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**Legalising Rights through Implementation of Forest Rights Act 2006:  
A Critical Review on Odisha and Jharkhand**

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## Abbreviations

ADB	Asian Development Bank
BDO	Block Development Officer
BPL	Below Poverty Line
CBO	Community Based Organisation
CF	Community Forest
CFM	Community Forest Management
CFR	Community Forest Resource
CPR	Common Property Resource
CSD	Campaign for Survival and Dignity
CWH	Critical Wildlife Habitat
DFID	Department for International Development
DLC	District Level Committee
DRDA	District Rural Development Agency
EPA	Environment Protection Act
FD	Forest Department
FIR	First Information Report (reports filed on police incidents)
FRA	Forest Right Act
FRC	Forest Right Committee
FSI	Forest Survey of India
GoI	Government of India
GP	Gram Panchayat
GS	Gram Sabha
IFA	Indian Forest Act
IFR	Individual Forest Right
ILO	International Labour Organisation
ITDA	Integrated Tribal Development Agency
ITDP	Integrated Tribal Development Project
JFM	Joint Forest Management
JFMC	Joint Forest Management Committee
MADA	Modified Area Development Approach
MFP	Minor Forest Product
MGNREGA	Mahatma Gandhi National Rural Employment Guarantee Act
MoEF	Ministry of Environment and Forest

MoTA	Ministry of Tribal Affairs
MT	Metric Ton
NCA	National Commission on Agriculture
NGO	Non-Governmental Organisation
NREGS	National Rural Employment Guarantee Scheme
NTFP	Non-Timber Forest Product
OFDC	Odisha Forest Development Corporation
O TELP	Odisha Tribal Empowerment and Livelihood Project
OTFD	Other Traditional Forest Dwellers
PESA	Panchayat Extension to Scheduled Areas
PF	Protected Forest
PIL	Public Interest Litigation
PMO	Prime Minister Office
POSCO	Pohang Iron and Steel Company
PRD	Panchayati Raj Department
PRI	Panchayati Raj Institution
PS	Palli Sabha
PTG	Primitive Tribal Group
PVTG	Particularly Vulnerable Tribal Group
RDC	Revenue Divisional Commissioner
RF	Reserved Forest
SC	Scheduled Caste
SCSTRTI	Scheduled Castes and Scheduled Tribes Research and Training Institute
SDLC	Sub-Divisional Level Committee
SIDA	Swedish International Development Organisation
SLA	Sustainable Livelihood Approach
ST	Scheduled Tribe
TSP	Tribal Sub-Plan
UN	United Nations
VAL	Vedanta Alumina Limited
VSS	Vana Samrakhyan Samitee
WLPA	Wild Life Protection Act
ZP	Zilla Parishad

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# Legalising Rights through Implementation of Forest Rights Act 2006: A Critical Review on Odisha and Jharkhand

**Tapas Kumar Sarangi<sup>1</sup>**

## ABSTRACT

The last two decades have been eventful for forest policy, with rights over resources and community conservation initiatives gaining more focus in academic debates, policy, and practice around the world. Many countries have now adopted forest tenure reforms to secure rights for the indigenous peoples and local communities over forests and natural resources. Forest tenure reforms are happening against the backdrop of growing evidence of the importance of rights-based approaches to conservation, particularly in contrast to the conventional conservation approach that is exclusive of rights and community participation. These reforms are also occurring within the context of conflicts around the impacts of globalisation and a neo-liberal model of development based on resource extraction, both of which have threatened, and continue to threaten, the lands, forests, and livelihoods of the indigenous peoples and local communities around the world.

Historically, forest dwelling populations in India have been subjected to a range of forest rights deprivations that have affected their livelihood adversely. Due to continuous and concerted efforts by progressive political groups, civil society organisations, and intellectuals, the historic Forest Rights Act was passed in India in 2006. The implementation process began in majority of the states including Odisha and Jharkhand since January 2008. However, the implementation process in both the states has not been smooth and the progress has been tardy due to a number of factors contributing for the implementation of the Act. Proper implementation of this Act will have a significant impact on the livelihood of the potential beneficiaries and growth of forest. The provision of inalienable land titles will reduce the tenure insecurity. Further, this will also provide incentives to the households for improvement and development of the land under their possession and thereby increase their livelihood. This in turn will reduce their excessive dependence on the forest resources. The present paper seeks to analyse the actual process of implementation at different institutional levels and the factors that constrain its proper implementation, and to understand its livelihood impact on the potential beneficiaries in the context of Odisha and Jharkhand.

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\* Any errors and omissions in the paper are the author's own.

## INTRODUCTION

The forest dwellers in general and the Scheduled Tribes in particular are the most disadvantaged with respect to land, which largely accounts for their perpetual poverty and makes them vulnerable to injustice and exploitation. There are a large number of processes through which tribals have lost their access to land and forests essential for their survival and livelihoods in India. These not only include alienation of land, which is legally owned by the tribals through debt mortgaging and sale, but also loss of access to land through reservation of forests, loss of traditional shifting cultivation land through survey and settlement, displacement, unsuitable and unimplemented land reform law, etc. Over a period of time, all these processes have led to loss of control and access to livelihood support systems vital to existence, and marginalising and destitution of tribal communities. Influx of non-tribals during the last two centuries, many of whom are more capable of negotiating state enforced legal and tenure systems, have pushed tribal communities further bottom in the local power hierarchies, even in areas where they live as majorities. Similarly, in areas where the tribals are in minorities, their conditions, along with that of the Scheduled Castes (SCs) or *dalits*, are even more miserable and powerless. Lack of ownership and claim over land and other factors of production is one of the fundamental reasons behind the deprivation of rights of the tribals in India.

Recently, the Indian government has legislated to acknowledge the "rights" of the Scheduled Tribes by taking them further towards self-rule. In 1996, the Indian Parliament passed the Panchayats Extension to the Scheduled Areas Act (PESA), 1996. The Act covers nine Schedule V states of Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, and Rajasthan, and instead of individuals, recognises and stresses on traditional community rights over natural resources. The recent Forest Rights Act or the Tribal Rights Act is a step further as they adopt a rights-based perspective and acknowledge the pre-eminent rights of STs to natural resources.

The basic proposition is that the STs and other forest dependent communities are the most disadvantaged with respect to land, which largely accounts for their perpetual poverty and makes them vulnerable to injustice and exploitation. However, attempts

have been made by the union and state governments to promote and protect their rights with regard to the control and use of forest land. The nature of legislative measures and their implementation such as the Forest Rights Act 2006 and their achievements are likely to vary from state to state. This variation is due to the influence of the complex interaction of historical necessities and socio-political and economic forces, which are largely state or region specific. In this context, a comprehensive and comparative study of the working of the Forest Rights Act and their impact on livelihood will be helpful in understanding the situation at the grass-root level.

The emergence of the Act highlights both the pressure and the obstacles that were faced in its making. One of the consequences of the disagreements was the delay in the finalisation and notification of the Act. The Bill, which was drafted on 13th December 2005, was tabled in the parliament on 18th December 2006, and was finally notified on 1st January 2008. Moreover, the rules that were notified are truncated, taking away the spirit of the Act in many ways.

The Act was unique in several ways such as: It recognises both land and community rights over forest land. It also covers both agricultural and forest lands including national parks and wildlife sanctuaries, which provided both individual and community tenure, and combined rights and responsibilities, which provided key role to gram sabha. There is an enormous challenge in the implementation of this Act, which seeks to create a new democratic system of forest governance by redistributing power between the communities and bureaucracy.

In the absence of adequate resource endowment such as land, human capital, and access to the service sector, forest plays a crucial role in the livelihood strategies of many rural households in Odisha (Sarap & Sarangi, 2009). The situation is almost similar in case of Jharkhand. However, the multifaceted deprivations faced by the tribal and other forest dwellers have led to the loss of private land, forest land, and forest products to these communities. This has severely restricted their access to these sources of livelihoods. Similarly, the people living in un-surveyed areas, and forest villages had also been deprived access to any sort of service provisions provided by the state. As a result, their level of living is at the rock bottom. Further, large-scale displacement of tribals on account of development projects, including mining activities also eroded their livelihood options. As a result, they had to survive on loans borrowed from moneylenders at exorbitant rates of interest by mortgaging their tiny pieces of private land which they could not recover due to lack of funds or the malpractices adopted by the moneylenders. Thus, cultivable lands held under private ownership were lost due to indebtedness in many parts of these states (Sarap & Sarangi 2010a).



Access to land, especially the average sized-land, and the quality of land available to the tribals in the Scheduled Areas of Odisha and Jharkhand is very low. Clearly, the tribals of these states were characterised by landlessness and small holdings - which resulted in low level of crop output and income. In such a situation, the dependency of the tribals on forest would be high. However, due to loss of forest land and forest, they have to foray further deep into the forest or work as uncertain wage labour. Moreover, majority of the tribal workers are agricultural labourers and marginal farmers. Deforestation has a particularly negative impact on women as collection of NTFPs has been their primary occupation and access to resources outside these areas is not ensured. Several decades of special development efforts by these states (particularly in Odisha) through the Tribal Development Plans has not resulted improvement of their livelihood. Similarly, in more than a decade old state such as Jharkhand also the Tribal Development Programmes have not improved much the to the livelihood condition of majority of the tribals.

### **Research Questions and Methodology**

In view of the above concerns, the current paper raises the following research questions: What are the livelihood outcomes of the different forest policies prior to the FRA 2006? What process has been adopted to implement the FRA in both the states, and what are the practical difficulties faced by different institutions at various levels? How do the entitlements under the FRA affect the livelihoods of the forest-dependent people? What are the institutional barriers for recognition of Community Forest Rights under FRA, and why the progress under Community Rights is slow? How will the provisions under FRA help the other forest-dependent communities (non-tribals) in Odisha and Jharkhand?

Based on secondary sources such as historical records, government documents, NGO reports, media reports, etc., the present paper tries to understand the implications of different forest policies on the livelihoods of the forest dwellers in general and the tribals in particular. However, the focus of the paper is to explore the actual process of FRA implementation and the practical difficulties associated with the implementation at various institutional levels in the state of Odisha and Jharkhand. These two states were selected for the study because of the high concentration of ST population and high dependence on forest resources for livelihoods. A brief account of the socio-economic condition of the STs in both the states is given below:

### **An Overview of Scheduled Tribes in Odisha and Jharkhand**

The state of **Odisha** is situated on the eastern coast of India, covering an area of 155,707 sq km. The state is divided into 30 administrative districts and 314 blocks. About 85 per cent of the people in Odisha live in rural areas. According to the 2001 Census of India, Scheduled Castes (SCs) and Scheduled Tribes (STs) constitute 39 per cent of the

total population in the state. However, the ST population constitutes about 22.13 per cent. Some of the important tribes are Santhal, Bonda, Munda, Oraon, Kora and Mahali. In the overall poverty ranking of the states in India, Odisha ranks 27 out of 30.

Odisha's actual forest coverage is about 31 per cent of its geographical area. There are two national parks, two tiger reserves, one biosphere reserve, and 18 wildlife sanctuaries, covering 5 per cent of Odisha's geographical area. The state is home to 62 tribes, 13 of which are categorised as Particularly Vulnerable Tribal Groups (PVTGs)<sup>2</sup>. Out of 46,989 villages, there are 29,302 forest fringe villages, with a forest area of about 1.7 million hectare, and a population of nearly 15.93 million (Government of India 1999). The forested districts are home to tribes and PVTGs and the forest cover in 12 tribal districts is about 38 per cent of their total geographical area. One-third of Odisha's population depends on forests, which provides livelihood and food security for 4 to 6 months per year and contributes 20 to 50 per cent to the annual household income. About 75.6 per cent of the ST population in Odisha in comparison with 46.4 per cent at the overall Odisha level lived below the poverty line during 2004-05 (Government of India 2011). They also lack access to education, health care, and food security. The major proportion of working population among the ST communities comprises agricultural labourers (47 per cent), small and marginal cultivators (33 per cent), and others (2001 Census).

Similarly, the state of Jharkhand is situated in eastern India and is a new state carved out of Bihar in 2000. It covers an area of 79,714 sq km. The state is divided into 24 administrative districts and 211 blocks. About 75.9 per cent of the people in Jharkhand live in rural areas. According to the Census of India 2001, people belonging to the SCs and STs constitute 38 per cent of the total population in the state. Some of the important tribes are Santhal, Oraon, Munda, Ho and Kharia. In the overall poverty ranking of states in India, Jharkhand ranks 29 out of 30. In both the states, the level of living and Human Development Index (HDI) is very low (see Table 1).

### **Indigenous People and Forest Rights in a Global Scenario**

Living at the nexus of powerful economic development and environmental pressures, the traditional forest communities have historically experienced high levels of marginalisation, violence, intimidation, displacement, and the destruction of their cultures and livelihoods. Ultimately, the conflicts over forest resources created by this injustice have undermined both the economic and environmental goals of governments and elites.

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<sup>2</sup> The PVTGs in Odisha include *Birhor, Bondo, Didayi, Dongoria-Khond, Juang, Kharia, Kutia Kond, Langia Saura, Lodha, Mankirdia, Paudi Bhuyan, Saura, and Chuktia Bhunjia*. Further, the number of ST households has increased from about 18 lakhs during 2001 to 21 lakhs as per the 2011 Census.

Table 1: Socioeconomic Condition of Scheduled Tribes in Odisha and Jharkhand

Indicators	Odisha	Jharkhand
Percentage of ST population	22.13	26.30
Rank in terms of ST population	3rd	6th
Percentage of Scheduled Areas to the total geographical area	44.7	29.0
Number of Tribal Communities	62	32
Number of Primitive Tribal Groups (PTGs)	13	08
Percentage of ST population living Below Poverty Line (BPL)	75.6	54.2
Percentage of Literacy among STs	Overall: 37.37 Female: 23.37	Overall: 40.70 Female: 27.2
Workforce participation of STs	Main workers: 57.4%, Marginal workers: 42.6%, Cultivators: 33.35%	Main workers: 59.4%, Agriculture Labour: 31.0% Cultivators: More than 50%
Concentration	12 districts (non-coastal) of southern and western part of Odisha	All most in all districts
HDI Index (2011)	0.362	0.376
Rank in terms of HDI Index	15th	19th

Source: Compiled by the author from different reports.

The 2002 report, *Who Owns the World's Forests?*, by White and Martin<sup>3</sup> found that even though this profoundly asymmetrical relationship between the states and the forest people was changing, the governments still had a long way to go to bridge the gap. In 2002, 77 per cent of the global forest area was administered directly by governments, while only four per cent was officially designated for use by indigenous peoples and communities, and seven per cent was owned by indigenous peoples and local communities. The remaining 12 per cent of the global forest area was owned privately by individuals and firms. The 2008 and 2010 reports, *From Exclusion to Ownership and Tropical Forest Tenure Assessment*, expanded the number of countries examined within White and Martin's framework. These reports concluded that: between 2002 and 2008, the global area of state ownership of forest lands had declined and that there had been

<sup>3</sup> See White, Andy and Alejandra Martin. 2002. *Who Owns the World's Forests?* Washington, DC: Forest Trends.

corresponding increases in the area of forests designated for use or owned by indigenous peoples and communities. Additional regional studies further confirmed this trend. These shifts were strongest in developing countries: in 2002, 21 per cent of the forests in developing countries were owned or designated for use by indigenous peoples and communities.

Today, approximately 31 per cent of the forests in developing countries are owned or designated for use by indigenous peoples and communities. Nevertheless, these reports found that very little was known about the range of mechanisms used by states at the national level to recognise and allocate tenure rights to indigenous peoples and communities, especially in developing countries. Many individual tenure regimes and national tenure systems had been analysed within their own contexts by academics and practitioners, but the absence of a systematic analytical framework for comparing these distinct statutory tenure regimes across contexts made it difficult to gauge and track global trends in recognising and allocating rights.

Over 900 million people in the world are poorest of poor, and at least one-third of them are indigenous peoples - more than half such people live in Asia. Social indicators such as life expectancy, maternal mortality, nutrition, education, and health, are evidence that they are indeed the poorest (Perera, 2009). They do not have sufficient land to gather or grow food, or to raise livestock. They have few opportunities to learn new skills, obtain medical care, or improve their livelihood. They also find it difficult to influence national policies, laws, and institutions that could improve their life chances and shape their collective future. As a result, most indigenous peoples have been socially, politically, and economically marginalised, endangering their survival in a rapidly changing environment. Despite the serious risks that indigenous people encounter as individuals and communities, indigenous rights in Asia have attracted little interest from the international legal community. Australia, North America, New Zealand, and some Latin American countries have been more prominent within transnational indigenous movements. Such movements are however absent in Asia, except in the Philippines and Indonesia, where such movements have evolved into a robust indigenous peoples' rights forum, which is supported by national legislation. In a few other countries such as Cambodia and India, some legislative instruments have recently been introduced to safeguard indigenous interests at the country level. In India, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 is a landmark piece of legislation that elaborates the rights of forest dwellers and others who depend on forests for their livelihood and cultural identity. Despite such legislation, Asian indigenous communities as "marginal groups" have only limited means to maintain active involvement in the international arena such that they are able to place their claims on the international agenda (Xanthaki, 2003). On the other hand, governments

in these countries do not show sufficient interest in participating in international human rights forums and monitoring bodies that address and monitor indigenous peoples' rights issues. They usually do not take part in the United Nations (UN) debates on indigenous rights. Furthermore, socio-economic databases on indigenous peoples in the Asia are limited; and without comprehensive, updated, and credible information, it is difficult for Asia's indigenous peoples and their representatives to become actively involved in the international arena regarding indigenous rights, and to place their claims on the international agendas.

Since the 1950s, international recognition of indigenous peoples and their marginal status in newly established nation states has encouraged them to struggle against the dispossession and marginalisation that were the common outcome of colonisation. During the past several decades, indigenous peoples' attempts to regain control over their ancestral domains and cultural spaces have gradually moved from localised group-specific struggles to issues of wide public awareness and debate, which in turn have led to the formulation and recognition of their economic, social, and cultural rights at both the international and state levels. Their movements now transcend national boundaries and have been interwoven into international protest networks, where environmentalists, human rights advocates, and non-government organisations articulate their rights in different forums, demanding the recognition of their economic, environmental, cultural, and land rights.

Over the decades, the UN has become the pivotal forum where indigenous peoples' rights are given shape and expressed in declarations, covenants, and other instruments that form an important component of international law and international human rights law. By using the legal concept "indigenous rights" in international law, indigenous peoples seek recognition for their collective rights to land and livelihood strategies within nation-state structures that have discriminated them. Their demands focus on sharing and inclusion rather than on domination and exclusion by the mainstream society and the state. Nevertheless, this indigenous communalism still clashes with the principles of state sovereignty and modern individualism that underpin property laws and directions of national economic development.

International development agencies such as the Asian Development Bank (ADB) and the World Bank recognise the vulnerabilities and risks that indigenous peoples encounter in development interventions. These agencies have developed safeguard policies to ensure that the development projects they support will take place in indigenous lands or territories only if the affected indigenous peoples are consulted and encouraged to participate. The World Bank introduced its first policy on indigenous peoples in 1982, while the ADB introduced staff instructions on indigenous peoples' administrative issues

in 1994, based on the World Bank Operational Directive 4.20 on "Indigenous Peoples of 1991 and the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries of 1989". In 1998, the ADB issued its own *Policy on Indigenous Peoples*. In both organisations, indigenous people's policies are considered as safeguard policies, giving them a way to hold the banks and the borrowing country or the client accountable for any infringements of their rights such as those caused by a bank-sponsored development intervention<sup>4</sup>.

Many Asian states pay attention to indigenous peoples, variously known as tribal people, forest dwellers, scheduled tribes, ethnic minorities, national minorities, indigenous cultural communities, and indigenous groups. These states have adopted international legal instruments as part of national laws to protect indigenous populations. In India, for example, the Constitution guarantees some rights to tribal people and has listed more than 200 tribal groups as "Scheduled Tribes". By enacting the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in 2006, India has demonstrated its willingness to accommodate the environmental and human rights of tribal people in domestic law. The proactive role played by the Indian judiciary for FRA 2006 during the recent past in matters such as the sovereign obligation toward tribal people and in dealing with tribal interests and rights relative to national laws and development priorities has also improved the legal recognition of rights of tribal people in the broader context of development<sup>5</sup>.

Two parallel processes with direct impact on indigenous peoples have emerged in Asia during the past several decades. The first is the growing presence of international and local NGOs and human rights advocates in countries where indigenous peoples live in large numbers. They have played a vital role in increasing the awareness among indigenous peoples of their rights and of transnational indigenous peoples' networks. The second is the rapid arrival of international corporations and global capital in the form of extractive industries, mega-energy programs, and transport development with the blessings of national governments and international donor agencies. Such agencies often obtain land for their industries with the support of national states. A state could invoke its right of "eminent domain" to take private or communal land with or without the consent

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<sup>4</sup> However countries like India do not accept the term "indigenous people" for its tribal communities, thereby refusing to ratify international conventions related to indigenous people's rights. Also, despite the World Bank and ADB having such "safeguard" policies, both have been funding large projects with the most negative impact on indigenous people's rights.

<sup>5</sup> But most Supreme Court orders under the *Godavarman* case totally negated the rights of tribal communities whether protected by Schedules V & VII or by state laws. Ironically, the FRA was a means to undo the damage inflicted by Supreme Court orders.

of the owners or users of the land. "Throughout Asia, resources that lie within the lands of indigenous and tribal peoples are taken without their consent<sup>6</sup>. Land that has belonged to them for hundreds, and sometimes thousands, of years is appropriated for forestry and mining" (Gray 1995). The most affected indigenous resources are forest, water, and minerals. These two parallel processes inevitably clash with each other, leading to a limited interpretation of international covenants intended to protect the rights of indigenous peoples.

### **Tribal Rights to Forests**

The close relationship of tribal people with the forest was described by Elwin (1963) in a poetic yet accurate manner:

"To a vast number of the tribal people the forest is their well-loved home, their livelihood and their very existence. It gives them food - fruits of all kinds, edible leaves, honey, nourishing roots, wild game, and fish. It provides them with material to build their homes and to practice their arts. By exploiting its products, they can supplement their meagre income. It keeps them warm with its fuel and cool with its grateful shade. Their religion leads them to believe that there are many spirits living in the trees. There are special sacrifices to the forest gods; in many places offerings are made to a tree before it is cut, and there are usually ceremonies before and after hunting. Tribal folk-tales often speak about the relations of human beings and the sylvan spirits and it is striking to see how in many of the myths and legends the deep sense of identity with the forest is emphasised....From time immemorial until comparatively recently, the tribal people have enjoyed the freedom to use the forest and hunt its animals, and this has given them a conviction, which remains even today in their hearts that the forest belongs to them".

This happy state of affairs for the tribal people was however not to last forever. Since about the middle of the 19th century, people from outside began to move into the forest, lured by its wealth of natural resources; the colonial government, sensing the commercial potential of forests, gradually extended its authority over them in the name of scientific management. In view of the above, a brief illustration of the evolution of forest policy in India during the pre and post-colonial period is discussed below:

### **Evolution of Forest Policies in India**

#### **Pre-Independence period**

Keeping in view the importance of natural resources and commercial significance of forest resources, certain regulations were formulated and implemented during the colonial administration to appropriate revenue benefits from the forest-based resources. The beginning of a forest policy in pre-independent India started in 1855 when the then

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<sup>6</sup> See for instance the case of Niyamgiri in Odisha.

Governor General, Lord Dalhousie, issued a memorandum on forest conservation restricting the customary rights of the forest dwellers on the use of forest resources through a ban on their movement in the forest. Further, the Indian Forest Act (IFA) 1865 empowered the government to declare authority on such resources for national interests. It was noticed that for all purposes the state seems to have played a dominant role over the rights of the individuals and communities. Later, during 1878, the Indian Forest Act classified all forests of India into three categories, i.e., reserve forest, protected forest, and village forest keeping in view the national forest policy. The first ever forest policy came into existence in 1894. As a primary objective for the maintenance of adequate forest cover to assume preservation of climate, physical conditions of the forest were emphasised. Therefore, the policy regulated the rights and placed restrictions on the privileges previously enjoyed by the local inhabitants. Since then, shifting cultivation has been banned and hill slopes were protected, resulting in a conflicting situation between the forest dwellers and the Forest Department.

The Indian Forest Act 1927 and the Government of India Act 1935 consolidated the power of the Government on forest, emphasised on the revenue yield aspects and resource requirement of British industry, commerce, and military sectors. As a result, forest as an area of revenue yielding was included in the state list.

#### **Post-Independence Period**

The forestry policies during post-independent India include: National Forest Policy, 1952; the National Commission on Agriculture (NCA), 1976; Forest Conservation Act, 1980; and the National Forest Policy, 1988. The National Forest Policy, formulated during 1952, mainly focused on forest as the source of timber but neglected the village commons. The state restricted the common people from involving in agricultural operations within forest land as well as in the periphery areas of the reserved forest. The free grazing of forest and free enjoyment of private forests were controlled and the tribal people were also denied from practicing shifting cultivation. Due to the abolition of the Zamindari system in 1952, the government took over the management of forests and formulated a number of legislations reducing the freedom of tribals over the use of forest and its resources. Apart from this, cultivation, hunting and fishing were also prohibited inside the reserved and protected forests. These measures further deprived the tribals of forest resources while granting greater use of forest produce to the neighbouring communities. More emphasis was laid on national interest, often interpreted as commercial interest.

Subsequently, during 1976 the Government of India formulated the National Commission on Agriculture and Social Forestry was recommended for creation of Forest Corporation to improve the commercial feasibility. According to the recommendations,



many conservation-oriented production forestry programmes were implemented and suggested with detailed modalities to yield successful results<sup>7</sup>. Apart from the special interest for the benefit of tribals, special provisions (various wage earning avenues) and restrictions were made for their entry into forest. In addition to this, the culture, tradition, and ethos of the forest dwellers were also not given proper attention by the commission. Again, no special programmes were implemented for enhancing the economy of the tribals. Instead, programmes were essentially drawn for developing forest resources benefiting tribals indirectly through wage earnings<sup>8</sup>.

Deprivation of tribals along with degradation of forests influenced the policy makers to look forward to a new forest law that appeared later on as Forest Conservation Act 1980 by the Government of India (GOI), restricting the rights of the state governments (Sarangi 2003). However, the law expanded the definition of "non-forest purposes", which included the cultivation of cash crops including tea, coffee, spices, rubber plants, oil-bearing plants, horticultural crops, and medicinal plants. This new bill initiated a debate with respect to policies, legislations as well as on the role of different stakeholders such as activists, scientists, forest department contractors, and industrialists (Sarangi 2008). Consequently, it resulted in creating a Forest Department by separating it from the Agriculture Department, and named it as the Ministry of Environment and Forest (MoEF). This new department deals with forest issues with a kind of pragmatic approach, so that the forest-related issues, both for the benefit of the government and the people, could be dealt with properly. Accordingly, various forest issues and related matters concerning people participation, forest revenue, deforestation, ecology, etc., could be taken care of by this ministry as and when necessary.

### **National Forest Policy, 1988: A Paradigm Shift**

Even after the adoption of the new policy, the Indian Forest Act 1927, with several amendments, continued till the National Forest Policy (1988) was introduced, with the primary objective of maintenance of environmental stability, meeting the requirement of fuel wood, fodder, etc., of the rural and tribal population and creation of massive support to ensure minimal pressure on existing forests. A wide discussion at national and international level forums suggested various methods and means to formulate a package of programmes to ensure sustainable forest development and ensuring livelihood

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<sup>7</sup> However, the commission hardly focused on conservation - it claimed that the only purpose of forests was to generate revenue and setup forest development corporations to cut down natural forests to replace them with commercial, fast-growing plantations.

<sup>8</sup> They had less to do with the tribals and were more about commercial exploitation of forests, including replacing mixed natural forests with fast growing mono-cultural plantations - three million dense forests were felled for the purpose.

of forest-dependent population. Similarly, there was a lot of criticism of many provisions of the Forest Conservation Act 1980. These provided inputs to the Government of India's National Forest Policy, 1988 which modified a number of provisions of earlier policies for the benefit of the poor. For the first time, recognition of non-market and ecological benefits was emphasised in the Seventh Plan Document (1985-90). It was made clear that raw materials for forest-based industries would be provided only after meeting the needs of the local people. The Central Board of Forestry recommended a ban on commercial exploitation of degraded forests and regeneration of national forest, in order to reduce the growing pressure on forest resources.

Thus, the new forest policy seems to have planned for protection, conservation and management of the forest and its resources, while it also honoured the customary rights of the people; replaced the contractors with tribal co-operatives, co-operative government undertakings and corporations; and suggested suitable alternatives for shifting cultivators such as engagement of these people in forest-based industries. With the adoption of the National Forest Policy 1988, the colonial forest policy establishing control of the Forest

**Table 2: Phases of Forest Governance during Post-Independent Period**

Phases	Major Policies	Highlights Points
Phase- I 1947-1970	National Forest Policy (1952)	✓ Commercial exploitation of forest for industrial development.
Phase- II 1971- 1988	National Commission on Agriculture (1976); Forest Conservation Act (1980)	✓ Conservation through powerful legislation such as Wildlife Conservation Act & Forest Conservation Act. ✓ No place for forest dwellers and tribals in protection and management of local forest resources.
Phase- III 1988 Onwards	National Forest Policy (1988)	Based on three major components: ✓ Emphasis on participation of forest dwellers <sup>9</sup> . ✓ Increasing access to forest products. ✓ Enhancing livelihoods.

<sup>9</sup> However, the primary objective remained to be the maintenance of environmental stability.

Department over forest was weakened (Sarangi 2007). However, rules to implement the policy were not in place until much later, and state governments in the meantime progressively reduced the traditional rights of the tribal people.

The question of forest rights is related to the modern concept of ownership, but notions of the forest people in this regard are quite different. The forest is the pivot around which the tribal life revolves, but for the state, the forest is simply a source of raw materials for industry and revenue for itself. In majority of the states in India, the Forest Department is a major source of revenue for the government. Hence, it is no wonder that successive plans, policies, and legislations have resulted in restricting the rights and usage of forests by millions of tribal people for whom forests are the only refuge and source of sustenance.

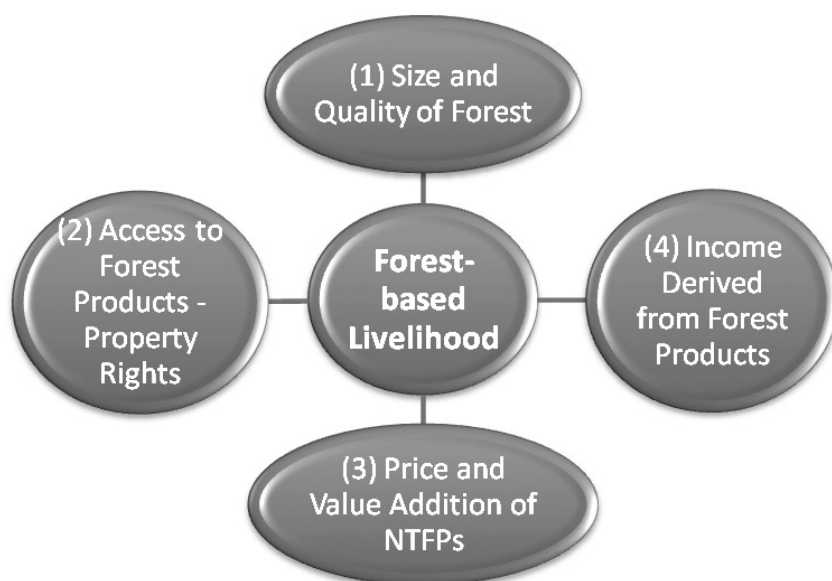
In the late 20th century, particularly after the United Nations drew up the international environmental principles in the 1972 Stockholm Declaration and the 1992 Rio Declaration, the Government of India progressively introduced different policies and laws that paved the way to recognise that tribal people, especially forest dwellers, had rights over their ancestral land, including the right to earn their livelihood from forests and maintain a cultural identity that is linked to them. After nearly 25 years of debate and grass-root level protests, this process culminated in the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Government of India 2007). This legislation, known as the FRA, is a landmark in the evolution of the government's attitudes on tribal people and their rights. It attempts not only to correct a "historic injustice" committed by the colonial and post-colonial rulers, but also to vest in forest communities a primary role in sustaining forest ecosystems by restoring their rights as well as their environmental authority. It became active on 31st December 2007, and its implementing rules were notified on 1st January 2008. The law basically grants legal recognition to the rights of the traditional forest-dwelling communities, partially correcting the injustice caused by successive forest laws in the 19th and 20th centuries. It marks the beginning of granting those communities and the public a voice in forest and wildlife conservation. However, the preamble to the FRA states that it is "an Act to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; and to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land".

#### **Forest and Livelihood: A Conceptual Framework**

A number of factors influence the livelihood system of the forest-dependent communities. Some of these factors are the size of forest, quality of forest, access to forest products,

property rights and reasonable income derived by households from such produce from value addition as well as selling it at reasonable prices. Proper working of institutions and secure property rights encourage the actual users to utilise the resources properly, safeguard the resources, and develop them. Malfunctioning of institutions and unfavourable government policies affect the livelihood of local population adversely (Sarap & Sarangi, 2009 & 2010b).

**Figure 1: Factors Affecting Forest-based Livelihoods**



### **Access to Assets, Markets and Livelihoods**

Tribal economies are mostly subsistence economies whose survival is closely linked to land and natural resources, including forest products. Estimates for Odisha and Jharkhand indicate that over 30 per cent of the land in these states comprises of commons such as forests, and one half of the land contributes to over one-fifth of the annual income of tribal households in the form of Non-Timber Forest Products (NTFPs). However, in Odisha and Jharkhand, majority of the tribal areas are coterminous with mineral deposits and have thus attracted considerable attention of the private sector in recent years, both for extraction and industrial development. All this together with the increasing threat of naxalite violence in these areas has brought focus on tribal development as a policy imperative<sup>10</sup>.

<sup>10</sup> See in particular the Planning Commission's report on development challenges in extremist affected areas (Government of India 2008).

Historically, tribals in Odisha and Jharkhand have always been far removed from the economic mainstream, as some argue, by default not design. De Haan (2004) and De Haan & Dubey (2005) suggest that the institutions that emerged at the time, particularly during the the British regime, were driven by a priority of maximising state revenue; and the current state policies in Odisha, De Haan argues, are still reflective of the same objective. Even though a state like Odisha has devolved the procurement and marketing of 68 NTFPs to gram sabhas, the government retains control over high revenue earning products (e.g., *Tendu* leaves) which are prone to commercial exploitation. Further, the lack of capable gram sabhas (village assemblies) in these areas has meant that even for NTFPs over which communities have supposed control, middlemen benefit more than the tribal people. Tribals who do sell on their own, sell in a buyers' market with no control over prices (Saxena 1999).

On the other hand, deforestation continues unabated - it is estimated that Odisha has lost more than a quarter of its forests in the last 25 years, resulting in considerable decline in the proportion of tribal income contributed by the NTFPs<sup>11</sup>.

Besides their tenuous hold over NTFPs, another major reason for tribal poverty is the classification of huge tracts of tribal forest land as state property. Although living in these forests for generations, given the poor documentation of customary rights, most tribals find it difficult to convert their *de facto* access to forest land and resources to *de jure* ownership. Legislation to prevent the sale of ST land to non-tribals too has been largely ineffective, as witnessed in the large number of cases involving land grabbing by non-STs through marriage or through fraud. The Non-STs have been procuring ST certificates and usurping the ST lands and other advantages. This is now a serious political issue in Odisha and Jharkhand. Further, tribal indebtedness is an important reason for lands being handed over to moneylenders.

Studies estimate that more than 50 per cent of tribal land in Odisha has been lost to non-tribals over a period of 25-30 years through indebtedness, mortgage and forcible possession. Worse, the process of tribal alienation, i.e., STs gradually losing their access to traditional commons has accelerated in recent years. While studies vary with regard to the impact of displacement in Odisha and Jharkhand, mostly on account of setting up of mineral-based industries, all agree that of those displaced, a disproportionate

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<sup>11</sup> However, the focus of development of the state has been mining-based activities and other such projects, leading to large-scale diversion and degradation of forest and forest areas. The area under forest has been diverted for non-forest use; between the periods 1982 to 2000-01, it was about 25,136 hectares, followed by 13,860 hectares, during 2001-02 to 2010-11. Land taken for mining in Orissa has either been forest land, agricultural fields, or common land (CSE 2008). This has adverse implications for the tribals and other poor who depend on NTFPs for their livelihood.

number are tribals. These states also have a controversial track record of resettlement and rehabilitation<sup>12</sup>. Most activists and academics working on tribal issues think that it is alienation from these communal resources which forms the fulcrum of tribal angst and revolt.

Alienation, together with reduced income from NTFPs, stagnant agriculture, and limited opportunities for non-farm self-employment, push the tribal households into a cycle of high interest debts from private moneylenders resulting in food insecurity and forced migration. This cycle is usually linked to the agricultural season, as most tribals migrate after harvest, i.e., around March-April, to repay the loans taken during the monsoons (Kabra 2004). A majority of tribals end up working as manual labour employed in construction sites or as domestic workers.

There are several policies in place to secure the rights of the tribals over their land, natural resources, and livelihoods; but there is a slip between the cup and the lip. One of the most important pieces of legislation called PESA was introduced almost 17 years back. It is unique in being in consonance with customary laws, focusing more on tribal hamlets based on culture rather than revenue villages. However, hardly any steps have been taken to operationalise PESA - state amendments and rules have been passed, but there is hardly any monitoring mechanism. Field studies in Odisha reveal that many people on the ground are not even aware of the legislation (Upadhyay 2007). Similarly, the Forest Rights Act is a significant step towards recognising the pre-eminent rights of tribals on forest land, but in most cases it has not yet harmonised well with forestry / wild life / environmental laws. As a result, the tribals, formerly communal owners, end up as "encroachers" on protected forests, at the mercy of the rent-seeking Forest Department or field staffs (Sundar 2012)<sup>13</sup>.

### **Sustainable Livelihood**

Livelihood, in its simplest sense, is a means of gaining a living and comprises the capabilities, assets and activities required for a means of living. A livelihood is sustainable if it can cope with and recover from stress and shocks, maintain or enhance its capabilities and assets, provide sustainable livelihood opportunities for the next generation, and contributes net benefits to other livelihoods at the local and global levels in the short and long term (Chambers and Conway 1992). Ellis (2000) defines livelihood as that which comprises "... the assets (natural, physical, human, social and financial capital),

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<sup>12</sup> See for instance, Mishra, I. 2007. "Heat and Dust of Highway at Kalinganagar." *Economic and Political Weekly*, March 10, pp 822-25. Also see, Actionaid 2007. *Vedanta Cares? Busting the Myths about Vedanta's Operation in Lanjigarh, India.*

<sup>13</sup> See Sundar 2012, pp-24.

the activities, and the access to these that together determine the living gained by the individual or household". This definition stresses the means rather than the ends.

The livelihood approach to understand the survival strategies of the poor people, as well as development process, has become increasingly popular in the last decade. Since the late 1980s, a new angle in these literatures has been the emphasis on sustainability. In its simplest form, the framework views people as operating in a context of vulnerability. Within this context, they have access to certain assets or poverty-reducing factors. These gain their meaning and value through the prevailing social, institutional and organisational environment. This environment also influences the livelihood strategies - ways of combining and using assets - that are open to people in pursuit of beneficial livelihood outcomes that meet their own livelihood objectives. All these relate the processes of change to the conditions in which people's livelihoods operate, and the response of the livelihoods to these changes.

People require a range of assets to achieve positive livelihood outcomes. They are, Human Capital, Natural Capital, Financial Capital, Physical Capital, and Social Capital. These capitals are the different forms of livelihood assets that the households can use to make a living (DFID 1999). The following table describes the different concepts of the five capitals.

### **Assets, Capability and Livelihood**

It is important to have a wide conception of the resources that people need to access in the process of composing a livelihood, especially in a context where peoples' livelihoods shift from being directly based on natural resources, to livelihoods based on a range of assets, income sources, and product and labour markets. This leads to considering livelihoods in terms of access to five types of "capital" assets - produced, human, natural, social and cultural capital (Bebbington, Kopp and Rubinoff 1997; Bebbington 1997; Scoones 1998; Carney 1998). This conceptualisation has a related benefit of conceiving livelihood sustainability within a framework that could also be used for thinking of regional and national sustainability (World Bank 1996, 1997), thus suggesting elements of a framework that could link levels of analysis in research and practice addressing the relationship between the environment, society and development (Blaikie 1989, 1985).

People's assets are not merely the means through which they make a living: they also give meaning to a person's world. This is not to fall into the trap of voluntarism, for though a person's assets are in large part determined by the structures and logics at work in economic and political spheres, they are, however, also to some extent both reflections and components of the meaning the person has tried to create through the livelihood strategies. This meaning will then be one among those that several people make about their livelihood strategies.

Table 3: Conceptual Description of Five Capitals

Types of Capital	Description
(1) Human Capital	<i>Human Capital</i> represents the skills, knowledge, ability and good health that enable people to pursue different livelihood strategies and achieve their livelihood objectives.
(2) Natural Capital	<i>Natural Capital</i> , which entered into the development discussion in the 90s, consists of two elements: non-renewable resources such as minerals, forests and soils; and renewable resources such as ecosystem services and nutrient cycling. Natural capital is measured in terms of changes in availability of drinking water, land quality, ground water, and environment <sup>14</sup> (Reddy and Soussan 2004).
(3) Social Capital	<i>The conceptual</i> definition of Social Capital is still being debated. The general notion is the existing stocks of mutual trust or connections between people that provide a flow of resources enabling not only solutions to problems but also pursuit of political and economic activities.
(4) Physical Capital	<i>Physical Capital</i> comprises basic infrastructure and producer goods needed to support livelihoods. Important components of infrastructure are affordable transport, secure shelter and buildings, adequate water supply and sanitation, clean affordable energy, and access to information. Producer goods are the tools and equipment that people use to function more productively.
(5) Financial Capital	<i>Financial Capital</i> denotes the financial resources that people use to achieve their livelihood objectives. They include savings and convertible liquid assets as well as regular flows of money such as earned income, pensions, transfer from the state, and other remittances.

Source: DFID (1999).

The assets or capital in this framework are not simply resources that people use in building livelihoods: they are assets that give them the capability and to act. Sen (1997) noted that the possession of human capital not only means that people produce more, and more efficiently; it also gives them the capability to engage more fruitfully and meaningfully with the world, and most importantly the capability to change the world. The same is also true, in other ways, for the other types of capital. The framework thus treats these assets not only as things that allow survival, adaptation and poverty alleviation, but also as the basis of the agents' power to act and to reproduce, challenge or change the rules that govern the control, use and transformation of the resources (Giddens 1979).

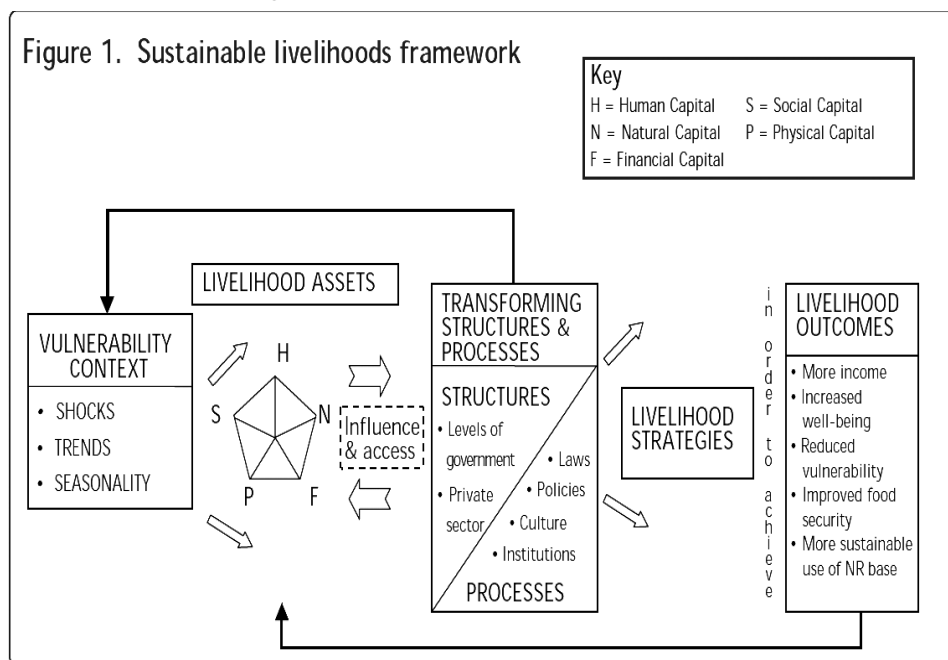
<sup>14</sup> See more details in Reddy and Soussan (2004).



## Sustainable Livelihoods Approach

The Sustainable Livelihoods Approach (SLA) emerged in the late 1990s and is based on a series of principles according to which development should be people-centred, responsive, and participatory; multilevel; conducted in partnership; sustainable; and dynamic (Carney 2002), and on the conception of different kinds of capabilities and livelihoods assets that permit poor people to overcome poverty and combat vulnerability (Carney 2002; Scoones 1998). Though these are not always incorporated by practitioners, SLA is also concerned with governance and the institutional and policy, or "the social structures and processes through which sustainable livelihoods are achieved" (Scoones 1998). Newell (2000) argues that "governance should ensure that a supportive environment for sustainable livelihoods is developed at all levels at which decision making takes place". Carney (2002) argues that though the public sector is often part of the problem, it can also play a key role in counterbalancing inequities.

Figure 2: Sustainable Livelihoods Framework



Source: (DFID, 1999).

After several years of SLA implementation, complaints have arisen regarding the loss of focus on institutional concerns and the failure to fully incorporate questions of power into the framework. This has led to the development of the rights-based approach to livelihoods, which is tied to conceptions of citizenship and the empowerment of poor people to play a more direct role in decision making (Carney 2002). Rights-based

approaches are based in part on legislative changes that clearly specify resource rights and hence provide a clear legal foundation for negotiation (Scoones & Wolmer 2003). They also include "greater accountability on the part of states and international actors, a greater stress on empowerment, participation and non-discrimination and attention to vulnerable groups" (Tsikata 2005). This approach would appear to address directly the structural inequities that commonly characterise resource access in many developing countries including India.

### **Why SL Framework?**

The sustainable livelihoods framework presents the main factors that affect people's livelihoods, and typical relationships between these. It can be used in both planning new development activities and assessing the contribution to livelihood sustainability made by the existing activities. In particular, the SL framework provides a checklist of important issues and sketches out the way these link to each other. It draws attention to core influences and processes; and also emphasises the multiple interactions between the various factors which affect livelihoods. The framework is centred on people. The Sustainable Livelihoods Approach (SLA) is a comprehensive framework that assesses various dimensions of livelihood at the household level.

The SL framework to analyse the Livelihood Impact set out here aims not only to provide a basis for understanding how policy works, but also to identify the impacts of new policy reforms such as the FRA 2006 on the livelihoods of the tribals and other forest-dependent people in Odisha and Jharkhand. This framework will itself be used in the next stages of the study, based on further integration of policy and livelihoods models and the range of experiences gained during the field investigation in selected villages of the two states. The household level data will be analysed using the SL framework to study the impact of FRA on the livelihood of the beneficiaries. Like most impact assessment studies, this study will also explore the before and after comparison using different parameters.

### **Evolution of Forest Rights Act 2006: A New Hope for Tribes and Forest Dwellers**

In 2006, as a result of a long campaign by the forest rights activists, the Government of India enacted a new act entitled, "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006". Those in support of the act regard it as the long overdue recognition of the rights of the Scheduled Tribes and forest dwellers to the lands they have occupied for centuries; and that it will save them from being treated as encroachers and evicted for development purposes without compensation, as has often happened in the past. It is also contended by the tribal rights activists that secure tenurial rights will lead to sustainable management of land. Those who are opposed to the act fear that it will undermine the fast-dwindling forests and sound the death

knell for the endangered tiger population.

The implementation of this law is not going to be smooth. Tribal and forest-dwelling people will not get the rights to forest land automatically. The verification procedures to determine eligibility are not simple and could be quite time consuming, as disputes may arise among the forest-dwelling communities themselves. The Act also prevents the use of forest land for development purposes such as mining, reservoir construction, and industrial plants without the consent of the tribal people who live in the forests or in their vicinity, through gram sabhas (village assemblies). However, there is a risk that politically connected commercial interests could manipulate the gram sabhas to obtain such lands for commercial purposes. The tribal rights activists also warn against the machinations of some bureaucrats, especially those in the Forest Department, who think that the department is the master of all forests in India. This could obstruct the implementation of the act and deny its benefits for tribal people. Implementing the Act is going to get further complicated as the law confronts legal challenges.

Those who are opposed to granting tribal peoples' forest rights have already filed public interest litigation in the Madras (Madurai Branch) and Andhra Pradesh high courts (Ramakrishnan 2008). The contention of the petitioners is that large-scale distribution of forest land will be against the national forest policy, as it will become difficult to keep at least one-third of the total land area under forest cover. Skeptical that the promised benefits for forest dwellers will come to pass, Ramnath (2008) concludes that "it is difficult to imagine that so many advantages to tribal people will actually be implemented."

### **Undermining Community Rights**

Land and territorial rights of the tribal people often receive no explicit legal recognition; and when laws do recognise such rights, they are seldom defended in practice, especially if they conflict with wider national development goals. The Panchayats (Extension to Scheduled Areas) Act of 1996, or PESA as it is commonly known, is a major move to recognise the rights of the tribal people over the natural resources that they manage, and on which they depend for their livelihoods. However, the Act has not been implemented, and the communal management of forests remains a mere promise. In fact, despite the opposition from tribal people, the forest areas in Odisha, Jharkhand, and other mineral-rich states are being allocated to corporations to invest in mining and other projects.

When it was enacted, the PESA was seen as a legislative revolution as it empowered the gram sabhas to take decisions on important and contested tribal matters such as enforcing a ban on the sale and consumption of intoxicants, ownership of minor forest produce,

power to prevent alienation of land, and to restore unlawfully alienated land, management of village markets, control over money lending, and land acquisition. In addition, The Act made it mandatory for all legislations in the Scheduled Areas to be in conformity with the customary law, social and religious practices and the traditional management practices of the community. Even if one were to expect proactive intervention from the centre, the PESA would get entangled in bureaucratic shackles. Two different ministries, the Ministry of Panchayati Raj and the Ministry of Tribal Affairs, have overlapping influence on the implementation of PESA and they function almost without any coordination (see Mahaprashasta 2013)<sup>15</sup>.

The tribal people feel that development projects, especially those of large scale corporations, will take over more and more of the lands that are in their possession. The most worrisome aspect is the leading role of the state, which is handing over tribal lands to industries and corporations in violation of the Constitution and national laws. The tribal people in Schedule V Areas as defined in the Constitution enjoy certain rights over the land, forests, water bodies, and other resources. In September 1997, the Supreme Court of India delivered a landmark judgment upholding the rights of tribal people to life, livelihood, land, and forests in a case that dealt with issues of mining in tribal land. Samatha, a Non-Government Organisation (NGO) in Andhra Pradesh, filed the case on behalf of the affected tribal people. The Supreme Court held that forests and lands in Scheduled Areas, irrespective of their being owned by the government or by a tribal community, cannot be leased out to non-tribal people or to private companies for mining or industrial uses. It restricted the mining activity in these areas to the State Mineral Development Corporation or a cooperative of the tribal people (Mathur 2009); and all leases granted by the state governments were declared to contravene Schedule V of the Constitution and were declared null and void. The judgment, known as Samatha Judgment, is a significant check to restrain the state from encouraging indiscriminate exploitation of land, forests, water bodies, and other resources, for commercial purposes, especially in tribal areas.

The central and state governments, however, chose to file an application to the Supreme Court during early 2000 asking for a review of the Samatha Judgment. Though the court dismissed the request, efforts to circumvent the Samatha decision-which reinforced constitutional protection for the tribal people-continue. Under pressure from multinational corporations, the central as well as the state governments continue to look for an escape route. In July 2003, the Government of Odisha went as far as constituting a state subcommittee chaired by the Chief Minister to discuss the

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<sup>15</sup> See Frontline May 3, 2013 Issue. <http://www.frontline.in/social-issues/social-justice/pesa-and-pressures/article4613751.ece>

implications of the Samatha Judgment. The committee concluded that the judgment is not binding on the state. The reasoning was that there are enough laws in the state to ensure protection of tribal interests and that therefore, Odisha could stay outside the purview of the Supreme Court's ruling. On the basis of this interpretation, the government decided to allow the transfer of land in areas covered by Schedule V of the Constitution for mining and industrial purposes. This is a patently wrong inference because the ruling was applicable to all states (Down to Earth, 2005). After the Samatha judgment, the Government of India issued executive instructions in 1998 to set up systems for consulting with the gram sabhas and detail the procedure for land acquisition in the Schedule V areas. However, in Odisha, the state government circumvented the gram sabhas and gave their power to the *Zilla Parishad* (divisional councils). This was a manipulation of the PESA that undermined its intent and effectively denied the tribal people their rights to be consulted on land acquisition for projects (Mahapatra 2005).

The recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibility and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security. However, the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of state forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers which are integral to the very survival and sustainability of the forest ecosystem. Hence, it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to state development interventions.

Indian forest laws enacted in the 19th and 20th centuries treated forest dwellers and other traditional forest users and especially their farming practices such as shifting cultivation as a threat to forest ecology. Hence, the new recognition of forest dwellers as "integral to the very survival and sustainability of the forest ecosystem" is a crucial policy reversal compared with previous forest laws, as the new law makes them the custodians of forests and their ecology. The FRA guarantees their livelihood, food security, and forest rights and recognizes their rights to ancestral lands, tenure security, and access to forests and forest produce. Associated with these rights are their responsibilities, namely, sustainable use of forests, conservation of biodiversity, and sustenance of ecological balance.

The reference to "historical injustice" to forest dwellers during the colonial and post-colonial periods sends a powerful political message to all state governments in India. Its

operational implication is that the new law cannot accomplish significant improvements in the status of forest dwellers unless a constructive political and administrative dialogue is continued at the state level to take urgent and comprehensive actions to implement it. Also needed is a campaign to raise public awareness. Indian society at large must recognise the validity of forest dwellers' customary rights to earn their livelihood and sustain their cultural identities through the legally recognised relationship between them and their ancestral lands.

### Box 1: Provision of Rights under FRA 2006

The FRA lists the following as forest dwellers' rights:

- Right to hold and live on forest land as an individual or community and to cultivate land as a livelihood
- Community rights such as cattle grazing on forest land
- Right to collect, own, use, and dispose of minor forest produce that has been traditionally collected within or outside village boundaries by forest dwellers
- Community rights to fish and collect other products from water bodies
- Right to use traditional seasonal resources such as pastures and water bodies as nomadic or pastoralist communities
- Community rights including tenures of habitat for primitive tribal and pre-agricultural groups
- Right to reclaim any disputed land over which forest dwellers had user rights
- Rights for converting to title leases or grants of forest lands issued by local authorities or state government
- Rights of settlement and conservation of all forest villages, old habitation, un-surveyed villages and villages in forests
- Right to protect, regenerate, conserve, or manage any community forest resource that the community has traditionally protected and conserved for sustainable use
- Rights that are recognised under state law or laws of any autonomous district or regional council or rights that are accepted as rights of tribal people under any traditional or customary law of the concerned tribes of any state
- Right to claim intellectual property rights over traditional knowledge related to biodiversity and cultural diversity
- Any other traditional right enjoyed by the forest-dwelling Scheduled Tribes or other traditional forest dwellers, but excluding the traditional right of hunting or trapping of animals
- Right to relocation and rehabilitation if evicted or displaced from forest land without providing legal entitlement to relocation or rehabilitation before 13 December 2005
- Right to use forest land not exceeding 1 hectare to build schools, dispensaries, fair-price shops, communication lines, minor irrigation canals or other water bodies, vocational training centres, roads, community centres, and drinking water supply pipelines, subject to approval by the gram sabha (village assembly)

Source : Forest Rights Act 2006.

These various rights of forest dwellers can be classified into four broad types such Land rights, User rights, Right to protect and conserve, and Relief and development.

**Table 4: Classification of Rights under FRA 2006**

<b>Land rights</b>	No forest dweller can claim user rights over any forest land that he or she was not cultivating before 13 December 2005 and is not cultivating at present. Those who are cultivating such land but do not have documents to prove continuous land use can claim up to 4 hectares if they cultivate the land themselves only for their livelihood. Those who possess government leases for forest land can claim user rights even if the land was taken by the Forest Department or is the subject of a dispute between the Forest Department and the Revenue Department. However, if those lands are re-conferred on an individual, a household, or a community, they cannot be sold or transferred to anyone except by inheritance.
<b>Community rights</b>	The FRA restores the forest dwellers' right to collect minor forest produce such as edible herbs and medicinal plants. But the forest dwellers cannot fell trees for sale. This also includes ownership and right to process and sell. The Amended Rules September 2012 even permits the gram sabha to issue transit permits. The law also recognises the use of grazing grounds and water bodies by nomadic or pastoralist communities.
<b>Right to protect and conserve</b>	Until the FRA was enacted in 2006, only the Forest Department was entrusted with the duty of protecting forests <sup>16</sup> . This legislation for the first time gives the forest-dwelling communities the right to protect and manage the community forest resource in their community forest within customary boundaries. It authorises forest dwellers to conserve community forest resources by giving the community a general power to protect wildlife and forests. This is vital, as thousands of forest-dwelling communities are trying to protect their forests and wildlife against threats from forest mafias, industries, and land grabbers, most of whom operate in connivance with the Forest Department.
<b>Relief and development</b>	The FRA states in Section 4(1) that "notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognizes and vests forest rights in (a) the forest-dwelling Scheduled Tribes in states or areas of states where they are declared as Scheduled Tribes in respects of all forest rights mentioned in Section 3; (b) the other traditional forest dwellers in respect of all forest rights mentioned in Section 3." This is a powerful and unambiguous recognition of rights of forest dwellers and an unreserved vesting of such rights on them.

*Source:* Forest Rights Act 2006.

<sup>16</sup> However, the Van Panchayats in Uttarakhand have enjoyed such rights since 1931 and in large parts of north east India, the communities have the right to protect and manage their own forests.

### **Key Rules to Implement FRA**

The FRA prescribes that all future creations of "inviolable" conservation zones and curtailment of rights in protected areas shall require the "free, prior, and informed consent" of tribal people who live on such land. It also emphasises that all forestlands irrespective of location and category that have traditionally been used by tribal communities will henceforth be treated as "community forest resources" and says that forest dwellers can act decisively in conserving such resources. What is most important, the FRA says that recognised rights of forest dwellers include conservation of forests and biodiversity (Section 5).

The FRA empowers holders of forest rights and their gram sabhas to:

- Protect the wildlife, forest, and its biodiversity;
- Ensure that adjoining catchment areas, water sources, and other ecological sensitive areas are adequately protected;
- Ensure that habitats of forest-dwelling Scheduled tribes and other traditional forest dwellers are preserved from any form of destructive practices affecting their cultural and natural heritage;
- Ensure that the decisions taken in the gram sabha to regulate access to community forest resources and prevent any activity that adversely affects the wild animals, forest, biodiversity, and natural heritage.

The legislation recognizes both individual and collective rights of the forest dwellers upon forests that provide them livelihood as well as cultural identity. It took nearly one year to publish the rules for the implementation of the FRA. Political interventions, bureaucratic twists, and hectic lobbying by activists representing tribal people and wildlife interest groups took central stage during the review of draft rules that were presented for public comments. The compromises and the accommodation of various interest groups in the formulation of the final rules, which were published in January 2008, have diluted in a number of ways the strong, forcefully stated forest rights enshrined in the law. A good example is that although the law provides for forest dwellers to have rights over water resources in forests including traditional fishing rights the published rules do not address this critical subsistence issue<sup>17</sup>.

### **Rationale behind Forest Rights Act 2006**

It is in this context that the Forest Rights Act [Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act] was enacted in 2006 - to undo the

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<sup>17</sup> The claim for community rights includes this right although it is true that the rules needed to further clarify this as well as many of the other rights.



historical injustice and address the "issues" related to the forest dwellers. The Act specifically aims at: (1) recognising and vesting forest rights and occupancy rights to those forest dwellers who have been living in such forests for generations but whose rights were not recorded; (2) providing a framework for recording the forest rights; (3) including the responsibility and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance, thereby strengthening the conservation regime of forests; and (4) ensuring livelihood and food security of the Scheduled Tribes and other forest dwellers.

However, there are misapprehensions regarding the Act at all levels and, in fact, the implementation of the Act has been stalled due to the Public Interest Litigations (PILs) filed against it. For the first time a legislation has come to be people-centric rather than animal-centric and tree-centric, and there is opposition mainly because the authorities and/or organisations have failed to represent the Act appropriately to the relevant audience. The paper aims to do just that.

#### **Issues and Problems Addressed by the Act**

Sustainable management and conservation of natural resources can be ensured only if there are incentives for their stewardship by local communities. This is particularly true for forest areas inhabited by the tribal people and other forest dwellers where they are critical stakeholders-provided their resource rights and privileges are recognised appropriately. Otherwise, their abject poverty can be a cause and consequence of forest degradation and deforestation, more so of the precious biodiversity and fragile ecosystems that many of the natural forests embody and whose restoration is difficult, if not impossible. The tribal people are the poorest of the poor. They are cut off from the mainstream and live in remote forest villages where development-health centres, schools, electricity, roads, etc.-has not yet reached.

This issue is critical to the tribal people as a clear understanding of the efforts to leverage complementarity between the health of the forests, related ecosystems and their sustainability along with the well-being and human rights of the forest dwellers and forest-fringe villagers is crucial for the very existence of the tribals. It is in this context that the recent Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act) should be seen and leveraged for the benefit of all.

The FRA has evoked strong reactions at all levels - the animal lobby and the lobby for tribals with one voice oppose the state in its conservation strategies; and retired forest officials have filed PILs against the Act; this debate has been so far confused and unclear on most issues. There is either plain lack of understanding of the intent and purpose or there is misinformation from the lobbies.

It is thus important to understand and critically examine the provisions of the law and set out the premise and history on which it stands, and understand it in the context of the existing policies, laws and processes on forests and forest-dwelling communities, especially the forest-dwelling Scheduled Tribes. To understand the social melee in which it will be implemented, it is equally important to assess in a situational context apart from the functional linkages of the authorities and institutions that it will invariably overlap. The impact of this historical legislation will have great bearing on the forest-dwelling communities that are coincidentally poor and marginalised.

Central and eastern Indian states such as Odisha, Chhattisgarh and Jharkhand have faced the maximum challenge in the implementation of the Forest Rights Act. It is in this background that the implementation challenges of the Forests Rights Act were studied in the states of Odisha and Jharkhand from both the regulatory as well as implementation standpoints.

The tribal people are entirely dependent on the forests for their survival. The forests provide them their safety net - in day-to-day life as well as in times of hardship and crisis. During times of hardship, and in the absence of a welfare state, they turn to the forests to keep them going. Hence, forests and the tribal people should be considered together rather than separately.

Presently, the tribal people are caught in a vicious cycle of dependence and poverty. Forests provide their subsistence needs but not more than that. They cannot resort to any other activity as they do not have any other skill. Moreover, their rights over Minor Forest Produce (MFP) are not clear as the PESA does not define MFP. Hence, in actuality, the gram sabhas do not have any kind of ownership over the MFPs. At the same time, the awareness level in the gram sabhas as well as in the gram panchayat on ownership, control and management of MFPs is very low. As a consequence, the tribal people are harassed by the forest officials.

This issue is critical for the tribals, as in the name of development, iron ore, bauxite, and other minerals are allowed to be mined at atrociously low rates - like Rs.4 per MT and paper mills are supplied with bamboo at 19 paisa per piece. The tribal people are harassed even though they pay as much as Rs.11 per piece and bribe the forest officials. However, the Jamuda Village in Kalahandi District of Odisha has become the first village in the state and the second village in entire country to receive transit permit for selling of bamboo and *tendu* leaves<sup>18</sup>.

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<sup>18</sup> See Down to Earth 4th March 2013 for details <http://www.downtoearth.org.in/print/40520>

### Box 2: Steps for FRA Implementation

The Act prescribes a number of sequential steps for the implementation of the provisions of the Act from the gram sabha to the state level committee. The following sequential steps are to be undertaken for the smooth implementation of the Act.

- A meeting of the *palli sabha*<sup>19</sup> is convened by the sarpanch on the request and presence of a representative of the *panchayat samittee* and the secretary of the concerned GP/ village/hamlet panchayat to elect the Forest Rights Committee (FRC) comprising 10 to 15 members including one-third women representation. The role of FRC is to assist the gram sabha in its function to collate, verify and approve claims to rights.
- The FRC receives claim forms from individuals and communities on behalf of the gram sabha / *palli sabha*. It has to provide reasonable time and opportunity to the FRC and the claimants to prepare maps demarcating the area of each recommended claim as prescribed under the Act. The claim form is to be accompanied by at least two evidences (out of nine given in the Act) authenticating the claim. The gram sabha shall, then, pass a resolution on the claims submitted and forward a copy of the same to the Sub-Divisional Level Committee (SDLC). Any person aggrieved by the decision of the gram sabha may apply to the SDLC within 60 days from the passing of resolution by the gram sabha for a decision on the petition.
- The SDLC consists of the SDO, tribal welfare officer, forest range officer, and three members from the *Panchayat Samittee* (PS), appointed by the PS. The SDLC examines the resolution/decision of the gram sabha, prepares the records of forest rights and forwards it through the SDO to the district level committee for a final decision.
- The District Level Committee (DLC) composed of the collector, District Forest Officer (DFO), district welfare officer (in Odisha it is the DRDA/ITDA), and three representatives of the *Zilla Parishad* (ZP), appointed by the ZP. The DLC is the final authority to decide and approve on the forms (both individual and community) prepared by the SDLC.
- The state level monitoring committee monitors the progress of recognition and vetting of the forest rights.

Source: Forest Rights Act 2006.

### Implementation and Outcomes of FRA in Odisha

FRA is a new Act passed in 2006. Immediately afterwards, the implementation of the Act got locked in court cases. The Retired Foresters' Association filed cases in at least 10 States of India against its implementation, as they alleged, it encouraged illegal encroachment and led to disruption of the eco-system. One study, carried out at the behest of the Ministry of Tribal Affairs by the Scheduled Castes and Scheduled Tribes

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<sup>19</sup> Palli sabha is for Odisha only.

Research and Training Institute (SCSTRTI), Bhubaneswar, Odisha, identified the institutional and administrative bottlenecks in the implementation of the FRA and made recommendations for the redressal of such problems. Other Studies by NGOs like the Skill Share International, Campaign for Survival and Dignity (CSD), and other tribal organisations related to the implementation difficulties. They argue that the MoEF set arbitrary deadlines, relocated people without approval, and diverted land in the name of critical wildlife habitats. They also focused on the lack of adequate awareness regarding the provisions of the Act.

There is a vast amount of literature on the forest policies in India and the changing use and management of forests; it starts from the Indian Forest Act 1865. In Springate-Baginski and Blakie (2007), the core theme has been how the Forest Act aimed at securing steady increase in timber production and silvi-cultural improvement. It was meant for construction of railways. So the colonial approach was, "the starting point of state intrusion into the complex customary rights and resource-use patterns then existing in India" (Springate-Baginski 2007).

When the tribal and other forest dwellers suffered hardships and resisted, the Government of India introduced social forestry in its Fifth Five Year Plan. It aimed at helping the forest dwellers meet their fodder, firewood and timber needs, whilst reducing their dependence on forest lands. This was supported by SIDA and DFID among others as recorded by Hobley (1992). Saxena and Ballabh (1995) evaluated the social forestry programmes and concluded that they failed. Poffenberger (1990) also agrees and terms the social forestry as environmentally and socially undesirable. Sarin et al. (2007) capture the shift from state control or facilitation to participatory approaches and community management, enshrined in Joint Forest Management (JFM). Dharamadhikary (2008) deals with the latest trend of compliance to industrial needs, including mining and large hydroelectric projects, by forest policies.

In the state of Odisha the process of implementation of the Act started since January 2008. A number of agents are involved in the process: four departments namely tribal, revenue, forest and panchayati raj are working in coordination for implementing the Act, with the Tribal Welfare Department being the nodal agency. Based on the Forest Rights Act 2006 the department of SC and ST Development Commission, Government of Odisha, has written to all collectors of the districts to form committees at district, sub-divisional, and village levels through the *palli sabha*<sup>20</sup> on 15 February 2008.

The panchayati raj department, in consultation with other departments, directed the officials at the district and block levels to hold a *palli sabha* on 16 and 23 March 2008

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<sup>20</sup> Village level assembly is known as *palli sabha* in Odisha.

to form the FRC at the village/hamlet level after giving proper orientation on the FRA and its rules. The dates of holding the *palli sabha* were published through the local media, and the official to be entrusted for implementation of the FRA at different levels were familiarised through discussion and training on the different provisions of the Act. However, dissemination of different provisions of the law could not be widely given to the villagers due to shortage of time as well as officials at the local level conversant with the act.

Initially, FRCs were formed only in revenue villages while many forest villages, un-surveyed villages, and forest habitations were excluded. Further, gram sabhas could not be held in many villages not only due to lack of preparedness by the panchayat level authorities, but also because of lack of quorum and due to the confusion regarding the purposes for which the meeting was held at the village/hamlet level. Some gram sabha meetings were held even after the fixed dates, and the state further allowed the convening of the FRC meetings at a later time.

Continuous and wider interactions among the different stakeholders, including the implementing agencies and facilitating agents such as civil society organisations helped simplify the understanding of the different provisions of the Act for the local officials as well as the potential beneficiaries.

The implementing departments facilitated the forest right committees in the preparation of maps relating to the land under possession by the potential beneficiaries, and the type of evidences to be presented in support of their claims. The civil society organisations played an important role in enabling the communities that are protecting the forest on community basis to submit claims to the implementing agencies.

However, it is to be stressed that given the low level of literacy among the STs/SCs and other backward caste households in general and rural areas in particular, all these efforts of awareness building had limited impact on the prospective claimants and FRC members<sup>21</sup> initially; but later on, it picked up. Awareness campaigning was largely absent in the remote areas<sup>22</sup>.

Even though the Act has to be implemented within a time frame, most of the departments of the state have taken the task of implementation as one of the several functions it has to perform. Initially the attitude of the Forest Department was not proactive, given its

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<sup>21</sup> Many claimants found it difficult to get a caste certificate (for STs) as they have no *patta* land - they only had customary rights on the land under their possession - and hence, there was confusion as to who should issue the caste certificate. Because of this type of confusion, many potential claimants could not submit the claim forms in time, even though they had forest land under their possession.

<sup>22</sup> See also Sathyapalan (2010) for similar experience in Kerala.

control over the forest for over a hundred years. However, this department later became a part of the process and co-operated in the implementation, along with the other departments. There was inadequate sanction of funds for hiring technical personnel (*patwaris* and other personnel) for the preparation of maps for the claimants and verification of land records.

Due to the legal and technical grounds on the control and management of land by both Revenue and Forest departments, only the maps for the lands occupied and cultivated within the revenue boundary were prepared while the areas under Reserve Forest (RF), Protected Forest (PF), national parks, sanctuaries, etc., were excluded. This was observed only in case of individual rights over forestland, while the rights over Community Forest (CF) were not given much attention for a long time. The FRA has been largely considered as land rights over a piece of forest land negating the Community Forest Rights (CFR). This has been a major gap in understanding the FRA at the government level as well as at the civil society level. Besides, there are specific provisions for the PTGs, pastoral, and pre-agricultural nomadic communities displaced under the FRA, which has been a no-starter. In this regard also, there has been complete lack of clarity at the government as well as the civil society levels.

#### **Shortcomings in the Implementation of FRA**

There have been some procedural bottlenecks in the implementation of the FRA; they arise out of inadequate knowledge of the FRA and its implications. Hence, the pace of implementation has been very slow. The Stay Orders by the courts and the elections to the State Assembly as well as the Parliament have further delayed the implementation and presentation of the members of the Forest Rights Committees (FRCs) and the DLCs, which could have helped the implementation of the Act, could not be made. Moreover, the FRA does not go along well with the other existing Acts such as the Wild Life Protection act (WLPA), Forest Conservation Act (FCA), etc. Hence, the restrictions provided in these legislations will continue and may even override the FRA.

A compendium of all circulars, letterheads, memos of instructions, guidelines of FRA issued by MOTA, MOEF and other Central government and State government departments were prepared and communicated to the officials at the ground level for their institutional structures and incentives were identified and developed for speedy implementation; this has been done in a mission mode. The MOTA wanted to work cohesively to make the Act effective. Repeated assurances were given to indicate that the Act will not weaken or threaten the Forest Department's functioning. On the contrary, it was viewed as an excellent opportunity for the department to work with the gram sabhas and local communities. This would ideally make forest management easier and effective for the department, keeping in mind the severe shortage in lower level staff.

Looking at the pros and cons, it is more or less agreed that tenure insecurity has made the developmental schemes and programs (e.g., *Indira Awas Yojana* for housing, drinking water, etc.), inaccessible to the Scheduled Tribes and other forest dwellers. The Act addresses this issue and will have positive impacts on the overall quality of life of the tribal people. The Tribal Sub-Plan (TSP) under which the states are supposed to earmark funds exclusively for the welfare of the Scheduled Tribes can be a window of opportunity for developmental investment. Hence, to take this Act forward in the right spirit will require commitment from both state as well as the civil society.

Development actors are attempting to figure out strategies that would facilitate synergy between their work in JFM and the provisions of the Act. It is understood that unless land/tenure rights are established, services cannot be derived out of it. Settlement is the first step and requires extensive research at the grass-root level. Detailed procedures have been laid out in the proposed rules, for the FRCs (to be constituted in each gram sabha), to inquire into the individual and community rights of eligible beneficiaries, and make suitable recommendations to the sub-division and district level committees, for incorporating these rights into government records. The proposed inquiries by the FRCs are of "quasi judicial" nature, and it is unrealistic to expect the FRCs to act in a judicious manner. This gives the NGOs an excellent opportunity not only to track the progress of implementation of the Act, but also to ensure transparency and accountability from an early stage. As of now, there exists only a vague understanding of the Act at grass-root level. The emerging gap between policy and practice can only be bridged with a robust communication strategy which provides clarity on provisions at all levels.

### **Issues of Multiple Institutions**

One of the biggest challenges for the Act is the issue of multiplicity in policies and institutions. Joint Forest Management (JFM) created under the programme is a key concern. It now has 106,482 JFM committees (on paper) throughout the country and it covers 22 million hectare of forests spread across 28 constituent states of India and union territories (Bhattacharya et al. 2010). For forest-dwelling communities, JFM, as a society, has largely been inadequate in providing tenure rights or legal status through legislative procedures. This insecurity has affected collective action, especially on issues of encroachment and illegal logging. Inter linkage with PRIs was an attempt to provide the JFMCs with a certain degree of authority. Unfortunately, many shied away from the challenge due to the political and bureaucratic complexities involved. The key question that emerged is what happens to community participation and resultant collective action (whatever little has been achieved so far under JFM)?

Establishing private property rights implies taking away incentives for collective action on commons. Knowing that the JFMCs in several pockets of the country have been

attempting to regulate or remove encroachments from forest lands, the recent legislation leaves them completely powerless and confused. It also exacerbates and leads to a domino effect in intra and inter-village conflicts across landscapes. The MOTA, however, does not perceive this to be an issue. It believes that in such scenarios, there must be concordance with constitutional arrangements (panchayats). For example, in Gujarat, water and sanitation committees can be formed in any hamlet but function as a subset of the gram panchayat. The general belief is that working with/under gram panchayats is a constitutionally appropriate way and will minimise conflicts. However, there is dichotomy of opinion on this subject. On one hand, nesting within existing constitutionally approved institutions minimises unnecessary replication of work and provides legal validity. At the same time, birth of project-based institutions has also been considered to be "strengthening democracy at the grassroots". The argument has been that the panchayats are weighed down by politics and corruption and are not really a voice for the marginalised.

However, it is increasingly becoming clear that strengthening decentralisation through empowerment of the PRIs is a state priority and forging linkages between JFMCs and PRIs gets a much desired thrust from the Act. Non-Governmental Organisations (NGOs) will have to place themselves within this debate and revisit their programmes on JFM and panchayati raj. They also need to design more adaptive conflict resolution mechanisms in order to make implementation of the Act easier.

Ecological security is also a matter of concern. The Act recognizes the forest dwellers' right to practice agriculture in and around forests. The impact of this activity on local biodiversity will be significant. The ministry acknowledges that plantation of exotic species and other such activities detrimental to biodiversity has been witnessed before, but then, complete restriction on such livelihood-related practices is not possible. However, it views this as an opportunity for the state and the NGOs to come up with innovative approaches/proposals that balance livelihoods and biodiversity conservation - they are not exclusive of each other.

### **Implementation and Outcomes of FRA in Jharkhand**

Implementation of the FRA only began in Jharkhand in October 2008, because there were no elected panchayats in the state. The state government claimed that it was not able to implement the Act, since the Act requires elected members in the SDLCs and the DLCs, while the rules require the panchayats to summon a gram sabha. The Ministry of Tribal Affairs was requested for a clarification on this and had, in July 2008, informed the Jharkhand Government that the state government can, in consultation with the gram sabhas, appoint members to fill these positions. Thus, in the Latehar, West Singhbhum, and East Singhbhum districts, gram sabhas were called at the end of



November 2008 and Forest Rights Committees were elected, though in some areas the Forest Department tried to impose JFMC members as the FRC members.

Initially, during the year 2009, systematic distribution of claim forms did not take place in most areas. Although the District Collectors received some funds for printing forms, etc., even where printed forms were available, the BDOs did not bother to distribute the forms. There are reports of revenue field level officials demanding bribes for giving forms. The Forest Department also attempted to restrict recognition to pre-1980 claimants in some areas.

Initially, most gram sabhas were held at the revenue village level, though hundreds of settlements submitted resolutions seeking constitution of hamlet level gram sabhas, In Latehar, the Collector agreed to hold gram sabhas as per the provisions of the Panchayati Raj Act in Jharkhand. Thus, the process of recognising hamlet-level gram sabhas was initiated in the district. During early 2009, there were also intensifying efforts to remove people from their lands for plantation purposes. For instance, in Latehar District, in the second week of February, false cases were filed against people who resisted plantations and two people were arrested. Even in August 2009, cases were filed against people occupying forest land since ages, and they were jailed. Likewise, many villagers were evicted since 2005 in the name of undertaking plantations.

As on October 2009, the state government did not issue any clear orders, and the actual implementation was dependent on the District Collectors. In the absence of clear procedural guidelines across the state, and due to limited personnel in the welfare department, the implementation was largely led by the District Collectors; and there seems to be wide variation in the approach followed by different collectors. In some districts, the collectors delegated the election process of the FRCs poorly-trained BDOs. In some areas, the BDOs themselves nominated the FRC members, without holding gram sabha meetings; while in other cases, the collector insisted on seeing the signatures of two-thirds of the members of the gram sabha on the voters' list before accepting the validity of the gram sabha meeting.

Since 2010, the process of implementation of the FRA in Jharkhand has comparatively picked up, largely due to state government's pressure for results. About 15,296 titles have already been distributed in the state as on 31st March 2013. However, in many cases, the titles are for lesser area than that claimed for, and no reasons have been given for this. Besides, the claims filed by other traditional forest dwellers are being ignored, and there have almost been no reported claims for community forest rights - though in one area, the Birhors claimed the right to collect NTFPs, and were granted the same over a 150 acre forest area.

The Forest Department is refusing to accept claims in most wildlife sanctuaries, national parks, and tiger reserves on the grounds that rights in reserve forests were recognised during the colonial period. However, some individual land titles were issued in the Hazaribagh Wildlife Sanctuary. No effort has been made to convert forest villages (there are 28 forest villages in the state) into revenue villages although individual titles have been issued in one. Further, bamboo and *tendu* leaves continue to be managed as nationalised MFPs by the Forest Department.

Jharkhand is an important state for FRA implementation, with a large forest area and a very large tribal and non-tribal forest-dependent population. However, by 31st March 2013, the number of individual claims received in Jharkhand was only 42,003; and of these, only 15,296 were granted. This amounts to less than one claim per forest-dependent village - a surprisingly low figure, and a cause for concern about the manner of the implementation of the Act. Moreover, very few claims for Community Forest Rights have been received; those listed as CFR claims are mostly for diversion to non-forest activities or minor claims for graveyards and threshing grounds. Hence, the main objective of giving community rights to forest resources has not been achieved.

The reasons for this situation include:

1. A number of potential claimants appear to be left out of the process entirely, due to lack of awareness and information, non-supply of forms, etc.
2. A large number of applications have been rejected due to wrongful interpretation of the Act.
3. A number of cases of inordinate delays in processing claims, providing support to gram sabhas to process claims, and tenable allegations of corruption by the implementing staff and village leaders have emerged.
4. Several cases of the Forest Department illegally initiating plantation activities in the land for which cultivation claims have been filed (or could be filed).
5. Several deviations from the process of implementation laid down in the law, including less involvement of the gram sabha, wrong attribution of rejection made by the officials to the gram sabha, no communication of rejection to the claimants, etc.
6. Where claims have been granted, the process of mutation of land records is incomplete; and in the case of community claims, the titles issued are faulty.
7. Several communities believe that applying under the Act will weaken their claim for full forest rights as per earlier Acts, for which they have been agitating since a long time.

The main underlying reasons for this state of affairs appear to be the lack of state government's interest towards the implementation of the Act, and the consequent inadequate realisation of the potential of the Act to reduce land right conflicts, and empower tribal and forest-dependent communities. Thus, in spite of resources being available, implementation is poor, misdirected, inadequately staffed, and poorly understood on the ground. This is a result of willingness to take the easy route by asking the Forest Department to play the major role.

Table 5: Progress under FRA 2006: A Snapshot (as on 31st March 2013)

State	No. of claims received	No. of titles distributed	No. of claims rejected	Extent of forest land for which titles distributed (in acres)
Odisha	5,32,464 (5,29,160 IFR & 3,304 CFR)	3,01,200 (3,00,321 IFR & 879 CFR) (56.57%)	1,31,970 (1,31,361 IFR & 609 CFR) (24.78%)	5,39,277.45 (4,84,025.80 IFR & 55,251.65 CFR)
Jharkhand	42,003	15,296 (36.42%)	16,958 (40.37%)	37,678.93
All India level	32,45,369 (31,78,608 IFR & 66,761 CFR)	12,80,100 (12,62,2018 IFR & 17,882 CFR) (39.44%) 16,226 (Ready for distribution)	15,13,742 (46.64%)	46,93,122.27

Odisha ranks 3rd and Jharkhand ranks 8th in terms of percentage of titles distributed over the number of claims received; (IFR- Individual, CFR- Community).

Source: Government of India, Ministry of Tribal Affairs, (as on 31st March 2013).

Note: Figures in the brackets indicate percentage of the total claim received.

### Outcomes at the State Level

The position, with regard to the progress of implementation of the FRA at different institutional levels in Odisha and Jharkhand up to 31st March 2013, is discussed below:

**Table 6: Progress and Distribution of Individual and Community Claims under FRA up to 31st March 2013**

	Particulars	States		
		Status	Odisha	Jharkhand
1	Number of claims filed at gram sabha level*	Total	5,32,464	42,003
		Individual	5,29,160	--
		Community	3,304	--
2	Number of claims recommended by gram sabha to SDLC	Total	4,12,458	23,617
		Individual	4,11,008	--
		Community	1,450	--
3	Number of claims recommended by SDLC to DLC	Total	3,17,995	17,046
		Individual	3,08,662	--
		Community	902	--
4	Number of claims approved by DLC for title	Total	3,09,564	16,351
		Individual	3,08,662	--
		Community	902	--
5	Number of titles distributed	Total	3,01,200	15,296
		Individual	3,00,321	--
		Community	879	--
6	Extent of forest land for which titles were distributed	Total	5,39,277.45	37,678.93
		Individual	4,84,025.80	--
		Community	55,251.65	--
7	Average amount of land distributed per title holder (in acre)	Total	1.74	2.46
		Individual	1.61	--
		Community	62.86	--
8	Number of claims rejected	Total	1,31,970 <sup>23</sup>	16,958
		Individual	1,31,361	--
		Community	609	--

*Source:* Government of India, Ministry of Tribal Affairs, 2013.

*Note:* Individual and community-wise data is not available in case of Jharkhand.

<sup>23</sup> About 1.31 lakh titles up to December 2012 at the state level have been rejected. In many cases, the SDLC/DLC have rejected the claims without assigning adequate reasons (see also Vasundhara 2011, pp-6).

**Table 7: State-wise Progress and Ranking of Implementation of FRA 2006  
(as on 31st March 2013)**

Ranking	States	Total number of claims received	Total number of titles distributed	Percentage of titles distributed over number of claims received
1	Tripura	1,82,617	1,20,473	65.97
2	Kerala	37,535	23,167	61.72
3	Odisha	5,32,464	3,01,200	56.56
4	Andhra Pradesh	3,30,479	1,67,797	50.77
5	Rajasthan	64,596	32,616	50.49
6	Chhattisgarh	4,92,068	2,15,443	43.78
7	Madhya Pradesh	4,72,108	1,73,062	36.65
8	Jharkhand	42,003	15,296	36.41
9	Maharashtra	3,44,330	99,368	28.85
10	Assam	1,31,911	36,267	27.49
11	West Bengal	1,37,278	29,532	21.51
12	Gujarat	1,91,592	40,029	20.89
13	Uttar Pradesh	92,433	17,705	19.15
14	Karnataka	1,63,370	6,554	4.01
15	Bihar	2,930	28	0.95
16	Himachal Pradesh	5,692	346	6.07
17	Tamil Nadu	21,781	00	0.00
18	Uttarakhand	182	00	0.00
	<b>All India</b>	<b>32,45,369</b>	<b>12,81,926</b>	<b>39.50</b>

*Source:* Government of India, Ministry of Tribal Affairs, 2013.

*Note:* No claims have been received so far in a few states, including Arunachal Pradesh, Goa, Manipur, Meghalaya, Mizoram, Sikkim, Andaman & Nicobar Islands, Daman & Diu, and Dadra & Nagar Haveli. However, at the all India level 15,824 titles are ready for distribution (Madhya Pradesh: 9,132 titles; West Bengal: 2,969); in case of Tamil Nadu, about 3,723 titles are ready for distribution, but the High Court has restricted the order for distribution.

### **Violation of PESA and FRA for Development Projects**

Out of the total tribal population of India, more than 40 per cent has already been displaced. This is happening when, even by government estimates, more than 60 per cent of the adivasis are classified as living in extreme poverty with no access to land, adequate food, health facilities, and education. Under such circumstances, even minor violations of the law like PESA and other provisions of the Fifth Schedule have an enormous impact on them - violation of PESA is a mockery of the participatory democracy<sup>24</sup> that India boasts of.

A considerable part of India's forests and forest land has been diverted for "development" and infrastructure projects such as mines, power plants, dams, roads, industries, sports and tourism facilities, and ports. Since 1980, when the Forest Conservation Act centralised the process of allowing (or rejecting) such diversion, about 1.2 million hectares were granted for such purposes; and prior to this, from 1951 to 1980, about 4.24 million hectares were diverted (Government of India, 2010).

Given that most forest areas in India are inhabited or used by people, this scale of forest diversion only means displacement and dispossession at a mass scale. Development projects are said to have caused the physical displacement of about 60 million people (Mathur 2008); a Planning Commission study of a subset of these found that about 40 per cent of such displaced were adivasis, even though they make up only 8 per cent of the country's population.

The FRA 2006 vests the gram sabha with the power to determine the nature of individual and community forest rights, and pass resolutions to such effect. It also stipulates that any resettlement of forest dwellers on account of conservation activity will not be undertaken unless free prior consent of the dwellers has been taken, and provides for penalty provisions against officers who violate the forest dwellers' entitlements (Sampat 2013). However, until recently, all such diversions of forests and forest land were undertaken without any consultation with local communities. The people have a say only in public hearings if there is an environmental impact assessment procedure involved with the project, and there is nothing in the law or administrative procedures that require the project authorities or the government to take on board the results of such hearings. Further, no public hearing is required, even now, for forest diversion, even though the diversion may seriously affect the lives and livelihoods of forest-dwelling and forest-dependent communities. As a consequence, such communities continue to be displaced from their forest surrounds, or dispossessed of their forest resources, due to the "development" projects.

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<sup>24</sup> See Frontline, May 3, 2013, <http://www.frontline.in/social-issues/social-justice/illusory-rights/article4613760.ece?css=print>

In a rights-based approach, every human being is recognised as a right holder. At the same time, there is also a duty bearer who has to respect, protect and guarantee these rights. The duty bearer is generally the state. Under this approach, the state has three levels of obligation, i.e., the duty to respect a right, duty to protect a right, and duty to fulfil a right. Violation of Forest Rights Act is one of the reasons for rejecting the mining clearance of various projects including the Vedanta Alumina Limited (VAL) in Odisha. The clearance was rejected on three major grounds: violation of the Forest Rights Act, "the blatant disregard" to the livelihoods of the people living in the area, violation of the Forest Conservation Act and the Environment Protection Act (EPA). Civil rights activists are celebrating the stop-order, but they would like the ministry to go further and seek compensation from Vedanta for the damage it has caused to the tribal population and to the environment (Jishnu 2010). However on 18th April 2013, in a landmark judgment, the Supreme Court has directed the smallest units of local governance to use their powers and take a decision on whether the Vedanta group's \$1.7 billion bauxite mining project in Odisha's Niyamgiri Hills can go forward or not. Affirming the decision-making power of the village councils of Rayagada and Kalahandi under the FRA, the court directed these gram sabhas to "take a decision...within three months" on any claims of cultural, religious, community and individual rights that the forest dwellers of the region may have<sup>25</sup>. In a letter to the Odisha Government on 2nd May 2013, the ministry directed the state to facilitate the gram sabhas affected by the proposed bauxite mining project on Niyamgiri hills to decide-independently and in a transparent manner-the veracity of the religious and cultural rights claimed by the tribal people on Niyamgiri hill. It has also issued several legally binding directions under the FRA to the Odisha Government and prescribed a timeframe for the entire process<sup>26</sup>.

Similarly, the Pohang Steel Company (POSCO) SEZ area in Odisha, where panchayat resolutions against the project are being consistently disregarded is a case in point (Sampat 2013). The POSCO-India project in the Jagatsinghpur District of Odisha involved the

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<sup>25</sup> See The Hindu 20th April 2013. <http://www.thehindu.com/todays-paper/tp-national/tp-ewdelhi/court-directs-gram-sabhas-to-take-a-call-on-vedantas-mining-project/article4635498.ece>

<sup>26</sup> The ministry has asked the Odisha Government to issue advertisements in newspapers, including those in vernacular languages, asking all the tribals and traditional forest dwellers in Kalahandi and Rayagada districts to file claims of religious and cultural rights, along with the individual and community rights under the FRA. The ministry has also asked the state to display this notification along with the details of the SC order in all villages in the two districts, irrespective of their proximity from the mining site. "This will ensure that there is no allegation of subjectivity in the selection of palli sabhas (gram sabhas) where the meeting will be finally held as per the direction of the Supreme Court". The ministry has asked the state to prepare a list of all the villages near the mining site, as well as on the Niyamgiri hills, where tribal people have made claims of traditional rights. It has given the state government 20 days to prepare the list. See Down to Earth 2nd May 2013 for further details. <http://www.downtoearth.org.in/content/tribal-affairs-ministry-gets-cracking-apex-court-s-order-vedanta>

setting up of a steel plant that required an estimated investment of 12 billion US dollars. More than three-fourths of the land that needed to be acquired for the project was inhabited by the tribals, and the FRA was passed in 2006, they could not be displaced until their rights were settled. Unfortunately, the said Act was not properly implemented, and consequently, there were widespread protests against the project. The final clearance however was granted in May, 2011.

Disputes over land rights, which have turned violent in recent years with communities taking on authorities, are all set to rise in India. Land requirement for industrial projects in India are set to be tripled during the coming 15 years, and as a result, conflicts over land acquisition are going to increase, according to a new study. Currently, close to 22,000 sq km of land is devoted to projects in agri-business, infrastructure, mining, and non-conventional energy sectors. This is expected increase to 61,653 sq km by 2026, which is close to double the size of Kerala. Most of the land taken over by industries is common land and forests, traditionally used by the local communities. According to the research conducted by the non-profit organisation, Rights and Resource Initiative and Society for the Protection of Wasteland, 130 out of the total 610 districts in the country have been embroiled in conflicts in the past 10 years due to the takeover of common lands and forests. Such conflicts have accelerated in the past two years.

A report by Centre for Science and Environment (CSE), through case-studies in six different states, shows how the governments and industries are subverting the rights of the people to acquire common land on a large scale. It says that enforcing and strengthening the laws such as the PESA Act of 1996 and the FRA of 2006, that recognise and protect the rights of the tribals and other local communities over common land and resources they have been using traditionally, are necessary to end the land and forest conflicts across the country. It was found that about one-third of the Indian population is impacted by land and forest takeovers. Further, in the last ten years, conflicts over land rights have been reported from every state as well as every forest in the country (Shrivastava 2012).

#### **Working of FRA in Protected Areas**

The approach to the distribution of titles under the FRA is biased towards individual rights rather than community rights; and this has hindered the claims under community rights. However, community rights require equal importance, especially in the protected areas of Odisha. Further, though, individual as well as community rights have been recognised in various wild life sanctuaries as well in the tiger reserves in Odisha, there is some mismatch between the traditional access areas identified by the community and the rights that have been recognised. Moreover, the allotted titles are incorrect in many respects.



Relocation of villages continues in some tiger reserves, in violation of the FRA. A number of core villages in the Simlipal Tiger Reserve were relocated to a far off colony. The process for the claim and recognition of forest rights under FRA was in progress when the relocation happened and it was found that the relocation was carried out without complying with the provisions of FRA and the Wild Life Protection Act. The process for the relocation of villages from the Simlipal Tiger Reserve is reported to be continuing, in violation of the FRA (Kalpavrikha 2011).

Similarly, violation of FRA continues in many protected areas, particularly in tiger reserves where the FRA process is being stalled, or relocations have either taken place already, or are in process. It is to be noted that most relocations are in violation of the provisions of the FRA and the Wild Life Protection Act (WLPA); e.g., those taking place without recognising the rights first, without establishing irreversible damage, and without co-existence options. Cases of such violations have been reported from many protected areas in Odisha.

Similarly, the process of establishing Critical Wildlife Habitats (CWH) has not gone very far (not a single CWH has been notified), and in many places, it is taking place without the other provisions of the FRA being implemented. There is a need to redefine what inviolate areas are, in the context of the CWHs; they should not be considered necessarily human-free, but rather as free of activities that are in violation of the conservation objectives of the area. The inviolate areas should be brought to the notice of the gram sabhas and independent wildlife scientists, and should be decided through a public consultation processes. Co-existence must always be considered as an option in the CWHs, rather than assuming that relocation is always necessary. Along with the options for relocation, the communities must be given the option (as per the FRA) of being able to stay on within the protected area with relevant rights and responsibilities, and with mutually-agreed modification of rights where necessary. Moreover, the governance and management of the protected area, including formulation of management plans, implementation of activities, monitoring, and so on, should be carried out jointly by the Forest Department and the gram sabhas that have obtained the CFR, or other rights. For this, appropriate changes need to be brought into the WLPA.

#### **Non-Recognition of the Rights of the OTFDs**

The Other Traditional Forest Dwellers (OTFDs) have been discriminated in some states and denied their rights under the FRA. The National Committee on the FRA stated that "the misinterpretation of the definition of OTFDs is probably the single biggest source of wrongful rejections and omissions across all states<sup>27</sup> ." In Assam, the state

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<sup>27</sup> See MANTHAN, Report of National Committee on Forest Rights Act, December 2010, pp-80.

government has been reluctant to provide land rights to the OTFDs under the FRA due to prejudice against these communities. The Chief Secretary of Assam told the visiting National Committee on FRA team in July 2010 that "if the Act is to be implemented there will be no forest coverage to be left with." Further, the Chief Secretary admitted that each district magistrate interprets the FRA differently. The state government of Assam was also reluctant to process the claims of OTFDs. The Chief Secretary articulated the Government of Assam's position by stating that "we are willing to give rights to tribals but not to non-tribals", as most of them are encroachers. The Committee on FRA stated that "there has been complete lack of allowing or entertaining the claims of OTFDs except those areas where there are strong and vested political interests. In fact in terms of OTFDs claims, the state's attitude is strikingly apathetic." There have been cases of "outright rejection" of the non-ST claimants (OTFDs) on grounds of not belonging to the ST population or not being able to provide "written" evidence<sup>28</sup>. In Jharkhand, a vast majority of the applications filed by the OTFDs have been rejected on the grounds that 75 years of occupancy has to be shown on the encroached land, not just 75 years of residence in the locality or village<sup>29</sup>. This is a total misinterpretation of the definition of the OTFDs. The National Committee on FRA pointed out that the MoTA in its circular dated 09.06.2008 has already clarified that the interpretation of the phrase "primarily resided in and who depend on" in Section 2(o) of the FRA includes persons "who are not necessarily residing inside the forest but are depending on the forest for their bona fide livelihood needs" or "who are working on patches of land in such areas irrespective of whether their dwelling houses are outside the forest or forest land"<sup>30</sup>.

### **Convergence Issue in FRA Implementation**

Some states or local administrations took the initiative towards convergence of government schemes to benefit individuals and communities that are getting rights under the FRA. For instance, in Nabarangpur District of Odisha, officials and NGOs worked together to facilitate linkages with irrigation, horticulture, rural development, and other departments under laws and programs such as the MGNREGA to enable rights-holders develop forest land and community resources, enhance livelihoods, obtain new facilities, and infrastructure. Similarly, in several villages of Vaijapur Taluka in Maharashtra, civil society networks such as Lokshakti worked with local authorities to plan NREGS options for 212 families that have got land rights under FRA (Government

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<sup>28</sup> See Implementation of Forest Rights Act in Assam: Report of field visit, 11-14 July 2010 and 24 July 2010, the National Committee on Forest Rights Act.

<sup>29</sup> See Implementation of Forest Rights Act in Jharkhand: Report of field visit, 15-19 July 2010 of the National Committee on Forest Rights Act.

<sup>30</sup> See MANTHAN, The Report of National Committee on Forest Rights Act, December 2010, pp-57.

of India 2010). Notwithstanding these examples, very little progress has thus far taken place across the country on providing convergence benefits to rights-holders. Though in most cases the rights have only very recently been provided, there is a good opportunity for developing programmes to reach them soon.

There are of course many other pre-FRA examples of convergence, where individuals or communities have received new rights to land. For instance, in Hoshangabad District of Madhya Pradesh when one village situated in Satpura National Park was relocated, the District Collector ensured that every scheme available to the area was implemented in the village. Similarly, in the State of Kerala also the project for convergence of all the development schemes is being implemented in various districts.

Here, it must be remembered that the convergence attempts should help develop the area and the individual families in consonance with the local ecological and cultural conditions so that the individual families are not treated as aliens in their own area. This will require consultation not only with the local communities but also with the gram sabhas. In addition to this, help from the State Tribal Research and Training Institutes, appropriate civil society organisations, and institutions including those of the communities themselves, should also be taken to understand the local traditions and cultural ethos of the local communities and develop appropriate developmental programmes (Government of India 2010).

### **Conclusion and Way Forward**

A critical review of the process and outcome of the FRA implementation clearly highlights the need for closer scrutiny of community rights under the Act, pointing out that state governments have been paying inadequate attention to its last mile implementation. The FRA amendment rules mandate the issue of CFR titles for every forest dwelling village; and in cases where this is not possible to issue the same, the DLC must give a proper written explanation. Several issues emerge from the review, which are important for designing the study on policy/structural issues and setting objectives. 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 the rights of tribals and other forest-dwelling communities.

The FRA is a landmark in the struggle of forest dwellers and other tribes for legal recognition of their environmental rights over forests. It has definitely converted key environmental interests of forest dwellers into environmental rights that could be enforced by courts. The strength and value of the FRA, however, has been diluted by the rules that have been approved for its implement and by the rules that are missing,

leaving gaps instead of covering the entire charter of forest rights (Perera 2009). However, in September 2012 the MoTA came up with a notification on various changes and amendments called (Recognition of Forest Rights) Amendment Rules 2012<sup>31</sup>. As is often said, India has some of the best environmental and human rights legislations among all countries, but their implementation is often poor. One problem is that many laws seem to contradict each other, or contain self-contradictory clauses. This is particularly evident in the FRA 2006, which has been rightly celebrated as a milestone, granting the tribals and other forest dwellers their natural rights, which were long overdue (Padel 2012). There is no doubt that the Act has provided a stopgap measure for movements opposing dozens of destructive displacement projects that cannot proceed until the forest rights have been settled.

Another implementation problem with the Act is that it marginalises community rights claims compared to individual rights. Applications for community rights are harder to make and few have been granted. On the other hand, granting individual rights to forest plots may undermine the essence of tribal culture and the future growth of forests (Sharma 2006). Hence, processing community claims over forest is probably the best way to ensure tribal communities' long-term food security. However, it is only in last week of November 2012 that the Government of Odisha issued instructions to the implementing agencies at the district level (collectors) to emphasise the implementation of community forest rights<sup>32</sup>.

At the all India level (as on 31st March 2013) 32,45,369 number of claims have been filed. Out of this 12,81,926 titles (39.5 per cent) have been issued to the claimant with the estimated number of people economically dependent on forests (275 million) suggests that the FRA has done little to extend property rights in its first five years of implementation - only a few individual claims have resulted in the issue of titles. Worse still, very few community titles have been issued to claimants in some states. In addition, most of the claims for titles from traditional non-tribal forest dwellers were rejected because understandably the claimants could not prove that they satisfied the requirement of using the forest land for 75 years.

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<sup>31</sup> See, *The Gazette of India Extraordinary*, Part- II, Section-3, Sub-section-(i), September 6th 2012, Ministry of Tribal Affairs, New Delhi.

<sup>32</sup> The circular, dated 26 November 2012, by the ST and SC Department of the Government of Odisha, is as follows: the FRA amended rules September 2012 have put a thrust on settling community rights through a new format of application for community forest resources. Consequent upon the amendment, the definition of "the disposal of minor forest produce" has been expanded to include the right to sell as well as individual or collective processing; storage, value addition, and transportation within and outside forest area through appropriate means of transport for use of such produce.

Further, lack of information/dissemination regarding the provisions of the Act has also prevented stakeholders from submitting their claims to the authorities. Similarly, lack of co-ordination between government departments, corruption, and attempts to use forest land for development projects and commercial plantations, are also important constraints to the implementation of the FRA. At its first joint meeting on 17 May 2010, the national FRA committee stated on the issue of titles that "the high rate of rejection without field verification by the officials has made a mockery of the provision of the law" (Government of India 2010). It is also expressed that claims are often rejected without even informing the applicant and in most cases no reason is cited. At the same time the claims are settled without proper verification and survey (ibid.). All these facts and findings lend credence to the evidence of the very poor performance of the FRA in India as a whole during the last few years after it was enforced. This illustrates the difficulties of granting formal property rights to the forest-dwelling peoples and the communities.

Further, translating rights into livelihood gains and conservation requires convergence of FRA with laws and programs like the MGNREGA, watershed and livelihood development programmes. The convergence plan should ideally emerge from the plans developed by the gram sabhas / community in exercise of authority for conservation and management of community forest resources and adjoining areas.

Technical support should also be provided to the gram sabhas and the communities to prepare plans for the development of forest land and resources in the CFR areas. The government should come up with a framework to pull out resources/components from the existing programs (MGNREGA, watershed, etc.) to implement the community plans.

The drive to acquire both fertile agricultural land and village commons for "Special Economic Zones" and for big private companies has been moving on a fast track. Granting of mining leases to private companies in forest areas has increased in recent times. Despite the alarming rate at which ancestral land is being lost to companies and private developers, the FRA provides tribal communities with political space to articulate their forest rights. The passage of the FRA encourages forest dwellers all over India to build an alliance, embracing India's democratic and pluralistic political and social organisations, based on environmental and social justice. However, the state-capitalist nexus will be a formidable obstacle to implementing the FRA. The decisions of the high courts and the Supreme Court of India on legal challenges will reveal how the judiciary considers the forest dwellers' rights that are elaborated in the law.

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