

## The Dilution of the Forest Rights Act



Source: <http://www.downtoearth.org.in/gallery/a-protest-to-demand-rights-over-forests-47895>

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### The Dilution of the Forest Rights Act

#### Introduction

Earlier this month, tens of thousands of farmers and forest dwellers in Maharashtra undertook a ‘long march’ from Nashik to Mumbai to indefinitely gherao the Maharashtra Assembly and demand immediate resolution of their life-and-death issues. The farmers, reeling under debt, demanded complete waiver of farm loans and better prices of crops according to the recommendations of the Swaminathan Committee. The forest dwellers demanded the strict enforcement of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – better known as the Forest Rights Act (FRA) – through granting individual and community land rights to forest dwellers.

The FRA was enacted by the United Progressive Alliance government in 2006. The Government, through the Preamble of the Act, categorically acknowledged the “historical injustice” meted out to the forest dwellers during both the colonial period and independent India. The British considered the forest dwellers as “encroachers” in their own land, snatching away the right to living and livelihoods the latter enjoyed in pre-colonial India. This process of alienation continued in independent India as successive governments evicted people from their forest lands for ‘development projects’ or for the purposes of conservation. It was in reaction to this continued oppression that a number of adivasi groups and other civil society activists pressured the Government to recognise the inherent rights of forest dwellers to their lands and resources. The enactment of the FRA was the culmination of their decades’ worth of struggle.

However, despite its strong potential, the FRA lies marred not only because of the gaps in the process of implementation, but also due to the surreptitious attempts by the Government to undermine the very spirit behind the legislation: democratising forest governance.

#### Features of FRA

The main objective of the FRA is to, first, recognise the inherent rights of the forest-dwelling Scheduled Tribes (FDSTs) and other forest dwellers over their forest-land and resources; and second, to ensure that they play an active role in the governance and management of forests. The Act, passed by the Parliament in 2006, came into effect on 31 December 2007. The Ministry of Tribal Affairs (MoTA) notified the Rules on 1 January 2008,<sup>1</sup> and later notified the amended Rules in 2012, giving more power to gram sabha to ensure sustainable use of resources.

Under the Act, FDSTs and other traditional forest dwellers have been granted, *inter alia*:

- **The right to hold and live** in forest land;
- **The right of ownership** to collect, use and dispose minor forest produce;
- **Community rights of uses or entitlements** such as fish and other products of water bodies, grazing and traditional seasonal resource access of nomadic or pastoralist communities; and

<sup>1</sup><http://pib.nic.in/newsite/PrintRelease.aspx?relid=77532>

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- **The right to protect, regenerate or conserve** or manage any community forest resource; and right of access to biodiversity and community right to intellectual property and traditional knowledge.

Further, the Gram Sabha plays substantial roles in the implementation of the Act. These roles, *inter alia*, include:

- To clear developmental projects managed by the Government which require diversion of forest land
- To initiate the process for determining the nature and extent of individual or community forest rights by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights
- To protect the wild life, forest, biodiversity, adjoining catchments areas, water sources, other ecological sensitive areas, preserve the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers from any form of destructive practices affecting their cultural and natural heritage etc.

### Current Issues

The first issue is the sluggish pace of the distribution of land titles to forest dwellers. In a status report on the implementation of the FRA, the MoTA revealed that for the period ending 31.10.2017, out of the 41,89,827 individual and community claims filed under the FRA, only 18,24,271 titles had been distributed: a mere 43.5%.<sup>2</sup>

	Claims Filed	Titles Distributed	Percentage
<b>Individuals</b>	40,50,131	17,59,955	43.4%
<b>Community</b>	1,39,696	64,316	46.03%
<b>Total</b>	<b>41,89,827</b>	<b>18,24,271</b>	<b>43.5%</b>

Table 1

Source: <https://tribal.nic.in/FRA/data/MPROct2017.pdf>

It is important to note that titles given to communities constitute only 3.52% of the total titles distributed. This is significant since community forest titles enable all villagers (landless people included) to access, use and sell minor forest produce and use other forest resources.<sup>3</sup> Section 3(1)(c) vests the rights over collection and sale of minor forest produce – non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers, etc. – in the hands of communities.

Moreover, according to a 2015 estimate by the Rights and Resources Initiative, at least 40 million hectares of forestlands are eligible for Community Forest Resources (CFR) rights recognition under FRA across the country.<sup>4</sup>

<sup>2</sup><https://tribal.nic.in/FRA/data/MPROct2017.pdf>

<sup>3</sup><https://tribal.nic.in/FRA/data/FRARulesBook.pdf>

<sup>4</sup> According to a report by *Community Forest Rights-Learning and Advocacy*, the Rights and Resource Initiative used Census 2001 and Forest Survey of India (FSI) 1999 data for the estimate. The data excludes estimates for Jammu & Kashmir, Arunachal Pradesh, Manipur, Nagaland, Mizoram and Meghalaya. Read the CFR report here: <http://rightsandresources.org/wp->

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However, according to the ministry's status report, as of 31.10.2017, titles had been given over only 5.7 million hectares (141,04,744.77 acres) of land, which is a mere 14.25% of the RRI estimate.<sup>5</sup>

The second, and more important issue, is of the systematic undermining of the role of gram sabhas. Under the FRA, the gram sabha is the statutory body for managing and protecting forestlands. The Act requires that the gram sabha consents to any activity which has to be carried out on these lands, including by a government agency. In its famous 2013 Vedanta judgment, the Supreme Court had upheld this right and asked the gram sabha to take a call on Vedanta's mining project in Odisha's Niyamgiri hills.<sup>6</sup> The gram sabha unanimously rejected the project.

However, the Compensatory Afforestation Fund (CAF) Act, passed by the Parliament in 2016, dilutes these rights provided to the gram sabhas under FRA. The CAF Act provides for mechanisms for the disbursement of funds accumulated over the years in the ad-hoc Compensatory Afforestation Fund Management and Planning Authority (CAMPA) body. The Act also provides for creating a national fund with contributions from any organisation, company or government department which makes a request for diversion or de-notification of forest land for non-forest purpose.

The CAF Act does not provide for the consent of gram sabhas to be taken into account where the authorities seek to implement compensatory afforestation projects on a forest land. It was mainly for this reason that the Congress and the Left parties had objected to the Bill in the Parliament. Following the opposition, the then-environment minister, late Mr. Anil Madhav Dave, had assured the house that the CAF Rules would include provision for consultation with gram sabhas in the implementation of CAF programs.<sup>7</sup>

However, the draft Rules, notified by the government in February 2018, paints a different picture. On consent and consultation of the gram sabha, a proviso to Section 5 of the Rules states:

“... the said activities over forest land under the control of State Forest Department and being managed as per the working plan with participation of local people shall be taken up **in consultation with the Gram Sabha or Van Sanrakshan Samiti or Village Forest Committee** as the case may be, and shall be in consonance with the provisions of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006...” [emphasis added]

The term used is “in consultation with the Gram Sabha ...” Compare this with the first proviso of Section 3(2) of the FRA, which states that -

“the clearance of such developmental projects shall be **subject to the condition that the same is recommended by the Gram Sabha.**” [emphasis added]

The proviso in the Rules implies that the implementation of afforestation projects need not necessarily require the informed consent of gram sabhas; they only need to be ‘consulted.’ More importantly, the proviso places Van

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content/uploads/2016/12/Promise-and-Performance-10-Years-of-the-Forest-Rights-Act-in-India\_December-2016\_Community-Forest-Rights.pdf and the RRI report here: [http://rightsandresources.org/wp-content/uploads/CommunityForest\\_July-20.pdf](http://rightsandresources.org/wp-content/uploads/CommunityForest_July-20.pdf)

<sup>5</sup> <https://tribal.nic.in/FRA/data/MPROct2017.pdf>

<sup>6</sup> [http://fra.org.in/ASP\\_Court\\_Cases\\_UploadedFile/%7B55233dc5-b38a-4c53-9228-00a2b8d19034%7D\\_Briefing\\_note\\_on\\_vedanta\\_judgment\\_April\\_18\\_2013.pdf](http://fra.org.in/ASP_Court_Cases_UploadedFile/%7B55233dc5-b38a-4c53-9228-00a2b8d19034%7D_Briefing_note_on_vedanta_judgment_April_18_2013.pdf)

<sup>7</sup> <https://thewire.in/environment/compensatory-afforestation-fund-act-hurting-forest-communities-says-petition>

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Sanrakshan Samitis and Village Forest Committees – both non-statutory bodies, established and controlled by state Forest Departments – on the same level as gram sabhas – constitutional, statutory bodies. One can imagine a situation where bureaucrats in the other two bodies would implement afforestation projects by easily bypassing the gram sabhas, and thereby, the will of the forest dwellers themselves.

Further, the MoTA has raised similar concerns with the draft Rules, especially on the definition of gram sabhas. The Rules define gram sabha as having “the same meaning as assigned to it in article 243(B) of the Constitution.” The article states: “gram sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level.” A senior official of the MoTA notes: “The role of gram sabha [sic] has been broadened strengthened [sic] after the forest rights act 2006 came in to force. But the environment ministry has completely overlooked the FRA definition of gram sabha.” What is even more worrying is that, as per officials of the MoTA, the ministry was not even consulted during the framing of the Rules.<sup>8</sup>

### Way Forward

The latest National Family Health Survey-4 revealed that scheduled tribes form the country’s poorest people, with five of ten falling in the lowest wealth bracket. Despite forming 8% of the total population, they account for a fourth of the population living in the poorest wealth decile.<sup>9</sup> It is thus imperative that the central government works along with the state governments and gram sabhas to speed up the process of granting individual and community land titles to tribals and other traditional forest dwellers to enhance their socioeconomic conditions.

Further, it is important to note that in 2007, India voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples. Article 19 of the Declaration states: “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”<sup>10</sup> Therefore, with the tribals being the primary stakeholders in plantation and conservation projects in forest areas, the CAF Rules must explicitly provide for the necessary consent of gram sabhas to implement any projects under the CAF Act. Further, any future legislations or amendments in the existing legislations concerning forest areas should be formulated through discussions and public consultations with the forest dwellers themselves and their representative institutions.

<sup>8</sup> <https://timesofindia.indiatimes.com/india/gram-sabha-definition-in-draft-caf-rules-could-deprive-some-forest-dwellers-of-consultation-mota/articleshow/63076626.cms>

<sup>9</sup> [http://www.business-standard.com/article/economy-policy/scheduled-tribes-are-india-s-poorest-five-of-10-in-lowest-wealth-bracket-118022800161\\_1.html](http://www.business-standard.com/article/economy-policy/scheduled-tribes-are-india-s-poorest-five-of-10-in-lowest-wealth-bracket-118022800161_1.html)

<sup>10</sup> [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

## Headlines

### **Make compulsory minimum period for doctors to work in India, parliamentary panel suggests**

**(PTI, *The Hindustan Times*, March 25, 2018)**

In its report on the National Medical Commission Bill 2017, the Parliamentary Committee recommended that service in India by doctors graduating from Indian medical schools be made compulsory. This was suggested since many doctors allegedly leave the country for foreign opportunities after studying in government colleges. The committee also stressed on the importance of a compulsory one year rural posting. The panel also recommended exploring the possibility of “restructuring and revamping” the Dental Council of India, the Nursing Council of India and other such councils for their effective regulation. Another aspect that was highlighted is the standardisation of regulatory, licensing or accreditation norms for all paramedical and allied health care professions so as to define their scope of practice.

Read More: <https://www.hindustantimes.com/india-news/make-compulsory-minimum-period-for-doctors-to-work-in-india-parliamentary-panel-suggests/story-hhsaKjcIataRqMvll0e3TJ.html>

Date Accessed: 26.03.2018

## Governance and Development

### GOVERNMENT

#### **Air India Refuses to Disclose PM Narendra Modi's Flight Records Under RTI Act**

(PTI, *The Wire*, March 25, 2018)

Air India, in response to a RTI query on PM Modi's chartered flight details, answered that it cannot reveal details as per instructions from PMO due to security threats. The RTI sought dates of invoices raised for chartered flights for foreign visits of the prime minister since November 2016 and the dates of forwarding each of these bills to the civil aviation ministry and the external affairs ministry. The rationale behind filing this RTI was the delay in clearing Air India bills and invoices while tax payers' money is being repeatedly used to bail out the carrier. However these details have been denied under Section 8(1)(g) of the RTI Act which restricts information from being revealed if it is perceived to be harmful to the person's life or physical safety. The petitioner has now argued that there no provision in the Act to deny information without giving reasons as per section 7(1) of the Act or without quoting the CIC or court orders.

Read More: <https://thewire.in/government/air-india-narendra-modi-rti-act>

Date Accessed: 26.03.2018

### HEALTH

#### **The standards and double standards of dealing with Tuberculosis in India**

(Pranay Sinha and Scott K. Heysell, *The Wire*, March 23, 2018)

The Government of India has audaciously claimed that India will be tuberculosis (TB)-free by 2025. Funding has increased markedly and some concrete steps have been taken. But to end TB by 2025, India needs to decrease new cases of TB by more than 10-15% every year over the next eight years. But the current rate of reduction is about 1.5% per year. So while India has the opportunity to lead the world's crusade against TB, there is a need to spend thoughtfully and creatively, with an eye to crafting diagnosis and treatment to the needs and abilities of the patients. We must also fund basic research that tries to discover molecular biomarkers of TB that improve our ability to diagnose the disease earlier and tailor the duration of therapy to the needs of the individual or even develop a vaccine that is truly preventative.

Read More: <https://thewire.in/health/the-standards-and-double-standards-of-dealing-with-tuberculosis-in-india>

Date Accessed: 25.03.2018

### LAW AND JUSTICE

#### **SC/ST Act: Par panel likely to recommend review of SC order**

(PTI, *The Indian Express*, March 25, 2018)

Members of the Parliamentary Standing Committee on Social Justice have recommended that the committee should file a review petition in the Supreme Court against the directive diluting provisions of the SC/ST (Prevention of Atrocities Act). The order which stated that there will be no immediate arrest based on a complaint filed under the Act will effectively render the Act toothless. The 30 member committee headed by BJP MP Ramesh Bias will meet next week along with officials from the Ministry of Social Justice to deliberate on the impact of the judgment.

Read More: <http://indianexpress.com/article/india/sc-st-act-par-panel-likely-to-recommend-review-of-sc-order-5111164/>

Date Accessed: 26.03.2018

#### **SC/ ST Act: Same Supreme Court bench gave misuse argument for dowry law**

(Shalini Nair, *The Indian Express*, March 22, 2018)

The Supreme Court bench of U.U. Lalit and A K Goyal, while dealing with a case under the SC/ST (Prevention of Atrocities) Act took a similar line on the anti-dowry law last July. In both cases, the court's stated intention was to prevent misuse — both the rulings drew criticism for reading down of the provisions. In both cases, the orders state that it has been "judicially acknowledged" that there has been "misuse", by Dalits in case of the SC/ST Act and by women under IPC 498 A (cruelty against a married women by her husband or in-laws) in the Rajesh Sharma vs the State of UP case. Both judgments cite the National Crime Records Bureau



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(NCRB) data on low convictions and high acquittals to imply misuse. In fact, the word “misuse” appears seven times in the SC/ST Act judgment (not including the many times it appears in the case law references), and thrice in the IPC 498 A order.

Read More: <http://indianexpress.com/article/india/sc-st-act-same-supreme-court-bench-gave-misuse-argument-for-dowry-law-5106454/>

Date Accessed: 25.03.2018

### SC prod on Lokayukta

(R. Balaji, *The Telegraph*, March 24, 2018)

The Supreme Court recently directed 11 states including Bengal to explain within two weeks what steps they had taken to appointment their anti-corruption ombudsmen, the Lokayukta and the Upalokayukta. It asked the chief secretary of a 12th state, Odisha, to state whether the office of the Lokayukta or his deputy, the Upalokayukta, in the state was "functional". "It appears that the states of Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Tamil Nadu, Telangana, Tripura, West Bengal and Arunachal Pradesh have not appointed any... Lokayukta or Upalokayukta," the bench of Justices Ranjan Gogoi and R. Banumathi said. It said the 11 states' chief secretaries should state the reasons for this omission and explain the steps taken to rectify it. The next hearing is on April 12.

Read More: <https://www.telegraphindia.com/india/sc-prod-on-lokayukta-218087#.WrW4v7P188M.twitter>

Date Accessed: 25.03.2018

## AGRICULTURE

### Learning from the ‘long march’

(R. Srinivasan, *The Hindu*, March 25, 2018)

Maharashtra Chief Minister Devendra Fadnavis extended his previous loan waiver scheme to yet more farmers for an even longer period, and also promised to transfer land to Adivasi farmers as guaranteed by the Forest Rights Act of 2006 only when an army of 40,000 barefoot, largely Adivasi farmers descended on Mumbai earlier this month. This was because, in Maharashtra, of the ₹34,000 crore loan waiver announced in 2017 (prior to the latest announcement), only ₹13,580 crore was actually disbursed, according to data given to Maharashtra legislators by the State government, as per Firstpost report. While the real lesson to be learnt from farmers’ protests like the ‘long march’ is that pushed long enough and hard enough by the current system which will eventually lead to such resistance, what farmers actually need is a robust and reliable credit infrastructure which allows them to access credit when they require it, better infrastructure to prevent yield loss. So even though loan waivers may be politically sexy, in most cases, money due to corruption and inefficiencies, does not reach the intended beneficiaries.

Read More: <http://www.thehindu.com/opinion/columns/learning-from-the-long-march/article23343862.ece>

Date Accessed: 25.03.2018

## India and the World

### *INTERNATIONAL AFFAIRS*

#### **We have resumed work on India-EU FTA, says Suresh Prabhu**

(PTI, *The Indian Express*, March 26, 2018)

India and EU have resumed discussions on the long pending Free Trade Agreement as indicated by the Indian Commerce and Industry Minister. Launched in 2007, the agreement had been eventually stalled due to differences between both sides pertaining to issues relating to movement of professionals, liberal visa regime and a better IPR mechanism. India's demand for the data secure nation status by the EU was also a major roadblock in the discussions. After trade with EU dipping to USD 88.4 billion, the government is now eager to resume talks on the agreement to boost trade and bilateral ties.

Read More: <http://indianexpress.com/article/india/we-have-resumed-work-on-india-eu-fta-says-suresh-prabhu-5111706/>

Date Accessed: 26.03.2018

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