include individual and community rights over forest land. The most important of these rights is mentioned under Section 3(1)(i) which empowers Gram Sabha, instead of the Forest Department, to protect, conserve and manage the forest for sustainable use. The Act also provides an assurance to the claimant from eviction from his land till the process of recognizing the rights is complete. There is a provision of a fine up to Rs.1000 if any officer acts in contravention of the provision of the Act.

Section 4(5) of the Act acknowledges the issue of forced displacement of forest-dwelling communities and therefore this section attempts to protect from further relocation and displacement of these forest dwellers. It says that "*no member of a forest-dwelling STs or OTFDs shall be evicted or removed from the land under his occupation till the recognition and verification process is complete*".¹² Section 5 further empowers the village Gram Sabha to take decisions to regulate access to community forest resources and to ensure that these decisions are complied with.¹³ The decision-making process became democratic and participatory due to these provisions for initiating any new developmental projects in these forest lands.

In practice, the way the act has been implemented indicates that the major gain has been recognition of agricultural cultivation on the forest lands. But the community rights which would create a mechanism for preserving and management of forest and its natural resources are not given much significance.

FIFTEEN YEARS OF FRA

Even after completing fifteen years of its existence in 2020 since its legislation in December 2006, the success in meting out justice to tribals appears to be a distant dream. A large number of reports, academic studies, and government statistics suggest a very discouraging scenario on the disposal of claims made by the tribals and other forest dwellers.¹⁴ In 2016, the MoEFCC

¹¹ Preamble of the ST & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. No.2 of 2007. (Dec.29, 2006).

¹² Forest Rights Act, 2006, s. 4(5).

¹³ Forest Rights Act, 2006, s. 5.

¹⁴ Madhusudan Bandi, *Forest Conservation, Tribals and a Decade of the Forest Rights Act in India*. Lv(21) Mainstream Weekly (May 14, 2017) Available at: <http://www.mainstreamweekly.net/article7162.html> (Accessed on May 7, 2021).

eased the process for granting 'forest clearance' to fast-track mining and other industrial projects that fall on the traditional lands of tribal people. Thus the requirement of consent of the tribal communities has been done away with at the primary stage of approval by the government and relegated to a much later stage in the decision-making process.¹⁵

In a state like Odisha and Chhattisgarh where around 22 and 30 percent constitute tribal population and 30 to 40 percent of the area is covered by forests, the implementation of community forest rights is very poor. Many claims were not even included in official reports. Some claims which even reached to Sub-Divisional Level Committee (SDLC) and got rejected were not even communicated to the claimants in writing and thus they could not exercise their right to appeal.¹⁶

The condition is worst in protected areas where the predominant impression amongst villagers is that they have to move out of the reserve area and that they cannot have rights in the core area. The fact that the FRA allows them to stay inside with various rights has not been explained to them. Forest resources such as Minor Forest Produce (MFP) such as tendu leaves, sal, and mahua seeds are a major source of livelihood for the villagers in these areas which are taken away by the forest department.¹⁷ Villagers often claim that they are threatened by forest officials to evict the area and take the compensation of Rs. 10 lakh or they would be arrested as 'Maoists'. Even the relocation of these HHs has not been done properly. They received much less than the promised 4 Ha land and there is also a lack of water, poor quality of lands, absence of pattas, and inadequacy of fuel and fodder resources.

IMPLEMENTATION OF FOREST RIGHTS AT A GLANCE

As per the report published by the Ministry of Tribal Affairs, till the end of Dec.2020, the government had received 4,259,385 claims, but only 1,997,778 titles have been distributed. This is less than 50 percent of total claims. If looked further into the details, 4,109,105 individual

¹⁵ Nishant Sirohi, *Forest Rights Act Case: Supreme Court directing eviction of over a million tribals is gross injustice*, The Leaflet: Constitution First (Feb.24, 2019) Available at: <https://www.theleaflet.in/validity-of-the-forest-rights-act-supreme-court-directing-eviction-of-almost-two-million-tribal-peoples-is-a-gross-travesty-of-justice/> (Accessed on May 7, 2021).

¹⁶ Tapas K. Sarangi, *FRA, 2006 in Protected Areas of Odisha, India: Contextualising the Conflict between Conservation and Livelihood*. IEG Working Paper No. 355 (2015).

¹⁷ R. Mahapatra, S. Narayanan, & A. Pallavi, *How Government is subverting Forest Rights Act*, Down To Earth (Nov.15, 2010) Available at: <https://www.downtoearth.org.in/coverage/forests/how-government-is-subverting-forest-rights-act-2187> (Accessed on May 7, 2021).

claims were made while only 150,280 community claims were made. Out of these 1,920,507 individual and 77,271 community claims have been distributed till Dec.2020.¹⁸The data itself shows that community claims are generally discouraged by the authorities. Even if the community claims are made, the authorities do not grant it easily and most of the time these claims are rejected.

The area over which titles were granted till Dec.2020 stood at 13.02 million acres. The states of Chhattisgarh, Gujarat, Madhya Pradesh, Maharashtra, Odisha, Telangana and Andhra Pradesh received the most number of individual and community claims. The data as released by the MoTA shows that in comparison to individual claims which are being awarded easily the community claims have been rejected in most of the cases. The reason for the rejection of these claims is also not been provided to the claimant.

The states mentioned above have the highest potential in securing community rights recognition within FRA but at the same time, the indigenous communities in these areas are also the most vulnerable in terms of poverty and lack of resources. There is a lack of support from the forest department in implementing the Act and handing over the power to Gram Sabha.

TWO CASE STUDIES

A. POSCO Project in Jagatsinghpur

On 22nd June 2005, POSCO signed MoU with Odisha Govt. to invest in a project consisting of iron ore mines for a steel plant in Jagatsinghpur District. Thousands of acres of community forest land were taken forcibly in Nuagaon, Gadakjunga and Dinkia panchayats by the government without conducting any consultations with Gram Sabhas. Most of the lands taken over are Common Land and villagers' livelihood depends on these lands. Out of 2700 acres, 2000 acres of land were handed over to POSCO. 4000 families and 22,000 people were affected in these 3 panchayats. There was resistance from local communities as no consultation or adequate notice was given to them. It raises serious questions of human rights violations and environmental concerns. More than 200,000 trees were cut down for the project. Only after a series of protests from the local communities supported by various NGOs, the court took the notice of the illegal and forceful eviction of these communities.

¹⁸ A Report Published by the Ministry of Tribal Affairs on Monthly update on status of implementation of the STs and OTFDs (Recognition of Forest Rights) Act, 2006, (Feb.22, 2021).

On 30th March 2012, the NGT suspended the environmental clearance for the project. In March 2017, POSCO finally withdrew from the project and the land was taken back from the company.

B. Case of Ghatbarra Village¹⁹

On 8th January 2016, an order was passed by the Chhattisgarh government to cancel the forest community rights granted to the Ghatbarra village of Suguja District. It was for the first time in the last 10 years of FRA that any government had cancelled forest rights. The reason being the village residents used their rights to oppose mining in coal blocks outside the forest compartments that were allotted to them.

It was also the first village in Chhattisgarh where CFR was granted under FRA. Ghatbarra village claimed over 8 forest compartments but it received only 3 in 2013. The remaining 5 were allocated as coal blocks to the Rajasthan government which is to be operated by Adani Minerals Private Ltd. Various other MoUs were also signed with mining companies for projects on forest lands which have been interpreted as ineligible under FRA.

Several claims got rejected because they are 'disputed' land popularly known as "Orange" areas. According to SCSIT Research & Training Institute report 2013, "*These orange areas are recorded as both forest and revenue department and so long as the land is recorded as forest land; it comes under the ambit of FRA*".²⁰

A Comptroller and Auditor General (CAG) report also confirms that the loss of forest land for industrial development has forced the forest-dwelling communities in Chhattisgarh to migrate to towns for cheap labor work.²¹

The above example of the Ghatbarra tribal group has raised the issue about the future of the Act which was enacted to undo the "historic injustice" done to forest-dwelling communities.

The reports such as the Maharashtra Government passing certain regulations in 2014 allegedly overriding the FRA tenets to gain control over the forests in the State and the passing of an order by the Chhattisgarh Government cancelling the community land rights of the tribals given

¹⁹ Shruti Agarwal, *Chhattisgarh cancels forest rights of tribals in Surguja*, DOWN TO EARTH (Feb.19, 2016) Available at: <http://www.downtoearth.org.in/news/chhattisgarh-cancels-forest-rights-of-tribals-in-surguja-52895> (Accessed on May 7, 2021).

²⁰ *Ibid.*

²¹ *Ibid.*

under the FRA in the Ghatbarra village of Surguja district to facilitate coal mining, only mark the violation of the FRA. It also amounts to bypassing the National Green Tribunal's (NGT) order that had earlier recommended for its termination as the mining of the area would harm biodiversity of the region and the protected species such as the elephant'.²²

THREE IMPORTANT JUDGMENTS

A. The Vedanta Judgment²³

*"We can never leave Niyamgiri, if the mountains are mined, the water will dry up. The crops won't ripen. The medicinal plants will disappear. The air will turn bad. Our gods will be angry. How will we live? We cannot leave Niyamgiri".*²⁴ These were not just the words but the feelings and emotions of the Dongria, Kondh tribes living in and around Niyamgiri hills. These are one of the most isolated tribal communities in India. They call themselves the 'Jharnia' which means '*protectors of streams*' because they safeguard their sacred mountain and the rivers that rise within its forests. It has been claimed in various sources that their culture, identity and livelihood are all dependent on the Niyamgiri hills and they cannot live anywhere else.²⁵

In this landmark case, Supreme Court gave responsibility to 12-gram sabhas out of 200 villages in Rayagada and Kalahandi districts of the Dongria Kondh, Kutia Kandha, and other tribal communities to take the final decision in their gram sabha. They had to decide whether any religious and other rights were held over the Niyamgiri Hills of Odisha and if the mining of bauxite in the Lanjigarh mines below the peak of the hill would affect their religious rights.²⁶ If the rights were affected by the proposed mining then the clearances to mining rights stood to be cancelled.

All the 12 gram sabhas unanimously rejected the proposal for mining in the region that Odisha Mining Corporation was to do in a joint venture with Vedanta. Consequently, the MoEF rejected

²² *Supra* note.14

²³ Orissa Mining Corp. Ltd. v. Ministry of Environment & Forest & Ors. (2013) 6 SCC 476.

²⁴ Callie Shanafelt, *Niyamgiri Hills, Sacred Land Film Project* (Feb.24, 2015) Available at: <https://sacredland.org/niyamgiri-hills-india/> (Accessed on May 9, 2021).

²⁵ P.S. Daspatnaik, *Ownership Pattern, Land Survey and Settlement and its Impact on the Dongria Kondhs of Odisha*, XXXIII(4) Adibasi Journal (1984).

²⁶ R. Shobha, *Niyamgiri adivasis' victory against Vedanta is a landmark for land rights in India*, Mines And Communities (May 14, 2016) Available at: <http://www.dailyo.in/politics/vedanta-losesniyamgiri-forest-rights-act-tribals-adivasi-odhisha-mining-land-acquisition/story/1/10627.html> (Accessed on May 7, 2021).

clearance for the said project.²⁷ The landmark judgment of SC reaffirmed the power of the Gram Sabha as a statutory authority under the Forest Rights Act.

B. V. Sambasivam v. Govt. of India²⁸

In this case, Supreme Court overturned a 2008 Madras High Court order – the only order against the Forest Rights Act from any court in the country. Madras High Court had directed that the Forest Rights Act should be implemented, but no titles should be given without its permission, based on the apprehension that it would lead to the destruction of forest land.

Andhra Pradesh and Orissa High Courts have also followed the Madras HC order by giving similar orders that year, but within less than a year, observing that the petitioners did not seem to be using the methods available to them in law, both of these courts removed their interim orders.

Non-conferment of title to the land which tribals cultivate and on which they live has deprived them of several entitlements (such as refusal to issue domicile certificate by the Tehsildar, ration card, and bank loans).

C. Wildlife Trust of India & Ors v. Union of India²⁹

In this case, the three-judge bench of the Supreme Court passed an order on February 13, 2019, and directed the state government to evict all the forest dwellers whose claims have been rejected by the authorities under FRA, 2006. The Central government and the Ministry of Tribal Affairs were accused of failing to adequately defend the statute of FRA and the rights of the forest-dwellers. The SC later put a stay order on the eviction when the Centre moved to the Court to modify the order (after many civil society members and NGOs criticized the central government for remaining ‘mute spectator’) as it would affect around 1.8 million members of Scheduled Tribes & OTFD communities who have been living in forests for generations, many of them being poor and illiterate. The Court directed the state governments to file an affidavit regarding the reasons for the high rate of rejection of claims, non-communication of rejection orders, unrealistic timelines in deciding the claims, irregular holding of State Level Monitoring Committee meetings, lack of support from the district administrations concerned in providing

²⁷ A Report published by Kalpavriksh and Vasundhara in collaboration with Oxfam India, *Citizens' Report 2015: Community Forest Rights under the Forest Rights Act*, (May 2015).

²⁸ *V. Sambasivam v. GoI & Ors.* MP No. 1/2008 in WP no. 4533/2008. Transfer Case (Civil) No. 39/2015.

²⁹ *Wildlife First & Ors. v. Ministry of Forest & Environment*, (2019) SCC 238.

revenue or forest maps, rejection of claims despite incomplete or insufficient evidence, etc.³⁰

When the matter was again put up in the Court on August 6, 2019, the Court noticed that 9 states had not followed due process in rejecting claims and that additional 7 states were yet to file their affidavits.³¹ Although the order of eviction has been temporarily stayed by the SC, the rights of tribal communities and OTFDs remain highly uncertain.

ISSUES RELATED TO IMPLEMENTATION OF FRA

It is little known fact among common people that the forest department is the single largest landlord that controls about 22 percent of the country's land area. There is a popular impression that large tracts of forest land are being lost due to encroachment or diverted to other uses but the truth is that land under the forest department's control increased by 26 million hectares between 1951 and 1988 at the cost of common lands used by rural communities for supporting a wide diversity of livelihood systems of the landless, small and marginal farmers and pastoralists.³²

The implementation of the FRA has been very poor and till now only 3 percent of the potential area of over 34 million hectares has been recognized as Community Forest Rights (CFRs).³³ There are several roadblocks to its proper implementation, especially created by the Forest Department who has always seen this Act in suspicion and are unwilling to let go of their control over forest. Forest Department has the authority to decide the jurisdiction of the land claimed by the tribal people and by this, their role has become very crucial. The FD's indifference towards FRA is not surprising as the department was against many of the provisions on which the entire legislation is based. The reluctance of the forest department to give up the control is because it is their major source of revenue. The Minor Forest Produce (MFP) accounts for around 50 percent of forest revenue which is way more than their profit through timbers. The forest department

³⁰ Legal Correspondent, *Supreme Court Continues its Stay on Eviction of Lakhs of Forest Dwellers*, THE HINDU (Sep.13, 2019) Available at: <https://www.thehindu.com/news/national/supreme-court-continues-its-stay-on-eviction-of-lakhs-of-forest-dwellers/article29403695.ece> (Accessed on May 7, 2021).

³¹ Kankana Trivedi, *Community Forest Rights at a Glance: 2017-20*, A Report produced and compiled by Oxfam India and Kalpavriksh as part of the Community Forest Rights – Learning and Advocacy Process (2020).

³² Madhu Sarin, *Who is Encroaching Whose Land?* Available at: <https://www.india-seminar.com/2002/519/519%20comment.htm> (Accessed on May 9, 2019).

³³ Madhu Sarin, *Independent People's Tribunal on the Status of Implementation of Forest Rights Act, 2006* A Report Published by HRLN (Apr. 2017).

trade in Minor Forest Produce (MFP) through co-operatives and corporations.³⁴

Some reasons for non-implementation of FRA include:

- Ambiguity in the interpretation of FRA provisions, the procedure for claiming them, and how the claims should be mapped and processed
- Lack of awareness campaigns, inadequate supply of the appropriate forms
- In many villages, the forest officials have given the impression that there is no need for community claims on forests as they already have a functioning Van Suraksha Samiti (VSS)
- At the same time, there is also a lack of political will both at the Central and State levels.

Even if the due process of claim is followed, the community claims have been rejected in most of the cases. It has also been said that most of the rejection of claims under FRA is motivated by the collusion between powerful players including the government, forest departments and large companies and corporations who have a commercial interest in the forest land. There is a need to identify effective strategies for overcoming the roadblocks in implementing this Act.

CONCLUSION

Access to community forest rights is a major concern in India. It not only affects the forest landscape that covers around 23% of the country but also the livelihoods of more than 200 million citizens of India which is 20% of the total population of India. The tribal and other forest dwellers community have always been oppressed and denied their rights, first by the feudal state, then by the colonial state, and subsequently by the independent Indian Government. There has been much compelling evidence across the world that forests are best protected when the indigenous community is given ownership rights over the forest for governance and management of the forest resources. They are also cost-effective, quick to respond and well-suited to address the complex problems in the management and governance of forest resources.

The passing of FRA, 2006 is a landmark moment in the history of the struggle of tribes and other forest dwellers for legal recognition of their rights over forests. However, the strength and

³⁴ *Supra* note 17.

value of the FRA have been diluted by the poor implementation of the act. The implementation, as well as the operation, is crucially linked to grass-root governance, which is possible only by empowering the gram sabhas to take control of the implementation thus protecting their rights. Further, the forest department needs to work in collaboration with the indigenous community in the management and governance of the forest for its sustainable use.

The UN Declaration on Rights of Indigenous People 2007 also acknowledges the importance of recognizing and protecting the rights of indigenous people over their land. UNDP's *Biodiversity and Ecosystems Global Framework: The Future We Want*³⁵ also emphasizes the need to unlock the potential of protected areas, including indigenous and community-conserved areas, to conserve biodiversity while contributing towards sustainable development. The Constitution of India under Article 244 and Schedule V & VI specifically protects tribal rights over their customary resources as well as their self-governing institutions. Still, they have to struggle and continue to fight for their rights over the forest land.

Although the FRA has provisions that are transformative and has brought a ray of hope to the lives of tribals, the depth of durability of this reform remains uncertain, primarily due to all the hurdles created by the powerful existing state forest bureaucracies, which remains major obstacles to realizing the pro-tribal rights. The issue of forest rights has been marked by many controversies for more than a century and a half, and has intensified in the past few decades; still, the FRA gives a hope that must be nurtured to carry the fight for forest right to the next level.

³⁵ UNDP (2012) *The Future We Want: Biodiversity and Ecosystems – Driving Sustainable Development*. UNDP Biodiversity and Ecosystems Global Framework 2012-2020. New York.