

Right to habitat of particularly vulnerable tribal groups in Forest Rights Act 2006: A discourse in ecological democracy in India

Dr. Debendra Kumar Biswal¹, Saumalini Mohanty²

¹ Professor, Department of Anthropology, Utkal University Bhubaneswar, Odisha, India

² Research Scholar, Department of Anthropology, Utkal University Bhubaneswar, Odisha, India

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Abstract

The Forest Rights Act 2006 (FRA) in India recognized the historical injustice upon the Scheduled Tribes (STs) and Other Forest Dweller communities and ensured rights to title, use and management of forest in India. The most significant is the right to habitat i.e. the area comprising the customary habitat and such other habitats in reserved and protected forests in the areas inhabited by these communities. However, the empirical evidences from the deep forest areas inhabited by the Particularly Vulnerable Tribal Groups (PVTGs) show that its implementation continue to suffer from many problems, as a result of which the majority of PVTGs are not receiving their rights or community rights are very low and leading to eviction or harassment by forest authorities. Based on these evidences, this paper intends to critically discuss three major discourses; firstly, the fixing of timing of 'historical injustice' as defined in FRA. Secondly, how to recognize habitat rights, where the community should stay or not. Thirdly, the three kinds of politics behind FRA- intention of the state, structure related arguments and nature and impact of this this Act upon the community.

Keywords: Customary law, community rights, natural resource management, habitat

Introduction

The Forest Rights Act, 2006^[2] (FRA) of India recognized responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance, livelihood and food security for the Scheduled Tribes (STs) and Other Traditional Forest Dwellers inhabiting in the forest areas. The most significant is the rights on ancestral lands and their habitat, which were not adequately recognized in the consolidation of state forest during the colonial period as well as in independent India resulting in "historical injustice" to the forest dwelling STs and Other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem. The Act defines habitat as which "includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of PVTGs and pre-agricultural communities and other forest dwelling Scheduled Tribes" (Govt. of India, 2006)^[4].

This was argued that this Act will redress the "historical injustice" committed against forest dwellers, while including provisions for making conservation more effective and more transparent and inherent Rights as recognized by the Act; Title rights – i.e. ownership – to land that is being farmed by tribals or forest dwellers as on December 13, 2005^[13], subject to a maximum of 4 hectares; ownership is only for land that is actually being cultivated by the concerned family as on that date, meaning that no new lands are granted, Use rights – to minor forest produce (also including ownership), to grazing areas, to pastoralist routes, etc. and Forest management rights – to protect forests and wildlife section 3(1).

However, this Act implemented in the year 2012 has raised several discourse in the field of academia, policy makers and the rights advocates; how to judge the depth of 'historical injustice' (Hebbar, 2022), how to estimate Relief and development rights of the communities in case of displacement (Manjari and Kaviya, 2024)^[9], whether people

should stay in the area where wildlife is a threat (Sarangi, 2015), do forest rights threaten wildlife conservation (Kavana and Nagaraja 2025)^[6], prioritizing tribal rights vs. environmental conservation (Kavana and Nagaraja 2025)^[6] and politics behind FRA (Bose, 2010).

Rights to Habitat in FRA 2006^[1]: An Overview

The right to habitation in the FRA 2006^[2] can be categorized into three parts; Rights to ancestral lands/habitat, rights to community tenure and rights to be relocated their dwelling due to state development interventions (GoI, 2006)^[2]. It means, the rights which secure individual or community tenure or both shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands. Firstly, right to hold and live in the forest land under the individual or common occupation for habitation or self-cultivation. The Act states that right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers. Secondly, rights including community tenure of habitat and habitation for primitive tribal groups and pre-agricultural communities. It states "rights of settlement and conversion of all forest villages, old habitation, un-surveyed villages and other villages in forests, whether recorded, notified or not into revenue villages". Thirdly, on rehabilitation due to developmental projects by the state, it says "no forest rights holders shall be resettled or have their rights in any manner affected for the purposes of creating inviolate areas for wildlife conservation except in case all the following conditions (?) are satisfied; People's rights have been recognized (without this, people cannot demand proper rehabilitation), it is shown that continued community presence will lead to irreversible damage to wildlife, the community agrees to the resettlement package being offered and full facilities are provided at the resettlement site

(Bhullar, 2008). The Act states that right to in situ rehabilitation including alternative land in cases where the STs and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlements to rehabilitation prior to the 13th day of December, 2005 [13]. The Chapter-III 4 (2) ensures for resettlement and alternative package for secure livelihood, free informed consent of the gram sabha in the areas concerned to the proposed resettlement and to the package has been obtained in writing and no resettlement shall take place until facilities and land allocation at the resettlement location are complete as per the promised package (Bhullar, 2008).

Discourse in Ecological Democracy

a. Rights to habitat in the constitution

There are two major Articles in the Constitution of India, which deal with right to habitat of a people. Under Article 15(4), exemption granted to the state for making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or Scheduled Tribes. Further, Article 46 states that the state shall promote with special care the educational and economic interests of the weaker sections of the people, in particular, of Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.

The United Nation’s Declaration on the Rights of the Indigenous Peoples, 2007 [12] (UNDRIP) is the international instrument to protect rights to habitat of the Indigenous communities worldwide, which say “No relocation shall take place without the free, prior and informed consent of the indigenous peoples” (United Nations, 2005) [15]. There are several Indian Laws, which directly or indirectly protect habitat rights of the tribal communities in India. The forest conservation Act, 1980 (amended in 1988) provides for the conservation of forest. The Act imposed restrictions on the de-reservation of forests or use of forest land for non-forest purposes. The Wildlife (protection) Act, 1972, Panchayat Extension to Scheduled Areas (PESA) Act 1996, Protection of Civil Rights (PCR) Act, 1976 and Protection of Land Alienation Regulations (various states): prevented land alienation from Adivasis and other vulnerable groups. The recent historic Act to protect the habitat rights of the PVTGs is ST and other Traditional Forest Dwellers (recognition of forest rights) Act, 2006 [2], which conferred the right of habitation on STs and other traditional forest dwellers.

There are also several government policies to deal with habitat rights of the tribal communities inhabiting in the forest areas; the National Forest Policy, 1988 and National Environment Policy (NEP) 2004. The NEP, 2004 seeks to address the question of environmental management in the country in a comprehensive manner.

Institution	Jurisdiction	Powers and Functions	Comments
Environmental courts	National Tribunal acts as the appellate authority at all-India level. State level environmental courts.		Deals with environmental offences and awards punishments
Green Bench of the Supreme Court		Deals with cases related to the environment in the Supreme Court.	
Green Bench of the High Court		Deals with cases related to the environment in the High Court.	
Forest Administration	Inspector General of (Forests). Assistant Inspector General of Forest. Divisional forest officers	Forest officers are equipped with both administrative and judicial powers.	

a. Judicial Decisions before FRA 2006

There are several judicial decisions before enactment of Forest Rights Act 2006 [2], which have directly or indirectly advocated for habitat rights of the tribal communities living in the forests in India. The Samatha vs. state of AP (1997) 8 SCC 191, is one of the landmark judgments on it. It is one of the judgements under Article-21 (right to life) which requires permission from the Gram Sabha in setting up business and industrial units in areas under tribal self-rule or areas under Schedule V of the constitution. In Narmada Bachao Andolan vs Union of India (2000), 10 SCC 664, it was decided that construction of the dam will continue as per the award of the tribunal but also ordered Narmada Control Authority to prepare an Action Plan to fix a time frame so as to ensure relief and rehabilitation. In Enviro-Legal Action vs. Union of India Case, right to enjoy pollution free water and air. It is included in right to life. Every attempt should be made to preserve the fragile ecology of the forest area and to protect the tiger reserve and the right of tribals in the state of Madhya Pradesh.

Debates on FRA and Rights of Particularly Vulnerable Tribal Gropus (PVTGs)

a. Categories of People Entitled For this Right

There are two categories of people entitled for FRA benefits- Forest Dwelling Scheduled Tribes (STs) and Other

Traditional Forest Dweller. First one is the members or community of the STs who primarily reside in and who depends on the forests or forest lands for *bone fide* livelihood needs and includes scheduled tribe pastoralist communities. Second are any member or community who has for at least 3 generations prior to 13th December 2005 primarily resided in and who depend on the forest or forest land for bona fide livelihood needs. Generation means 25 years (GoI, 2006) [2]. Within the STs, the most deprived are the Particularly Vulnerable Tribal Groups (PVTGs), whose rights have not been properly represented or there are strong empirical evidences of conflict between their customary practices in habitat and the rights defined through statute in the FRA 2006 [2]. The Shilu Ao Committee constituted by the Planning Commission in 1969 for reviewing the tribal situation had observed that a large number of tribal communities continued to be extremely backward and some of them are still in the primitive food gathering stage. It was emphasized that these communities needed special attention. As a part of the Tribal Sub Plan strategy, 75 tribal groups with a total population of about 13 lakhs have been identified as the primitive tribes. The main criteria adopted for their identification are:1. pre-agricultural level of technology, 2. Very low level of literacy and 3. Stagnant or declining population.

The Act defines a ‘generation’ to mean a period comprising of twenty-five years. Hence, in order to qualify for forest rights under the Act, the ‘Other Traditional Forest Dwellers’ must prove that they have “primarily” resided in and depended on the forest or forest lands for bona fide livelihood needs since the year 1930. After protest from different sections, the Ministry of Tribal Affairs in its letter no. 17014/02/2007-PC&V VolVII (MOTA, 2008) in June 2008^[10, 16] clarified that the implication of using the word “primarily” is to include the Scheduled Tribes and Other Forest Dwellers who have either habitation, or patches of land forest cultivation for livelihood, and would, therefore, be primarily spending most of their time either in temporary makeshift structures or working on patches of land such areas irrespective of whether their dwelling houses are outside the forest or forest land. However, this clarification has been questioned by livelihood experts. The inclusion of such a restrictive provision would render the claims of nomadic tribes and vulnerable non-ST forest dwellers, who may have relied on other means of livelihood since the year 1930, ineligible. So, how do people prove they are eligible? Again, the major challenges before the policy makers is the procedure of identification of hamlets/settlements and consolidation (Bhullar, 2008). for instance, in PVTG settlements in Koraput district of Odisha, in one revenue village, there are a number of big hamlets. As a result, FRC were formed in the revenue villages despite being 5TH Scheduled Area and in one FRC even 20 big hamlets.

b. Community Forest Rights (CFR) of PVTGs

The FRA-2006^[2] limits to distinction of ‘Community Forest Resources (CFR)’ and ‘Habitat’ of the tribal communities. Community forest resources are customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as sanctuaries and national parks to which the community had traditional access. Whereas, habitat includes the area comprising the customary habitat and such other habitats in reserved forests and protected forests of PVTGs and pre-agricultural communities and other forest dwellers. Community forest resource is related to village, whereas, habitat means the entire area in which the PVTGs reside and use irrespective of the type of forest. The habitat has been distinguished from community forests because the PVTGs live in relatively close proximity and in compact area though they live in separate and small habitats (Verma, 2008)^[16].

There is also ambiguity on powers of the community to protect forests which will lead to conflict and undermine Ministry’s stated goals (Madhu Ramnath, 2008)^[7]. the ministry has taken a giant stride forward by mandating that all villages should have Community Forest Resource Rights (para iv-a). However, having taken this crucial step, several instances in the PVTG areas show that the guidelines fail to provide any clarity on the actual powers of communities in terms of managing, conserving and protecting forests (Manjari,2024)^[9]. As such, once the titles are granted, communities will attempt to assert their rights, while state agencies will resist any reduction in their powers, leading to constant conflict.

Further, in connection with CFR Form “C” states that the “presence of a few Scheduled Tribes/ Other Traditional Forest Dwellers is sufficient to claim make the claim”. It is

claimed by the experts that this may be changed to “residence of a few Scheduled Tribes/ Other Traditional Forest Dwellers in the Village” as it leads to confusion. The process of recognition of forest rights (process for determination, claims verification and recognition of rights) on 12A (1) confuses field verification procedures, these officials only have the power to record their comments, not to decide on claims. Also, role of gram sabha is undermined.

c. Relief and Development Rights of PVTGs and FRA

The FRA beneficiaries will have rights to rehabilitation in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection. There are two major issues in this case; firstly, the conflict between community rights vs. rights of the state for development activities and secondly, resettlement due to wildlife conservation and community rights habitation in the deep forest (Pallavi, 2007)^[12]. The Section 4(2) of the Act lays out a procedure by which people can be resettled from areas if it is found to be necessary for wildlife conservation. The first step is to show that relocation is scientifically necessary and no other alternative is available; this has to be done through a process of public consultation. The second step is that the local community must consent to the resettlement. Finally, the resettlement must provide not only compensation but a secure livelihood. The literature in support of this Act argues that the provisions in the Act for community conservation will in fact strengthen forest protection in the country, because it will provide a legal right for communities themselves to protect the forest, as thousands of villages are already doing in the face of official opposition (Madhusudan, 2005)^[8]. The Joint Parliamentary Committee recommended that a site specific, participatory and scientific procedure for relocation has been incorporated in section 4(2) of the Act. The Wild Life (Protection) Act has been amended on the same lines with regard to tiger reserves. These laws now say that resettlement will only happen if: i. People’s rights have been recognized (without this, people cannot demand proper rehabilitation); ii. It is shown that continued community presence will lead to irreversible damage to wildlife; iii. The community agrees to the resettlement package being offered and iv. Full facilities are provided at the resettlement site (Kabra, 2006)^[5].

But, it raises the issue that do forest rights to tribal communities threaten wildlife conservation (...). Many environmentalists and anthropologists sharply criticize this Act, since they alienate local people, lead to violent conflict and often result in people secretly returning because they have no choice if they want to survive. It would be more realistic to identify protected areas, which consist of National Parks and Sanctuaries (about 4.7% of India’s geographical area) as inviolate while areas outside such reserves could be utilized to serve the needs of tribal communities (PRS, 2005)^[8].

When eviction and relocation of the tribals and other forest dwellers is concerned, the Forest Rights Act 2006^[2] does not place any explicit restriction on the methods that can be used to remove non-eligible forest dwellers. This is a concern, given the history of cases where brutal force has been used to evict tribal families. It mentions that FDSTs would be relocated from core areas of National Parks and Sanctuaries with due compensation. However, it does not clarify exactly what kind of compensation would be offered

to the tribal people, what recourse they would have if such compensation is not satisfactory or is altogether denied. hence, the old debate between the environmentalists and the social anthropologists regarding “tigers or tribals” has been revived after the FRA 2006 [2]. The Act asks for declaration and demarcation of the “critical wildlife habitat” (CWLH) and to evict villagers from the villages falling in the way of the special tiger corridor. One of the crucial threats to the proper implementation of the Act is the interpretational freedom of the Forest Department. Whether it is occupation on forest land or demarcation of CWLH or ownership over Non-Wood Forest Products (NWFPs), the Forest Department does what suits its interests best.

Conclusion

The Forest Rights Act 2006 [2] ensures title rights, use rights, forest management and relief and development rights of the forest dweller STs and Other Forest Dweller Communities living in the forest across the country. The most important is “right to habitat” especially of the seventy-five Particularly Vulnerable Tribal Groups, where the habitat has been distinguished from community forests because the PVTGs live in relatively close proximity and in compact area though they live in separate and small habitats. Several empirical evidences show that its implementation continue to suffer from many problems, as a result of which the majority of PVTGs are not receiving their rights or community rights are very low and leading to eviction or harassment by forest authorities. The major debates surrounding these issues are intention, structure and impact related arguments. Before implementation of FRA-2006 [2], the right to habitat was there in Art.15(4) and Art 46 of the Constitution of India, UNDRIP of the United Nations, several Indian Acts like Forest Conservation Acts, PESA, National Environment Policy 2004 and many more. There were also several judicial decisions to ensure habitat rights of the tribal communities. However, the FRA was supposed to redress the historical injustice upon these communities, but failed to achieve goals. Firstly, the experts see loopholes in identification of categories of people for the entitlement. The see restrictive provisions in its identification, by which the nomadic and vulnerable tribes would be ineligible. How do people prove they are eligible? The major challenge is the procedure of identification of hamlets/settlements and consolidation to it. The Act limits distinction of Community Forest Resources and Habitat, ambiguity on powers of the community to protect forests. Empirical evidences in the PVTG areas show that the guidelines fail to provide any clarity on the actual powers of communities in terms of managing, conserving and protecting forests. The process of recognition of forest rights (process for determination, claims verification and recognition of rights) on 12A (1) confuses field verification procedures, these officials only have the power to record their comments, not to decide on claims. Also, role of gram sabha is undermined. When eviction and relocation of the tribals and other forest dwellers is concerned, the Forest Rights Act 2006 [2] does not place any explicit restriction on the methods that can be used to remove non-eligible forest dwellers.

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