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**How does the Forest Rights Act conceptualise justice and rights? How are conflicts between various stakeholders addressed? Analyse using any theory of rights/justice discussed in class (John Rawls' theory of justice, Utilitarianism, Distributive Theory of justice etc.).**

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## Introduction

Discussion around the Forest Rights Act (FRA) of 2006 can be seen as, essentially, a debate over the Rights of the various parties with a stake in the matter. There are four broad stakeholders in this: the Corporate Lobby, the 'elite' Environmental Conservationists, the Forestry Department, and the original inhabitants (adivasis, or otherwise) of forested land. The end-goal of the FRA is to provide justice, doling out accordances to the parties in line with their respective Rights -- accordances determined by the conception of 'Justice' envisioned by the State, and thus the Act.

A point worth noting before we dive into these conceptions of justice and remedies provided by the FRA is that in a resource pool like Forests with multiple stakeholders and potential use-cases, maximising a utility necessitates the suboptimal completion of other needs<sup>1</sup>. Quoting an example provided by Sharchchandra Lele,

"Maximising, say, timber production will necessarily reduce some of the other goods and services. Conversely, managing forests for wildlife conservation means timber harvesting has to be curtailed drastically, if not given up altogether. Other trade-offs are more complex, poorly understood and ecosystem-specific, but they exist nevertheless. "

Economic & Political Weekly, Vol LII Nos 25 & 26, Page 55

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<sup>1</sup> "Forest Governance : From Co-option and Conflict to ...." 24 Jun. 2017, <https://www.epw.in/journal/2017/25-26/forest-rights-act/forest-governance.html>. Accessed 1 Mar. 2020.

Thus, conflict over stakeholder usage can be reduced to a question of: *who reserves the Right to the resource?*

## A Basic Background to the FRA

The Forest Reservation Act is set against the backdrop of the existing Indian Forests Act (IFA) established by the British in Colonial times. The IFA could be seen at heart as a Utilitarian Bill: one that prioritized only the timber collection interests of the Colonial Government as its primary utility. It stripped all persons inhabiting forested/semi-forested areas of their Rights to use and live in these areas. As commentators have said, it “made them trespassers in their own land overnight”.

As such, the Act did not conform to

- Rawl’s theory of Justice by not meeting the requirement of unequal distribution of resources to benefit the least advantaged
- Basic Rights that should have been accorded: effectively, displacing entire swathes of populations living in the affected areas without consideration for basic human rights.
- Social Justice Theory

Even post-independence, classification of areas as ‘forested land’ did not take into consideration local concerns. Shankar Gopalakrishnan writes<sup>2</sup>,

In a 2003 affidavit submitted to the Supreme Court, Madhya Pradesh stated that 82% of its forest blocks had been notified as “forests” without completing any survey or settlement (CSD 2004).

Economic & Political Weekly, Vol LII No 31, Page 71

## How the FRA Conceptualizes Justice and Rights

Given this backdrop, what is the FRA doing? It can be summarised as:

- It is resolving a social Injustice by giving back to forest-dwellers rights to their land that had been snatched away by the IFA
- This Injustice was caused by decisions in the past that are now law as the forest-dwellers/residents around the general area of the forests were delegitimized overnight by the passing of a single law sans any consultation

Of importance is the fact that the need for the FRA would not have arisen if the delegitimization of the localites stripping them of their Rights (that are accorded to all other residents of the country) had not happened in the first place. It is, from the perspective of Social Justice, a remedial Act.

## The FRA is about Social Justice

A claim can be made that the FRA falls in line with Rawl’s Theories of Justice based on fairness -- after all, we have discussed that the previous Act can be said to have been in violation of

Principles 2(a) of his conception. However, a closer examination on multiple fronts serves as clarification of the Act's conception of Justice as more for Social Justice, than one resembling Libertarian ideology.

Looking at Evidence: In an IFA-controlled world, Traditional Inhabitants are the biggest losers

In pre-FRA India, Forest Land was reserved as Government Property, leased out or used at the Forest Department's will. The era saw some famous movements around this, the Chipko movement being one of the more notable one. It is interesting to note that however, the movement gained traction after the priorities as presented to the media pivoted from 'allowing local use of forest resources' to an Environmental Issue.

And this is no fluke. When we look at all stakeholders in the matter, it is easy to see that the Local Communities seeking autonomy are the most disadvantaged amongst all of the rest. With lobbying, the Corporate Lobby and the Conservationists get their say, by claiming a 'development' agenda that aligns with their own and promising reforestation to satiate conservationist concerns, or by claiming preservation of nature as paramount, respectively. But both narratives are picked up by the Media, either as 'pro-development' or 'pro-environment'.

Local Communities, however, do not get any say in the matter. Media rarely, if ever, holds up a 'pro-poor' narrative against the other more dominant arguments: resulting in a lack of popular support. The impact on them is manifold:

- **Not allowed to stay in historically inhabited areas**, due to conservationist policies/govt status of land. "Trespassers in their own land"
- **They are not allowed to use forest resources for their own livelihood**
- **Face the brunt of Forest Existence without equal distribution of benefits**

A detailed analysis of the stakeholders and their conflicting resource uses is given in Table 1.

The logistics of it: the push for FRA came from Tribal Ministry, and Prime Minister's comments

Perhaps the most telling fact hinting at the FRA being a conceptualisation of Social Justice rather than anything else is that the push for the Act came from the Tribal Ministry, not the Ministry of Forestry, in the interests of uplifting the tribals. It fell in line with the UPA government policy of 'reform with a human face'<sup>2</sup>. In fact, the then Prime Minister Manmohan Singh is quoted having said about the Act:

As an internal note from the Prime Minister's Office put it in 2006, there was "no need to indulge in communitarian wishful thinking," and instead the goal of the new law should primarily be to "reduce harassment of tribals."<sup>2</sup>

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<sup>2</sup> "The Forest Rights Act : Political Economy of 'Environmental ...." 5 Aug. 2017, <https://www.epw.in/journal/2017/31/review-environment-and-development/forest-rights-act.html>. Accessed 1 Mar. 2020.

## A short note on the Rights that can be examined through the FRA

Group differentiated Rights, in a way: the FRA need not have been created if (an erstwhile) government had not decided to dispossess as many people with a single law as they had done. So this is not really group-differentiated as much as it is remedial, making up for past mistakes.

Natural Rights: particularly prominent however, is the natural negative right to non-interference -- Forest-dwellers have a right to remain as they are. This is shown prominently in the FRA, that gives ownership and non-timber usage rights entirely to the local population in and around forested areas.

Libertarian Theory: If we consider Corporations as Individuals and accord them Rights as individuals (as in the US), then the FRA is potentially in violation of the Libertarian conception of rights.

## How the FRA Addresses the conflicts between Stakeholders

	Traditional Inhabitants (Local Communities)	Corporate Lobbies	'Elitist' Environmental Conservationist Lobby	Forestry Department
<b>Stake in Forests</b>	Forests as livelihood (subsistence)  Forests as Capital Resource (trade, self improvement)	Forests as land to be cleared for projects  Forests as raw resource for large-scale industrial use	Forests as protected, untouchable resource  Any use of forests for any reason whatsoever is bad	Seeks to control the forests, as it historically has done  Any loss of control over forested area is bad
<b>(Negative) Impacts of (living near) forests</b>	The negative impacts of having to live near forests (such as tigers attacking cattle, or elephants trampling crops) are felt directly by them	No such negative impacts	No such negative impacts	Local forest rangers have to deal with living next to a forest. Officials in the Ministry off-site do not have any negative impacts.
<b>What Happens If Forest Rights are autonomously given to</b>				
<b>Traditional Inhabitants (Local Communities)</b>	-	Not beneficial: the Corporate Lobby is unable to acquire land or forestry products without permission from the owners, here the local communities	Solely local community use is bad, as any exploitation is bad.  There is no belief in local ability to keep stasis.	Solely local control is bad, as they lose control of "their forests"  Can, however, accept local usage under their control - often with bribes

<b>Corporate Lobbies</b>	<p>They can be displaced from their traditional homes</p> <p>If they are allowed to live near forests, they face the full brunt of side-effects without enjoying benefits</p>	-	<p>Solely industrial use should be worse. However, since primary opposition is seen to the new acts that benefit locals, where they were disadvantaged, more visible opposition is given to local control.</p> <p>Afforestation efforts are applauded.</p>	<p>Solely industrial control is bad, as they still don't have control</p> <p>But if they retain control, Industrial use is fair play.</p>
<b>'Elitist' Environmental Conservationist Lobby</b>	<p>Conservationism (as seen in the National Park Model) displaces them from their traditional habitat.</p> <p>The principle of no interference with nature also takes away their traditional means of livelihood</p>	<p>While it is largely not beneficial as Conservationism prohibits the usage of forest produce for resource utilization, it can be acceptable as Afforestation efforts will be applauded</p>	-	<p>Solely conservationist control is considered bad, as they lose control of the forests.</p> <p>However, if they retain control of the land, negotiations can be made on management.</p>
<b>Forestry Department</b>	<p>[ Status Quo pre-FRA ]</p> <p>Forestry Department control aids the above two.</p> <p>In itself, displacement from traditional homes can happen again.</p> <p>Rangers enjoy a level of authority over the forest, and possibility of corruption increases.</p>	<p>[ Status Quo pre-FRA ]</p> <p>Kind of beneficial - lobbying with the government, as in the past, especially playing the 'development' card, can get them access to forests for their agenda fulfilment.</p>	<p>[ Status Quo pre-FRA ]</p> <p>Solely forest department is not great - but they can in theory enforce conservationist policies, so they need to exist, implementing (ideally) an entirely conservationist framework.</p>	-

**Table 1: An analysis of Stakeholders vs Conflicts in between all of them**

The FRA prioritizes the Rights of Local Communities over all others. It does not implement -- explicitly anyway -- the concept of "multilayered governance" as suggested by Sharachandra Lele<sup>1</sup>. Dilutions to the law<sup>3 4</sup> in its state and local level implementations mean that the situation as it stands remains one of conflict -- either the FRA is used in its fullest capacity as a "weapon of Adivasi Communities"<sup>2</sup>, or it is ignored by Forest Officials, Corporate Lobbies, or whatever powers that be.

<sup>3</sup> "New forest law would put framers of the colonial act to shame." 12 Apr. 2019, <https://www.telegraphindia.com/opinion/new-forest-law-would-put-framers-of-the-colonial-act-to-shame/cid/1688584>. Accessed 2 Mar. 2020.

<sup>4</sup> "Political Economy of Community Forest Rights | Economic and ...." 24 Jun. 2017, <https://www.epw.in/journal/2017/25-26/forest-rights-act/political-economy-community-forest-rights.html>. Accessed 2 Mar. 2020.