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## FOREST RIGHTS STRUGGLE: THE MAKING OF THE LAW AND THE DECADE AFTER

C.R Bijoy

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## ARTICLE

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# 1

## INTRODUCTION

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, popularly the Forest Rights Act (FRA), was enacted a decade ago in 2006. A flagship law of the Government of India, the result of a prolonged intense struggle of Adivasis, it became operational with the notification of Rules in 2008 which was later amended in 2012.<sup>1</sup> This law remarkably attempts to finally liberate the forests, or at least a significant part of it, from the vice grip of a forest governance that treats forests as invaded lands and its people as a subjugated population. This colonial legacy stripped vast tracts of forests of its natural wealth and produced grotesque patches of tree plantations and called it afforestation. It earned disrepute to the forest bureaucracy as a ruthless force. FRA attempts to decolonise and democratise forest governance befitting an independent nation by dumping the opaque centralised prescriptive command and control governance for a localised open and transparent institutional mechanism, that progressively seeks and improvises location and eco-specific solutions.

# 2

## THE FOREST RIGHTS ACT 2006: DEMOCRATISING FOREST GOVERNANCE

FRA acknowledges that the 'forest rights on ancestral lands and their habitat were not adequately recognised, resulting in historical injustice to the forest dwellers who are integral to the very survival and sustainability of the forest ecosystem'<sup>2</sup>. Therefore it became 'necessary to address the long standing insecurity of tenurial and access rights of forest dwellers including

those who were forced to relocate their dwelling due to State development interventions'<sup>3</sup>. FRA recognises and vests the forest rights on forest land in forest dwelling Scheduled Tribes<sup>4</sup> and other traditional forest dwellers<sup>5</sup> who 'primarily reside in' forests<sup>6</sup> for generations, are 'dependent on forest land or forests for bona fide livelihood needs'<sup>7</sup> and have occupied forest land before 13 December 2005,<sup>8</sup> but whose rights could not be recorded. 14 sets of rights,<sup>9</sup> including any rights not specified but excluding hunting,<sup>10</sup> are recognized in the form of individual, community, territorial and development rights. Except for the individual rights, all others are vested in the Gram Sabha, the village assembly. Individual rights are in the name of both the spouses if married and the single head if it is a single headed household. The individual rights are 'heritable but not alienable or transferable'<sup>11</sup>. In the absence of a direct heir, the heritable right passes on to the next-of-kin.

Most significantly, FRA confers the rights holders with 'the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance, thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwellers'<sup>12</sup>.

3 Ibid

4 Need to prove only the Scheduled Tribe status.

5 Resident in the area for 3 generations before 2005, a 'generation' defined as 25 years.

6 Section 2(c) and 2(o) of FRA

7 Section 2(c) of FRA. The Ministry of Tribal Affairs, Government of India, vide letter No. 17014/02/2007-PC&V (Vol. VII) dated 9 June 2008, clarified that the phrase 'primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs' appearing in sections 2(c) and 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 are 'such Scheduled Tribes and other traditional forest dwellers who are not necessarily residing inside the forest but are depending on the forest for their *bona fide* livelihood needs would be covered under the definition of "forest dwelling Scheduled Tribes" and "other traditional forest dwellers" as given in sections 2(c) and 2(o) of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.'

8. The date when the bill was introduced in the Parliament.

9. See Section 3 of FRA.

10 Includes trapping or extracting a part of the body of any species of wild animal.

11 See Section 4(4) of FRA.

12 Preamble to FRA.

1 For the Act, Rules including 2012 Amendment and Guidelines see <<https://tribal.nic.in/FRA/data/FRARulesBook.pdf>> accessed 15 November 2017.

2 Preamble of FRA.

The role of the Gram Sabha is to protect wild life, forest and biodiversity, adjoining catchment area, water sources and other ecologically sensitive areas, and their habitat from any form of destructive practices affecting their cultural and natural heritage. They are to regulate access to community forest resources and stop any activity that adversely affects forest, wildlife and biodiversity.<sup>13</sup> All such villages would have a 'customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access'<sup>14</sup>. In the unlikely event of any such village not having such an area, the reasons are to be recorded.

The evidences acceptable for recognizing rights include public documents; government records and reports; physical attributes;<sup>15</sup> quasi-judicial and judicial records; research studies on customs and traditions; records from erstwhile princely States or other such intermediaries;<sup>16</sup> traditional structures;<sup>17</sup> genealogy tracing ancestry to individuals mentioned in earlier land records; statement of elders;<sup>18</sup> community rights;<sup>19</sup> traditional grazing grounds; areas for collection of forest produce<sup>20</sup> including medicinal plants; fishing grounds; irrigation systems; sources of water;<sup>21</sup> sacred trees, groves and ponds or riverine areas; burial or cremation grounds; and earlier or current practice of traditional agriculture.

The Gram Sabha with its open, transparent and democratic public space, is the statutory authority to determine rights. The 'village' is defined as a habitation or group of habitations, within a 'forest' or adjoining

it.<sup>22</sup> Its small population makes it manageable for the full participation of its inhabitants. The Gram Sabha is to constitute a Forest Rights Committee. All pertinent records and documents are to be provided to the Gram Sabha.<sup>23</sup> The Forest Rights Committee inquires into the claims and makes recommendations to the Gram Sabha for approval. Higher level committees of officials and elected representatives, examine, approve and issue titles for these rights. If there are ambiguities, the claims are reverted back to the Gram Sabha for reconsideration. If the claims are modified or rejected, the reasons are to be communicated to the claimants and the concerned Gram Sabha. Any violation of the provisions in the law by any official is a punishable offence. There are provisions for redressal of grievances. The Ministry of Tribal Affairs (MoTA) is the nodal ministry and the Tribal Department of the State is the nodal agency for implementation in the State, with a State Level Monitoring Committee overseeing the process.

Inviolable areas or Critical Wildlife Habitat (CWH) can be declared only after recognition of rights and certification by the Gram Sabhas. The government, in consultation with experts and inhabitants, is to establish through scientific and objective criteria that the presence of rights holders will adversely impact wild animals and their habitat; concludes that other options such as co-existence are not available; and prepares and communicates a resettlement package ensuring 'secure livelihood'<sup>24</sup> in consultation with and free informed consent of the Gram Sabhas. Resettlement is to be, after facilities and land allocations at the resettlement location are complete as per the promised package. These inviolable areas are *not* to be subsequently diverted by the Government or any other entity for other uses.

Just when the tide turned in favour of an enactment for recognition of forest rights, Sariska Tiger Reserve in Rajasthan reported that all its tigers had vanished despite expending the maximum funds per tiger for

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13 The Gram Sabha is to constitute a committee to execute their decisions.

14 Section 2(a) of FRA.

15 Such as house, huts and permanent improvements made to land and including remnants of structures built by the local community.

16 Including maps, record of rights, privileges, concessions, and favours.

17 That establishes antiquity such as wells, burial grounds, sacred places

18 Other than claimants.

19 By whatever name called.

20 Roots and tubers, fodder, wild edible fruits and other minor forest produce.

21 For human or livestock use.

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22 Where people have or had traditional access to the forest and its resources. Also see Section 2(p) of FRA.

23 By the Sub-Divisional Committee consisting of representatives from the revenue, tribal, and forest departments and three representatives from the Panchayats Raj Institution as prescribed in the Rules of FRA.

24 See Section 4(d).

their protection than anywhere else in the country. Responding to the hue and cry, the Prime Minister set up a Tiger Task Force which submitted their scathing report 'Joining The Dots'<sup>25</sup> on 5 August 2005. It categorically reiterated that 'the protection of the tiger is inseparable from the protection of the forests it roams in. But the protection of these forests is itself inseparable from the fortunes of the people who, in India, inhabit forest areas'.<sup>26</sup> The Government quickly passed an amendment<sup>27</sup> to the Wildlife (Protection) Act of 1972 (WLPAct) in September 2006. Forest rights recognition and community decision on demarcation of tiger reserves consisting of core or Critical Tiger Habitat and buffer or peripheral areas,<sup>28</sup> and in their own relocation from the Critical Tiger Habitat became statutory requirements for notification of Tiger Reserves, which until then was merely an administrative arrangement.

Complying with FRA, the Ministry of Environment and Forest (MoEF) directed the State governments in 2009<sup>29</sup> that proposals for forest diversion for non-forestry purpose should include State government's certification that FRA implementation is completed in all respects, that the proposal for diversion was placed before the concerned Gram Sabhas and that the Gram Sabha decisions were taken with a 50 percent quorum. Certifications from the concerned Gram Sabhas on completion of FRA implementation and consent for forest diversion, are also to be included. In 2013 in the Niyamgiri case<sup>30</sup> of Odisha, 660.749

hectares of forest land in the Niyamgiri Hills in Kalahandi and Rayagada Districts were to be diverted to Orissa Mining Corporation for mining bauxite by Sterlite Industries (Pvt.) Ltd., a subsidiary of Vedanta Ltd. In this case, the Supreme Court reiterated that the concerned Gram Sabhas of Dongaria Kondha (Dongria Kondh) Tribe are 'to consider all the community, individual as well as cultural and religious claims'.<sup>31</sup> More recently in May 2016 in the Kashang Integrated Hydro Electric Project case for diversion of 17.6857 hectares of forest land in Kinnaur district of Himachal Pradesh,<sup>32</sup> the National Green Tribunal similarly ruled that 'the Gram Sabha shall consider all community and individual claims which would bring within its ambit religious as well as cultural claims'.<sup>33</sup>

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act of 2013<sup>34</sup> finally repealed another obnoxious colonial law – the Land Acquisition Act of 1894, though exempting from its purview 13 other central legislations that provide for land acquisition. It brought 'the Scheduled Tribes and Other Traditional Forest Dwellers who have lost rights recognised under the FRA Act, 2006' within the ambit of 'person interested'<sup>35</sup> to be compensated under this law. It specifically stipulates that the affected forest rights holders 'having fishing rights in a river or pond or dam in the affected area shall be given fishing rights in the reservoir area of the irrigation or hydel projects'.<sup>36</sup> Where community rights under FRA are affected, these 'shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights'.<sup>37</sup>

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 that

25 Project Tiger, Ministry of Environment, Forests and Climate Change, Government of India, 'The Report of The Tiger Task Force. Joining The Dots', (New Delhi, 2005).

26 Ibid iv.

27 For the text of the amendment see <<http://www.moef.nic.in/sites/default/files/WildLifeAmedmentAct2006%20.pdf>> accessed 18 July 2017.

28 Section 38V(4)(i) and (ii) of Wildlife (Protection) Act 1972 as amended in 2006.

29 Ministry of Environment, Forest and Climate Change, Government of India, Letter F.No.11-9/1998-FC(pt) of 03.08.2009, Sub: Diversion of forest land for non-forest purposes under the Forest (Conservation) Act 1980 - ensuring compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, <<http://www.moef.nic.in/divisions/forcon/3rdAugust2009.pdf>> accessed 18 July 2017.

30 Writ Petition (Civil) No. 180 of 2011 *Orissa Mining Corporation vs. Ministry of Environment & Forest and others*, Judgement of 18 April 2013, <<http://sci.gov.in/jonew/judis/40303.pdf>> accessed 168 November 2017.

31 Ibid 86.

32 Appeal No.28 of 2013 *Paryawaran Sanrakshan Sangarsh Samiti Lippa vs. Union of India and Others*, judgement of 4 May 2016, <<http://www.indiaenvironmentportal.org.in/files/Kashang%20Hydro%20Electric%20Project%20village%20Lippa%20NGT.pdf>> accessed 19 July 2017.

33 Ibid 19.

34 For the text of the Act see <<http://indiacode.nic.in/acts-in-pdf/302013.pdf>> 19 July 2017.

35 In Section 3(x) (ii) of the Act.

36 In Section 41(10) of the Act.

37 In Section 42(3) of the Act.

came into effect on 26 January 2016 includes interference with the enjoyment of forest rights as another category of offences of atrocity,<sup>38</sup> where 'forest rights' is as defined under Section 3(1) of FRA.<sup>39</sup> This offence is now 'punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.'<sup>40</sup>

## 2.1 Precipitating the Crisis

Ever since the Forest Department was set up in 1864 and the government empowered itself to notify any land as forest through the Forest Act in 1865, as well as the creation of the Indian Forest Service in 1867 and Provincial Forest Service in 1891 and the introduction of scientific forest management in 1871, the battle for control over forests has been waged violently. The waves of revolts of forest dwellers forced the British to enact various laws to recognise their rights,<sup>41</sup> such as the Scheduled District Act of 1874 - which was the precursor to the V and VI Schedule under Article 244, the special constitutional provisions such as Articles 371A and 371G for Nagaland and Mizoram respectively and regional laws such as the Chotanagpur Tenancy Act, 1908 and the Santhal Pargana Act, 1949. The legal instrument for colonising the forests and her people that got consolidated as the Indian Forest Act of 1927 remains the bulwark for forest governance even today. Wildlife protection through the Wildlife (Protection) Act, 1972 and forest conservation through the Forest Conservation Act, 1980 were embedded into this colonial governance frame. With the waning of production forestry and the advancement of tree plantations under the guise of afforestation, forest and lives of forest dwellers continued to be wrecked. Mired in faulty and incomplete notification of forests and protected areas,<sup>42</sup> non-recognition and settlement of the rights of forest dwellers, adoption of exclusionary enclosure conservation, liberal diversion of forests for

infrastructural and development projects, forest destruction and encroachment presented a grim scenario, ripe enough for judicial activist intervention.

The Writ Petition (Civil) No. 202 of 1995, was filed by T.N Godavarman Thirumulpad (popularly the 'forest case') in the Supreme Court, seeking its intervention to protect a patch of forest in Gudalur of Nilgiri District in Tamil Nadu. This case was expanded in its scope by the Court and heard as a continuing mandamus. The Supreme Court effectively took over the day-to-day governance of Indian forests.<sup>43</sup> A whole array of issues was raised, and orders issued redrawing the contours of various elements of forest governance within the precincts of the colonial governance frame. ; one such issue was forest 'encroachment'. The Amicus Curiae appointed by the Court filed an application on 23 November 2001 against the illegal encroachment of forest land in various States and Union Territories. The Supreme Court then issued an order on 18 February 2002 asking some States to report back on 'what steps have been taken to clear the encroachments from the forest' in IAs No. 703 and 502 in W.P. (Civil) No. 202 of 1995.<sup>44</sup> The MoEF, under the Bharatiya Janata Party led National Democratic Alliance (NDA) government, issued an order on 3 May 2002<sup>45</sup> (that too with a passing reference to a non-existent Supreme Court order of 23 November 2001 in IA No.703<sup>46</sup> in WP (Civil) No.202/95 giving a wrong impression that evictions had been ordered by the Supreme Court) to all the States and Union Territories, stating that 'approximately 12.50 lakh hectares of forest land is under encroachment' and that 'all encroachments which are not eligible for regularisation as per guidelines issued by the Ministry vide No.13.1/90-FP.(1) dated 18.09.90<sup>47</sup> should be summarily evicted in a time

38 Incorporated in Section 2(1) (be) of the Act.

39 See Section 3(1) (g) of the Act.

40 See Section 3(1) of the Act.

41 C. R Bijoy, 'Forest Rights Struggle. The Adivasis Now Await a Settlement', *American Behavioural Scientist*, (Volume 51, Number 12, 2008).

42 Madhu Sarin, 'Scheduled Tribes Bill, 2005: A Comment', *Economic and Political Weekly*, (Vol. 40, No. 21, 2005), 2131-34.

43 Armin Rosencranz and Sharachandra Lele, 'Supreme Court and India's Forests', *Economic & Political Weekly*, (Vol. 43, Issue No. 05, 2008), 11-4.

44 For this order, see <<http://judis.nic.in/temp/202199531822002p.txt>> 19 July 2017.

45 Ministry of Environment, Forest and Climate Change, Government of India, Letter No.7-16/2002-FC dated 3 May 2002, Sub: Evictions of illegal encroachments on forest lands in various States/UTs time bound action plan, <[http://mpforest.gov.in/img/files/Prot\\_New79.pdf](http://mpforest.gov.in/img/files/Prot_New79.pdf)> 19 July 2017.

46 The Supreme Court only registered IA 703 on this date.

47 For the guideline see <<http://wr.d.bih.nic.in/guidelines/awadhesh02a.pdf>> 19 July 2017.



bound manner and in any case not later than 30 September 2002<sup>48</sup>. All encroachments, other than those prior to 25.10.1980 which the State governments had decided to regularise, are to be removed. This resulted in an unprecedented country-wide crack down by the Forest Department. MoEF, replying on 16 September 2004 to a Lok Sabha question,<sup>49</sup> reported that evictions were carried out from 1,52,400.110 hectares of forest land between May 2002 and March 2004, out of a total of about 13.43 lakh hectares of encroachment of which 3,65,669.111 hectares were regularised till then.

Though no figures are available, roughly about 300,000 forest dwellers would have been forcibly evicted and deprived of their livelihood during this period. Their houses, crops and food were destroyed by the forest officials who were often assisted by the police;<sup>50</sup> some women were reportedly raped, and men shot at and killed. Hundreds of villages were demolished. Over a hundred villages were burnt to ashes in Madhya Pradesh. Elephants were deployed to demolish villages in Assam and in the Melghat Tiger Reserve of Maharashtra, which was reporting hunger deaths of children and that too under heavy monsoon downpour. Resistance and protests from the people led to clashes and deaths in police firings. The protests spread across the forests.

## 2.2 The Making of the Forest Rights Act

Threats to life and livelihood, and enforced evictions often accompanied by violence are integral to the lives of forest dwellers. In the past when under threat, the forest dwellers resisted and organised protests. At best, these protests only halted the threats temporarily. Over

150 mass organisations of Adivasis and other forest dwellers - diverse in their size and extent of reach, understanding and capabilities, but who were resisting evictions, their State federations and larger alliances of Adivasi organisations such as Bharat Jan Andolan and the National Front for Tribal Self-Rule, came together at the national level in the latter half of 2002 to form a coalition, Campaign for Survival and Dignity (CSD).<sup>51</sup> At best, they could aim for tangible achievements that can aid the forest dwellers with a few more instruments to politically defend their lives with dignity.

At the core of CSD were some of the key struggle-based Adivasi organizations of the National Front for Tribal Self-Rule whose experience, especially in politically engaging with the political parties, parliamentarians, the bureaucracy and the law making process, was a valuable asset. Recognising the opportunity in the 73<sup>rd</sup> Amendment to the Constitution that required the Parliament to enact a separate legislation for extending Panchayati Raj to the Fifth Schedule areas, the National Front for Tribal Self-Rule was constituted in 1993 to push for a law rooted in the customary and traditional tribal governance and participatory democracy at the same time. The mobilisation and struggles opened up the political space for engaging with the decision-making structures. The strategic engagement for the next three years culminated in the enactment of Panchayat Raj (Extension to the Scheduled Areas) Act in 1996, popularly called PESA.<sup>52</sup> This law recognised the primacy of the village (hamlet or group of hamlets) at the functional level and its Gram Sabha, as an autonomous power centre on certain matters of governance, and their decision making in crucial areas of community life. PESA was perceived and used

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48 Ministry of Environment, Forest and Climate Change, Government of India, Letter No.7-16/2002-FC dated 3 May 2002.

49 Reply by MoEFCC on 16.08.2004 to the Lok Sabha starred question No.284 regarding 'Regularisation of encroachments on forest land', <<http://164.100.47.192/Lok Sabha/Questions/QResult15.aspx?gref=2276&lsno=14>> accessed 19 July 2017.

50 See for instance, Bhatia, Bela, 'Competing Concerns', *Economic and Political Weekly*, (Vol.40, Issue 47, 2005) 4890-1 and Madhu Sarin, Op Cit, 2005.

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51 For a list of State and regional federations see <https://forestrightsact.com/about/>

52 C.R Bijoy, 'Policy Brief on Panchayat Raj (Extension to Scheduled Areas) Act of 1996', (UNDP, 2012), <<http://www.undp.org/content/dam/india/docs/UNDP-Policy-Brief-on-PESA.pdf>> accessed 2 August 2017.

primarily as a political instrument for self-assertion of the Gram Sabhas rather than a law that the government and the power structures would adhere to.<sup>53</sup>

This unprecedented nationwide threat to the forest dwellers also posed a political challenge of addressing this long pending issue nationally, particularly since forest is a subject in the concurrent list. For the people, forests were their homeland. They saw the State, principally the Forest Department, as intruders and agents of the urban industrial complex and increasingly of the corporate sector. It was not a matter of conferring rights, but of recognising traditional and customary rights. The struggle was not merely to resist eviction or even get a few of the rights recognised, but of rights over forests and its governance which they traditionally enjoyed but were historically denied. It was a question of righting the historical injustice.

The spate of violent evictions across the country led to an uproar. The immediate task was to collate and assess the situation in the forests. Simultaneously there was need for an immediate effect at the national level. More than a thousand people from 13 States came together in a *Jan Sunvai* (public hearing) organised on 19-20 July 2003 at New Delhi for a vivid narration of the situation. These narratives constituted the authentic evidence of the attacks on the lives of the forest dwellers, particularly the Adivasis.<sup>54</sup> CSD viewed forest rights recognition itself within the same political frame of self-rule patterned on PESA, where rights are self-determined and asserted with the state recognising them. Mass mobilisation and struggles forging collective strength makes it possible to move into the space of political negotiation with the power

structure, drawing democratic sections into the struggle. In 2002-04 CSD, along with various forms of protest in numerous places, launched the self-assertion of rights of occupation over forest land in villages with forest dwellers declaring their rights and submitting claims under the MoEF 1990 guidelines<sup>55</sup> in thousands of villages across central and southern India.

Responding to the protests, the Government of Maharashtra passed an order<sup>56</sup> on 10 October 2002 for regularization of forest 'encroachment'. The order provided for a local mechanism for verification of claims, laid down criteria for regularisation and the procedure to be followed while expanding the evidence claimants could submit in support of their claims. Though this did not address the variety of tenurial rights to forests, yet it provided an administrative frame of how the issue could be addressed, albeit in a restricted manner. The Inspector General of Forests, MoEF, was compelled to issue a clarification on 10 October 2002<sup>57</sup> and 30 October 2002<sup>58</sup> that its 1990 orders for regularization of pre-1980 encroachment were valid while showing 'progress on the eviction of ineligible encroachments'<sup>59</sup>. However, this did not have any impact.

53 That PESA largely remains unimplemented even after two decades gives credence to such a premise. Even the rules to operationalise whatever provisions of PESA are there in the State Panchayati Raj laws have been notified only in Himachal Pradesh, Andhra Pradesh (including Telengana), and Rajasthan in 2011, and more recently Maharashtra in 2014 and Gujarat in 2017. Madhya Pradesh, Chhattisgarh, Jharkhand and Odisha are yet to notify rules. Also see C.R Bijoy, 'Panchayat Raj (Extension to Scheduled Areas) Act, 1996: The Travails of a Governance Law', *Kurukshetra*, Ministry of Rural Development, Government of India, (Vol. 64, No.1, 2015) 16-18.

54 Campaign for Survival and Dignity, 'Endangered Symbiosis: Evictions and India's Forest Communities, The Report of the Jan Sunvai', (New Delhi, 2003).

55 These guidelines of 18 September 1990 were on (i) Review encroachments on forest land; (ii) Review of disputed claims over forest land, arising out of forest settlement; (iii) Disputes regarding pattas/ leases/ grants involving forest land; and (iv) Conversion of forest villages into revenue villages and Settlement of other old habitations, <http://fra.org.in/13-1-FP-1%20to%206.pdf>

56 Government of Maharashtra, Decision Number Sankin 2002/372/J-1 dated 10 October 2002, <<http://www.pucl.org/Topics/Industries-envirn-resettlement/2003/forest-rights-annex.htm>> accessed 2 August 2017.

57 See Letter of Inspector General of Forests, Ministry of Environment, Forest and Climate Change, Government of India, No. IFF/FC/2002 dated 10.10.2002, Sub: Eviction of illegal encroachment on forest land in various States/UTs – Time Bound Action Plan – Clarification thereof, <<http://wrd.bih.nic.in/guidelines/awadhesh02c.pdf>> accessed 2 August 2017.

58 See Letter of Inspector General of Forests, Ministry of Environment, Forest and Climate Change, Government of India, No.IGF/FC/2002 dated 30.10.2002, Sub: Eviction of illegal encroachment on forest lands in various States/UTs - Time Bound Action plan- Clarification thereof, <<http://mahaforest.gov.in/fckimagefile/Handbook-22.pdf>> accessed 2 August 2017.

59 Ibid.

The NDA government issued two orders one after the other in February 2004 to all the States and Union Territories, just before the Parliamentary elections. The first<sup>60</sup> was to step up the process of conversion of forest villages into revenue villages. The second<sup>61</sup> was to regularise the lands under occupation by tribals with a cut off date of 31 December 1993. These were stayed by the Supreme Court<sup>62</sup> as they violated the court orders staying de-reservation and regularisation. Moreover, the new cut off date of 1993 had no legal basis when the Forest Conservation Act of 1980 permitted regularisation of only the pre-1980 encroachment.

With parliamentary elections being notified in 2004, the continuing protests ensured that forest rights figured in the agenda of the major political parties in some form or other. NDA promised 'Regularization of land rights of tribals living on forest land and promotion of their livelihood activities based on forest produce, if necessary by suitable amendments in the forest laws'<sup>63</sup>. The Congress led United Progressive Alliance (UPA) promised that they '...will urge the states to make legislation for conferring ownership rights in respect of Minor Forest Produce

(MFP), including tendu patta,<sup>64</sup> on all those people from the weaker sections who work in the forests'; '...will take all measures to reconcile the objectives of economic growth and environmental conservation, particularly as far as tribal communities dependent on forests are concerned'; 'eviction of tribal communities and other forest-dwelling communities from forest areas will be discontinued' and that 'cooperation of these communities will be sought for protecting forests and for undertaking social afforestation; and, the rights of tribal communities over mineral resources, water sources, etc as laid down by law will be fully safeguarded'<sup>65</sup>. Admittedly these are some aspects of forests rights, yet these fell far short of the varied tenurial rights in forests of a range of forest dependent communities.

The UPA government who came to power in May 2004 established the National Advisory Council (NAC), a group of well-known academics, activists, and former bureaucrats, in June 2004, to provide social sector policy prescriptions to the Prime Minister and the government.<sup>66</sup> The CSD report of the 2003 *Jan Sunvai* was discussed in NAC on 20 October 2004. CSD demanded that the government immediately cease illegal eviction and formulate a clear, open and transparent process for recognition of rights, developed on the lines of the verification and regularisation process in the Maharashtra government order of 2002 for implementing the 1990 guidelines.

MoEF meanwhile filed an affidavit<sup>67</sup> on 21 July 2004 in the 'forest case' conceding that there has been a 'historical injustice' due to the government's failure to recognise the traditional rights of the tribal forest dwellers which 'must be finally rectified'.<sup>68</sup> The political

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60 See Letter of the Inspector General of Forests, Ministry of Environment, Forest and Climate Change, Government of India, No.11-70/2002-FC (Pt) dated 03.02.2004, Sub: Stepping up of process for conversion of forest villages into revenue villages, <<http://www.moef.nic.in/sites/default/files/stepping.pdf>> accessed 2 August 2017.

61 See Letter of the Inspector General of Forests, Ministry of Environment, Forest and Climate Change, Government of India, No.2-1/2003-FC (Pt) dated 05.02.2004, Sub: Regularisation of the rights of the tribals on the forest lands, <<http://www.envfor.nic.in/divisions/forcon/regularisation.pdf>> accessed 2 August 2017.

62 Stayed by Supreme Court vide their order dated- 23.02.2004 in IA No. 1126 in IA No. 703 of 2000 in WP (C) No. 202 of 1995. See Ministry of Environment & Forest, Government of India, 'Handbook of Forest (Conservation) Act, 1980 (With Amendments made in 1988), Forest (Conservation) Rules, 2003 (With Amendments made in 2004), Guidelines & Clarifications (Up to June, 2004)', (New Delhi, 2004) 5, <<http://wrd.bih.nic.in/guidelines/awadhash02c.pdf>> accessed 24 July 2017.

63. See NDA Agenda for Development, Good Governance, Peace, and Harmony, Elections to the 14th Lok Sabha, (April-May 2004), <<http://www.bjp.org/documents/manifesto/nda-agenda-for-development-good-governance-and-peace>.

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64 Leaves of *Diospyros melonoxylon* used for wrapping the tobacco and making 'beedis' or Indian cigar.

65 See National Common Minimum Programme of the United Progressive Alliance Government, (May 2004), <<http://nceuis.nic.in/NCMP.htm>> accessed 13 August 2017.

66 NAC has been credited with contributing to the drafting of the Right to Information Act, 2005, the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, Right to Education Act, 2009, Forest Rights Act, 2006 and the Food Security Act 2013.

67 IA No. 1126 in IA No. 703 in Writ Petition (C) No. 202 of 1995 dated 21.07.2004

68 Ibid.

discourse moved away from forest encroachment to 'historical injustice' that needed to be set right. On 3 November 2004, NAC convened a 'dialogue' meeting with MoEF and CSD along with representatives of the Planning Commission, Ministry of Rural Development and Ministry of Tribal Affairs (MoTA).<sup>69</sup> Pursuant to this meeting and further communications from the Prime Minister's Office (PMO), MoEF issued a direction on 21 December 2004 to halt all evictions of tribals without proper verification as per 1990 guidelines but this was not applicable to 'ineligible encroachers' (reiterated again on 12 May 2005 and 17 October 2005).<sup>70</sup> But these directions did not provide the due process to be adopted for identifying eligible and ineligible 'encroachers', nor for evicting ineligible encroachers. MoEF, for the first time provided guidelines on 3 November 2005<sup>71</sup> for the verification and recognition of rights of tribals and forest dwellers on forest land, through village committees, and taluka and district level committees comprising representatives from the Revenue, Tribal and Forest departments along with the Panchayat Raj structure. The proviso being that forest officials are necessarily the secretaries of all these committees. Claims for forest rights applied not only to individual land for settled agriculture, but also 'claims over forest products from surrounding forests based on customary use and/or use permitted by earlier princely state/zamindari regimes'<sup>72</sup> as well as

'claims of shifting cultivators and pre-agricultural communities'.<sup>73</sup> A follow-up meeting between CSD and the Prime Minister on 5 November 2004 recognised the urgency of finding a solution. By the year end, CSD had framed a draft Bill based on existing official frameworks, such as the 1990 guidelines and the Maharashtra circular.

NAC, subsequent to the November 2004 protests at Delhi, recommended in January 2005 that forest rights can be addressed only through a new statute as present laws not only could not meet the needs of the situation, but are themselves the root of the problem. The matter went to the Prime Minister and was discussed with representatives of CSD. The existing laws and judgments based on these laws did not provide the scope for recognition of forest rights and therefore required a new legislation to overcome them. The 1990 guidelines all the way to the detailed MoEF guidelines of 3 November 2005, including orders not to evict without determining the claims to rights, have been ineffective anyway. MoEF had already acknowledged in its affidavit to the Supreme Court on 21 July 2004 that the 'historical injustice...must be finally rectified'. Though forests come under the purview of MoEF, acceding to the demands of the movements that this Ministry stood discredited as they failed not only to protect the interests of the forest dwellers but in itself was the problem, the Ministry of Tribal Affairs (MoTA) was entrusted to draft a law. On 19 January 2005, the PMO directed the preparation of a new law to be introduced in the Parliament during the year. A Technical Support Group was constituted, which included representatives of CSD. The draft Bill was ready in April 2005 and placed before the cabinet the next month. In the meantime, eviction from the forests and protests against them continued.

Pressure against recognition of forest rights was also building up, particularly from the forest bureaucracy, wildlife enthusiasts and conservationists who argued for removal of people from the forest. Prominent amongst the reasons propagated were that these forest dwellers were incapable of managing the forest resources and that outsiders would grab the forest land that forest dwellers claimed. The media, initially abuzz with the impending disastrous threats to forests

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69 For details of the outcomes of this and subsequent meeting with the Prime Minister, see Dr. Jean Dreze, Member, National Advisory Council, 'Tribal Evictions from Forest Land', (March 2005), <[http://www.prsindia.org/uploads/media/1167469383/bill53\\_2007010353\\_Nac\\_note\\_on\\_tribal\\_eviction.pdf](http://www.prsindia.org/uploads/media/1167469383/bill53_2007010353_Nac_note_on_tribal_eviction.pdf)> accessed 17 July 2017.

70 Referred to in the Letter F.No. 2-3/2004-FC (Pt.II), Ministry of Environment & Forest, Government of India, Sub: Traditional Rights of forest dwellers, including tribals, on forest land; discontinuation of eviction – regarding, <<http://www.aranya.gov.in/downloads/Traditional-Rights.pdf>> accessed 18 July 2017.

71 Ministry of Environment, Forests and Climate Change, Government of India, Letter F. No.2-3/2004-FC dated 03.11.2005, Sub: Guidelines for diversion of forest land for non-forest purposes under the Forest (Conservation) Act, 1980 – verification/recognition of rights of tribals and forest dwellers on forest land, <<http://www.aranya.gov.in/downloads/guide-line-for-diversion-of-forest-land-for-non-forestry-purposes-under-FC-Act-1980.pdf>> accessed 18 July 2017.

72 Ibid.

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73 Ibid.

and wildlife, became shrill deploring alleged 'vote bank politics' of the ruling alliance. They succumbed to the numerous disinformation<sup>74</sup> campaigns unleashed by a section of conservationists.<sup>75</sup> A war of words followed with no space for a rational debate. CSD stuck to facts - historical, legal and objective, building up a steady barrage exposing the resource politics around forest resources. Soon a section of the media and conservationists emerged in support of forest rights, recognizing the potential of community rights in conservation of forests. With this, the opposition of the elite conservationists and forest bureaucracy soon lost their vantage position of influence in the discourse on forest rights recognition.

MoEF vainly attempted to reassert their turf which they had lost out to the MoTA, by drafting two parallel Bills. The first was the Draft Model State/Union Territory Minor Forest Produce (Ownership Rights of Forest Dependent Community) Act, 2005<sup>76</sup> for the States and Union Territories to adopt with powers to define who are the forest dependent communities, keeping the Protected Areas out of the ambit of this law and ensuring that the Forest Department retains overall control. Much more sinister was the Forest Rights (Recognition and Vesting) Bill, 2005 which MoEF pitched as a last ditch effort to displace the MoTA draft. However this failed as the PMO treated this as an attempt of the MoEF to 'consciously sabotage' the forest rights Bill.<sup>77</sup>

CSD, stepping up to the pressure to counter the opposition to the law, organised a continuous protest from 7 to 21 March 2005 of over 5,000 people at New

Delhi. f. Simultaneously over 100,000 people protested all across the country. A few hundred thousand claims were filed, declaring their rights over land as a form of self-assertion. CSD declared 15 August 2005, India's Independence Day, as a protest day with the slogan '*Desh Hamara, Jangal Hamara, Kanoon Do Ya Jail Do?*' (The nation is ours, the forest is ours; give us the law or the jail). Over 150,000 people in 9 States organised protests. There were widespread protests by the constituents of CSD and their local allies in the states of Rajasthan, Odisha, Madhya Pradesh, West Bengal, Maharashtra, Gujarat, Chhattisgarh, Karnataka, Andhra Pradesh, Dadra and Nagar Haveli, Kerala and Tamil Nadu during 15 November to 5 December 2005, demanding the Bill to be placed in the Parliament. Some 1-2 million people participated in the protests and over 75,000 were arrested. Brutal evictions and attacks by the forest officials and police continued in these states despite the orders of the MoEF to put a stop to the evictions. Political parties including the Communist Party of India, Communist Party of India (Marxist), and Gondwana Ganatantrik Party (Gondwana Democratic Party), and fraternal organisations as National Forum of Forest People and Forest Workers joined these protests. Evictions and threats to eviction too abated over time.

The Bill, approved by the Cabinet on 1 December, was placed before the Parliament on 13 December 2005. A 30-member Joint Parliamentary Committee was constituted on 23 December to examine the draft Bill. This Committee called for public response and also invited various people to depose before the Committee. Their report,<sup>78</sup> reflecting many of the demands of people's organisations including CSD, was submitted to the Parliament on 23 May 2006.<sup>79</sup> Not seeing any further move by the government to

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74 For instance, the government wants to distribute 10 acres of forest lands to every tribal family when in fact actual existing occupation of land up to 10 hectares was to be recognised.

75 Non-governmental organisations such as Wildlife Protection Society of India, Vanashakti, Bombay Natural History Society, Conservation Action Trust, Wildlife First etc and a section of forest officials.

76 See the text of the draft Bill at <[http://www.moef.nic.in/downloads/rules-and-regulations/ownership\\_forest2005.pdf](http://www.moef.nic.in/downloads/rules-and-regulations/ownership_forest2005.pdf)> 19 July 2017.

77 M. Rajshekhar, 'The Act that Disagreed with its Preamble: The Drafting of the 'Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006', Unpublished paper, <<https://mrajshekhar.wordpress.com/on-the-drafting-of-the-forest-rights-act/>> accessed 12 July 2017.

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78 This Committee of mostly tribal Members of Parliament from all political parties was headed by Kishore Chandra Deo of the Congress Party who later, as Minister, held the portfolios of Tribal Affairs and Panchayati Raj during 2011-14.

79 Lok Sabha Secretariat, Lok Sabha, Government of India; Report of The Joint Committee on The Scheduled Tribes (Recognition of Forest Rights) Bill, 2005, (New Delhi, 2006), <[http://www.prsindia.org/uploads/media/1167469383/bill53\\_2007010353\\_joint\\_committee\\_report.pdf](http://www.prsindia.org/uploads/media/1167469383/bill53_2007010353_joint_committee_report.pdf)> accessed 7 August 2017.

introduce the Bill in the Parliament, CSD launched yet another indefinite protest from 21 August 2006 at Delhi where people, mostly from Rajasthan, Gujarat, Chhattisgarh, Odisha, Jharkhand, and Madhya Pradesh, participated. Protests broke out in these and other states. Leaders of various political parties (such as the Communist Party of India, Communist Party of India - Marxist, Indian National Congress, Bharatiya Janata Party, Gondwana Ganatantrik Party, Jharkhand Mukti Morcha, and Chhattisgarh Mukti Morcha), women's organisations (National Federation of Indian Women and All India Democratic Women's Association), a former Chief Minister, former Ministers, and a former Prime Minister addressed the protesters extending their support. Tribal Members of Parliament, irrespective of party affiliation, including the Chairman of the Joint Parliamentary Committee which examined the draft Bill, joined the protests on 24 August in New Delhi where a march of tens of thousands of people demanding the passage of the Bill was held. Representatives of various social movements (National Alliance of People's Movements, People's Democratic Front of India, Jamaat-e-Islami Hind, and Mazdoor Kisan Shakti Sangathan), agricultural workers union (Andhra Pradesh Vyavasaya Viritidarulu Union), peasants unions (Bharatiya Kisan Union and All India Kisan Sabha), slum dwellers organisation (Dilli Shramik Sangh), campaign groups (National Campaign for Dalit Human Rights), and cultural groups (Nishant Natya Manch), besides senior journalists, academics and artists addressed and participated in the protests.

CSD launched an indefinite *dharna* (sit-in protest) by about three hundred Adivasis and forest dwellers from twelve states for almost a month at Jantar Mantar in Delhi from 22 November 2006, against the attempts to scuttle the law. The protests spread nationwide on 29 November demanding enactment of the law in the Parliament. Over ten thousand took to the streets in Delhi; numerous parliamentarians and political party leaders extended their support. Simultaneous demonstrations were held in Mumbai, Ranchi and Bhubaneswar, each drawing between twelve to fifteen thousand people.

The Bill cleared by the Cabinet on 7 December 2006 was passed by the Lok Sabha on 15 December and the Rajya Sabha on 18 December on the last day of its sitting foreclosing the possibility of any amendment

being introduced.<sup>80</sup> The forest dwellers protested instantly on the same day against the dilution of the Bill on a number of counts. The then Minister for Tribal Affairs assured that these flaws will be rectified later. With the Presidential assent on 29 December 2006, the Bill became law. Instantly FRA was hailed as a historical one and a flagship law of the government. Another Technical Support Group consisting of some members from CSD, was constituted to draft the Rules to make the law operational. Though the Rules were formulated in May 2007 itself, the government succumbed to renewed pressure from vested interests: the forest bureaucracy, the mining lobby and the elitist conservation groups. The draft Rules went to the backburner. Protests broke out in various parts of the country demanding a stop to eviction and for operationalising the Act.

CSD then launched a nationwide indefinite protest on 2 October 2007 with the slogan of '*Jangal ko Azadi do! Jangalvasiyon ko Swaraj do*' (Freedom to the forest, self-rule for forest-dwellers). This time, the rapid militarisation of the forests to counter the Maoists while simultaneously clearing people from the forests and handing them over to industries, especially to the mining companies, struck a chord with the local inhabitants. This, in contrast, highlighted the injustice of shelving the operationalisation of the FRA. Tens of thousands of people were arrested which went on into the next month. An indefinite protest in New Delhi was launched on 23 November. The Rules were finally notified on 1 January 2008. The law that was formulated in three years took another year to be enacted and one more year for it to be operationalised. The Act was brought to also circumvent the use and misuse of various Supreme Court's orders in the 'forest case' and 'wildlife case', viz. Writ Petition (Civil) No. 202 of 1995, T.N Godavarman Thirumulpad Vs. Union of India and others and Writ Petition (Civil) No. 337 of 1995, Centre for Environmental Law, World Wide Fund for Nature-India vs. Union of India and others.<sup>81</sup>

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<sup>80</sup> Any amendment in the Rajya Sabha will require ratification by the Lok Sabha in the subsequent Parliament session which is highly unpredictable.

<sup>81</sup> Shomona Khanna, 'Exclude and Protect. A Report on the WWF case on wildlife conservation in the Supreme Court of India', SRUTI (Society for Rural Urban and Tribal Initiative), (New Delhi, 2008).

The notification of the Rules promptly led to filing of cases<sup>82</sup> in the High Courts of Tamil Nadu, Maharashtra, Andhra Pradesh, Odisha and Karnataka, mostly by Retired Forest Officers Associations, challenging the constitutional validity of the Act and claiming that this will put an end to India's rich forest with its wildlife. They also demanded a stay. Similar cases were filed in the Supreme Court by some conservation non-government organisations.<sup>83</sup> However, the Courts did not stay the implementation of FRA. In January 2015, all the cases in the various High Courts were transferred by the Supreme Court to itself on transfer petitions filed by MoTA. Supreme Court also overturned the only order by any court that had interfered with the Act, the order of the Madras High Court requiring approval from the Court for issue of titles under FRA.

MoEF continued its hostility, with its forest bureaucracy resisting the implementation in all the States, threatening eviction and repressing forest dwellers though subdued and sparse. Violations of the laws on forest diversion, especially for mining, continued though bitterly contested on the ground and a few in the courts. The corporate push for land grab under various pretexts steadily increased forest diversions without any concern to the tenurial rights under the new law. CSD, demanding democracy in the forests, respect for rights and law and an end to illegal diversion, organised mass protests on 3 August 2009 that included road blockades. MoEF issued an order on the same day (hereinafter the 2009 order) to the States requiring recognition of forest rights and consent of the village for all forest diversions. These have not been adhered to by the State and central governments. But FRA slowly emerged as a political and legal instrument for people to assert and defend their rights against processes that seeks to deprive them. This unique law recognising tenurial rights over forests and governance of tenure of forests even preceded<sup>84</sup> the

'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests' adopted by Food and Agriculture Organisation (FAO) of the UN in 2012. The latter being 'the first comprehensive, global instrument on tenure and its administration is to be prepared through intergovernmental negotiations'.<sup>85</sup>

## 3 A DECADE LATER

Undeterred by FRA, more lands have been brought under the legal category of forests and Protected Areas, and diverted for non-forestry projects. Forest increased by 17.34 percent from 59.8 million hectares at the time of independence (1949-50) to 70.17 million hectares (2015), covering 21.34 percent<sup>86</sup> of the total land area. In 2007, the forest cover was 69.09 million hectares covering 21.02%. Along with the increase in forest land and its diversion, the forest land under the Protected Area regime too has steadily increased. Between 1970 and 2017, the National Parks increased from 5 in 1970 to 98 in 2007 (3,821,972 hectares) and further to 103 covering 4,050,013 hectares. The Wildlife Sanctuaries increased from 62 in 1970 to 510 in 2007 (12,054,395 hectares) and further to 543 covering 11,891,771 hectares. Together with 254,719 hectares in 73 Conservation Reserves (4 Community Reserves of 2,069 hectares in 2007) and 5,966 hectares in 45 Community Reserves (7 Conservation Reserves of 9,482 hectares in 2007), 16,202,469 hectares or 4.93 percent of the total land area or 22.09 percent of the forest now comes under the Protected Area regime.<sup>87</sup>

82 For a brief on the court cases, see <<https://forestrightsact.com/court-cases/>> accessed 10 August 2017.

83 Bombay Natural History Society (subsequently withdrew from the case), Wildlife Society of Orissa, Wildlife Trust of India and All Assam Tribal Youth League.

84 C.R Bijoy, 'Policy and legal options for strengthening the role of forests for food security and nutrition with reference to Voluntary Guidelines on Governance of Tenure of Land, Fisheries and Forests', Paper presented at the International Conference on Forests for Food Security and Nutrition, FAO, (Rome, Italy, 13-15 May 2013), <<http://www.fao.org/forestry/80699/en/>> accessed 15 July 2017.

85 See FAO, 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security', Rome, 2012, <<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>> accessed 11 July 2017.

86 Ministry of Environment, Forests & Climate Change, Government of India, 'Executive Summary, India State of Forest Report (ISFR) 2015', Forest Survey of India, (New Delhi, 2015), <<http://fsi.nic.in/isfr-2015/isfr-2015-executive-summary.pdf>> accessed on 19 July 2017.

87 For the current data see Protected Areas of India from 2000 to 2017 (as on July, 2017) at <[http://www.wiienviis.nic.in/Database/Protected\\_Area\\_854.aspx](http://www.wiienviis.nic.in/Database/Protected_Area_854.aspx)> 10 August 2017.

### 3.1 Applicability of FRA

FRA applies to all the States and Union Territories except Jammu and Kashmir<sup>88</sup> where Article 370 requires the State to enact a separate legislation on the lines of FRA to make it applicable there. This has not been carried out despite the nomadic Gujjar and Bakarwal communities, who are largely dependant on rearing livestock for their livelihood, demanding extension of FRA to the State.<sup>89</sup> The State legislative assemblies of Nagaland and Mizoram have to extend FRA to these States as required under Articles 371A and 371G respectively of the Constitution. Central laws relating to certain subjects – in particular, land and resources related to land, and customary practices of communities in these States – will not apply to these States unless specifically extended to them by the concerned State Assemblies. Nagaland government constituted a committee to examine whether FRA should be extended to the State. No decision has been taken as of yet. The Mizoram State Assembly through a resolution on 29 October 2009, extended FRA to the State from 31 December 2009; this was notified into force on 3 March 2010.

### 3.2 FRA Implementation

Only 18 States out of 29 States and 7 Union Territories have actually begun implementing FRA. Official reports point to weak implementation and resistance by the bureaucracy.<sup>90</sup> There is extreme reluctance to follow the prescribed process of recognition as it empowers communities. While willing to recognise individual rights, there is strong reluctance to recognise community forest resource and other community

rights.<sup>91</sup> Only a few states have shown progress, and most other states have fared poorly while some States show nil implementation.

There are about a 100 million people living on land classified as forest.<sup>92</sup> 170,379 of the 587,274 villages with a mixed population of 147 million are located in and around these forests. There are 275 million<sup>93</sup> to as many as 350-400 million<sup>94</sup> forest dependent population. There are still on official record, 4,526 forest villages as on 2011 with a population of 2,206,011 of whom 1,332,265 are Scheduled Tribes.<sup>95</sup> 513 forest villages have been converted to revenue villages under FRA.<sup>96</sup> There could be a few thousand more unrecorded forest habitations. Notwithstanding resistance from the bureaucracy and other vested interests to FRA, as on 31 July 2017, 1,800,538 titles were issued for 5,592,968.93 hectares.<sup>97</sup> Though an

88 Section 1 (2) of FRA: It extends to the whole of India except the State of Jammu and Kashmir

89 Press Trust of India, 'Gujjars demand extension of Forest Rights Act to J-K', *Business Standard*, (12 February 2015), <[http://www.business-standard.com/article/pti-stories/gujjars-demand-extension-of-forest-rights-act-to-j-k-115021201467\\_1.html](http://www.business-standard.com/article/pti-stories/gujjars-demand-extension-of-forest-rights-act-to-j-k-115021201467_1.html)> accessed 9 July 2017.

90 Ministry of Environment and Forests and Ministry of Tribal Affairs, Government of India, 'Manthan. Report, National Committee on Forest Rights Act', (New Delhi, 2010), <[http://moef.nic.in/downloads/public-information/FRA%20COMMITTEE%20REPORT\\_FINAL%20Dec%202010.pdf](http://moef.nic.in/downloads/public-information/FRA%20COMMITTEE%20REPORT_FINAL%20Dec%202010.pdf)> accessed 8 July 2017.

91 CFR-LA, 'Promise and Performance: Ten Years of the Forest Rights Act in India. Citizens' Report on Promise and Performance of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, after 10 years of its Enactment', (Produced as part of Community Forest Rights-Learning and Advocacy Process (CFRLA), India, 2016).

92 R.J Fisher, Somjai Srimongkontip, and Cor Veer, 'People and Forests in Asia and the Pacific: Status and Prospects', Asia-Pacific Forestry Sector Outlook Study, Working Paper No: APFSOS/WP/27, Forestry Policy and Planning Division, FAO, (Rome, 1997) 7, <[Lhttp://www.fao.org/3/a-w7732e.pdf](http://www.fao.org/3/a-w7732e.pdf)> accessed 21 July 2017.

93 World Bank, 'India. Unlocking Opportunities for Forest-Dependent People in India', Agriculture and Rural Development Sector Unit, South Asia Region, , Report No. 34481 - IN, (Main Report: Volume I, 2006) 1, <<https://openknowledge.worldbank.org/handle/10986/8416>> accessed on 7 July 2017.

94 Ministry of Environment, Forests and Climate Change. Government of India., 'Asia-Pacific Forestry Sector Outlook Study II, India Forestry Outlook Study', Working Paper Series, Working Paper No. APFSOS II/WP/2009/06, FAO, (Bangkok, 2009) 72, 75, <<http://www.fao.org/docrep/014/am251e/am251e00.pdf>> accessed on 12 July 2017.

95 Lok Sabha unstarred question no.2487 answered on 31.07.2017, <<http://164.100.47.190/loksabhaquestions/annex/12/AU2487.pdf>> 19 July 2017.

96 Ibid.

97 See Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 for the period ending 31.07.2017, <<https://tribal.nic.in/FRA/data/MPRJuly2017.pdf>> 16 November 2017.



impressive figure in itself, perhaps the largest ever recognition of tenurial rights over land anywhere in the world in contemporary times, this is a mere 13.98 percent of 'around 40 million hectares of community forest resources to village level democratic institutions'<sup>98</sup> that the MoEFCC (MoEF renamed Ministry of Environment, Forest and Climate Change in 2014) reckoned in 2009 itself, immediately after notification of FRA Rules in 2008, as eligible for recognition under FRA. Another study<sup>99</sup> too arrived at this figure, 32.198 million hectares located within village boundaries as reported by the Forest Survey of India, 1999 and at least another eight million hectare in North-Eastern States,<sup>100</sup> as being eligible for recognition as Community Forest Resource Rights (CFR rights).<sup>101</sup> The area recognised so far is merely 7.98% of the total forest area when according to the MoEFCC at least 20% of the forest area itself would

be 'under the occupational titles',<sup>102</sup> besides the areas to be recognised under other rights. While 43.14 percent of the 4,173,597 claims were accepted, the rejection rate is much higher at 44.07 per cent, often arbitrary and without giving reasons. Even where titles are issued, the area recognised is often lesser than what was claimed, and no reasons for this are stated whatsoever.

### 3.3 Protected Areas

FRA overrides WLPA in matters that are not consistent with it. Rights are permissible in National Parks and Critical Tiger Habitats (WLPA requires all rights of forest dwellers to be acquired or settled, and residents relocated) as well as Wildlife Sanctuaries and buffer area of Tiger Reserves (where rights may be denied, curtailed or regulated by the wildlife authorities under WLPA). The protected area regime under WLPA, in effect, is now no longer maintainable or defensible in law. Yet the MoEFCC, even after the lapse of a decade, has not taken any step to amend WLPA to bring it to be in consonance with FRA, but instead continues to ride roughshod over FRA with the legally untenable WLPA's protected area regime.

With Tiger Reserves becoming a statutory category in 2006 with the amendment to the WLPA from what it was, an administrative arrangement under Project Tiger, MoEFCC immediately constituted the National Tiger Conservation Authority (NTCA). With FRA set to get operational with its Rules finally ready to be notified on 1 January 2008, NTCA hastily despatched a 'Most Urgent' order<sup>103</sup> to the State Governments on 16 November 2007, asking for proposals for identification and notification of core or Critical Tiger Habitats (CTHs) before 29 November 2007 (within 13 days) with a minimum area of 800-1000 sq kms, while the proposals for the buffer area were to be sent by 31 January 2008. Despite the absence of any 'scientific and objective criteria'<sup>104</sup> that the law insisted upon,

98 Ministry of Environment, Forests and Climate Change. Government of India., 'Asia-Pacific Forestry Sector Outlook Study II, India Forestry Outlook Study' (Bangkok, 2009), 75-6.

99 Rights and Resources Initiative, Vasundhara and Natural Resources Management Consultants, 'Potential for Recognition of Community Forest Resource Rights Under India's Forest Rights Act: A Preliminary Assessment', (Washington D.C, USA, 2015).

100 The Forest Survey of India 1999 data, the Census 1991 and the Census 2001 data did not cover the states of Manipur, Arunachal Pradesh, Nagaland, Mizoram and Sikkim. The study used estimates by other sources according to which, forests with potential CFR recognition in the north-east could range from 7.72 m ha to 11.4 m ha. A conservative estimate of 8 m ha as the area eligible for CFR rights recognition was taken.

101 Section 2(a) of the Act defines *Community Forest Resource* as 'customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access'. Section 3(1) (i) recognizes the 'right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use'. Section 5 of the Act empowers the holders of forest rights, the Gram Sabha, and village level institutions to protect forests, water catchment areas, biodiversity and 'ensure that the habitat of forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage'.

102 Ministry of Environment, Forests and Climate Change. Government of India., 'Asia-Pacific Forestry Sector Outlook Study II, India Forestry Outlook Study', 18.

103 Letter No.1501/11/2007-PT (Part) of 16 November 2007, National Tiger Conservation Authority, Ministry of Environment and Forest, Government of India.

104 Section 38V(4)(i) of WLPA as amended in 2006.

the State governments demarcated and notified 31 Tiger Reserves securing 29,25,202 hectares in a break-neck speed before the end of 2007 with at least 1.75 lakh people inhabiting the CTHs of 27,14,877 hectares.<sup>105</sup> None of the legally mandated provisions of the WLPAs amendment or FRA was followed<sup>106</sup> (Bijoy, 2011). Compounding this illegality, MoEFCC released funds to relocate those living inside CTHs without recognising their rights under FRA as legally required and settling them. They were offering instead a cash compensation in most cases or its equivalent in terms of land etc as provided under the Centrally Sponsored Scheme of Rs.10 lakhs per family. However the same is no longer valid as WLPAs 2006 provides for 'livelihood'<sup>107</sup> in contrast to the FRA 2006 which provides for 'secure livelihood'<sup>108</sup> as the resettlement package that has the informed consent of Gram Sabha. The area under Tiger Reserves has since swelled to 7,274,902 hectares (4,014,530 hectares CTH and 3,260,372 hectares buffer area) in 50 Tiger Reserves.<sup>109</sup> In most of these Tiger Reserves, FRA claims are not being processed by the higher level committees. Forced or proposed relocation in violation of FRA are reported from Panna in Madhya Pradesh, Achanakmar in Chhattisgarh, Simlipal in Odisha, Sariska and Ranthambore in Rajasthan, Tadoba and Melghat in Maharashtra, Kaziranga in Assam and Nagarhole Tiger Reserve in Karnataka. Initially MoEFCC in fact laid claim over the CWH of FRA by issuing detailed guidelines to identify and notify CWH under FRA on 25 October 2007, that too less than a month before its NTCA demanded notification of CTH. The guidelines were further revised on 07 February 2011. Though both CTH and CWH are similar in most respects, the one thing that did not suit MoEFCC was the provision that once notified, CWH will legally fall

outside the purview of 'forest clearance' for diversion for non-forestry purpose under the Forest Conservation Act 1980, ironically the most prominent function for which this Ministry is known. Till date MoEFCC has not notified any CWH under FRA based on its own revised guidelines; instead it has steadfastly continued notifying National Parks and CTHs, both effectively inviolate areas, using WLPAs. Taking it further, NTCA even issued a direction on 28 March 2017<sup>110</sup> to the Chief Wildlife Wardens of Tiger Reserves, not to confer rights in CTHs 'in absence (sic) of guidelines for notification of critical wildlife habitats'<sup>111</sup> when it has no jurisdiction to issue such an order and that too in violation of FRA. This has now become an instrument to deny rights and to threaten revocation of rights already conferred in CTHs. Ironically, a few months later in October, the Ministry released the National Wildlife Action Plan 2017-2031, a plan document and not an executive order, that asked for expediting and completing the process of determining forest rights under the FRA by 2022.<sup>112</sup> Meanwhile the number of tigers that had declined from 1,827 during the first tiger census in 1972 (Project Tiger launched in 1973) to 1,411 in 2010, dramatically reversed the decline reporting 2,226 tigers in 2014.<sup>113</sup>

105 Based on the data in 'Tiger Reserves of India (as on 20 December 2016)', <[http://wiienvs.nic.in/Database/trd\\_8222.aspx](http://wiienvs.nic.in/Database/trd_8222.aspx)>, accessed 10 August 2017; and 'Information on Tiger Reserves', <[http://www.wpsi-india.org/images/Information\\_on\\_Tiger\\_20Reserves\\_WPSI\\_Oct\\_2011.pdf](http://www.wpsi-india.org/images/Information_on_Tiger_20Reserves_WPSI_Oct_2011.pdf)> accessed 17 July 2017.

106 C.R. Bijoy, 'The Great Indian Tiger Show', *Economic and Political Weekly*, (Vol. XLVI, No.4, 2011) 36-41.

107 Section 38V(5)(iv) of WLPAs 2006.

108 Section 4(2)(d) of FRA.

109 Lok Sabha unstarred question no.3521 answered on 08.08.2017 at <<http://164.100.47.190/loksabhaquestions/annex/12/AU3521.pdf>> accessed 18 July 2017.

110 NTCA Letter F.No.1-7/93-PT (Vol. I) dated 28 March 2017 <[http://www.fra.org.in/ASP\\_OrderCirculars\\_UploadFile/%7B87628850-a404-4179-b843-aba8f1b37c2e%7D\\_Conferring%20rights%20under%20FRA%20in%20critical%20tiger%20habitats\\_28th%20Mar17.pdf](http://www.fra.org.in/ASP_OrderCirculars_UploadFile/%7B87628850-a404-4179-b843-aba8f1b37c2e%7D_Conferring%20rights%20under%20FRA%20in%20critical%20tiger%20habitats_28th%20Mar17.pdf)> accessed 18 July 2017.

111 Ibid.

112 Kumar Sambhav Shrivastava. 'New wildlife plan backs Adivasi rights in tiger reserves despite environment ministry stalling them', *Scroll.in* (03 November 2017) <<https://scroll.in/article/855353/new-wildlife-plan-backs-ativasi-rights-in-tiger-reserves-despite-environment-ministry-stalling-them>> accessed 17 November 2017.

113 Y.V. Jhala, Q. Qureshi, and R. Gopal (Eds), 'The Status of Tigers in India, 2014', National Tiger Conservation Authority, Ministry of Environment, Forests and Climate Change, Government of India, New Delhi and The Wildlife Institute of India, (Dehradun, 2015)11, <[http://projecttiger.nic.in/WriteReadData/LatestNews/Document/Tiger%20Status%20booklet\\_XPS170115212.pdf](http://projecttiger.nic.in/WriteReadData/LatestNews/Document/Tiger%20Status%20booklet_XPS170115212.pdf)> accessed 21 July 2017.

### 3.4 Forest Diversion

Over 5.5 million hectares<sup>114</sup> of forest land have been diverted for non-forest purposes such as mining, development and infrastructure projects since 1947 till 2016. Of this, 31 lakh hectares was diverted since 2008 when FRA became operational. Given the poor FRA implementation in any given area, it can safely be assumed that most, if not all, forest clearances granted since at least the 2009 order on forest diversion do not comply with this order and FRA in letter and spirit. Forest land can be diverted only after implementation of FRA and Gram Sabha consent. Often 'favourable' certificates and reports of the District Collectors are instead used to justify forest clearance. In almost all the cases of forest clearances that were challenged on the ground of not complying with the FRA and related provisions for diversion, the judgements since the 2013 high profile Niyamgiri-Vedanta case by the Supreme Court clearly indicate that violations are the norm and not the exception. Most forest clearances do not go to the court. The Supreme Court, if so concerned about the fate of forests, has not thought it fit to monitor whether forest clearances comply with all that they ought to comply with legally. There is strong resistance to FRA implementation by the district authorities in the forest areas which are proposed to be diverted for

projects<sup>115</sup> in Chhattisgarh, Maharashtra, Odisha, Jharkhand, Madhya Pradesh, Andhra Pradesh, and Himachal Pradesh.

On 14 November 2012 a meeting called by the PMO with MoTA and MoEFCC concluded that no Gram Sabha consent should be required for construction of roads, canals, laying of pipelines, optical fibres and transmission lines etc., or for projects where any other mandatory consultation has been carried out, including public hearings for environmental clearance. Further, instead of the Gram Sabha certifying that FRA implementation is complete, the State government can do so. The PMO asked both Ministries to revise their circulars in accordance with these decisions. MoEFCC, despite not having any legal mandate, issued a circular on 5 February 2013 to dilute its own 2009 order, exempting linear projects such as construction of roads, canals, laying of pipelines/optical fibres and transmission lines etc from obtaining consent of Gram Sabhas, unless recognised rights of Particularly Vulnerable Tribal Groups are being effected. MoTA, on 7 March 2013, countered that MoEFCC could not issue such circulars as, under FRA, only MoTA had the authority to issue orders and that compliance with FRA is required as the law does not provide for any exemption. As forest diversion is within the purview of MoEFCC, their illegal orders prevail. The Forest (Conservation) Act Amendment Rules, 2014<sup>116</sup> empower the District Collector to settle rights under FRA and obtain the consent of the concerned Gram Sabhas.

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114 Forest diverted during 1950-1980: 4.5 m ha (see MoEFCC, Forests, <<http://www.moef.nic.in/divisions/ic/wssd/doc2/ch9.pdf>> accessed 21 July 2017), 1980 -2010: 808,465.43 ha (see Centre for Science and Environment. Table 4: Forestland diverted for development projects in 'Forest Clearance Analysis for January - December, 2015', <[http://cseindia.org/docs/environmental\\_governance/feb2016/FC\\_analysis-2015.pdf](http://cseindia.org/docs/environmental_governance/feb2016/FC_analysis-2015.pdf)> accessed 21 July 2017), 2011-2013: 93,107.431 ha (see Lok Sabha Unstarred Question No. 2749 for 09.12.2014, <[http://164.100.47.193/Annexure\\_New/lsq16/3/au2749.htm](http://164.100.47.193/Annexure_New/lsq16/3/au2749.htm)> accessed 21 July 2017), 2014: 35,867.47 ha (see Lok Sabha unstarred question no.5603, <[http://164.100.47.193/Annexure\\_New/lsq16/4/au5603.htm](http://164.100.47.193/Annexure_New/lsq16/4/au5603.htm)> accessed 21 July 2017), and 2015 to 16.11.2016: 21,396.86 ha (see Lok Sabha unstarred question no.1105, <<http://164.100.47.190/loksabhaquestions/annex/10/AU1105.pdf>> accessed 21 July 2017).

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115 See for instance, Raksha Kumar, 'In Chhattisgarh, mining interests and tribal rights on a collision course', *Scroll.in*, (2 February, 2010), <<http://scroll.in/a/802590>> accessed 12 July 2017; Press Trust of India, 'Gram sabhas pass resolution demanding mining projects cancellation in Maharashtra district', *Business Standard*, (18 December 2015), <[http://www.business-standard.com/article/pti-stories/gram-sabhas-pass-resolution-demanding-mining-proj-cancellation-115121800293\\_1.html](http://www.business-standard.com/article/pti-stories/gram-sabhas-pass-resolution-demanding-mining-proj-cancellation-115121800293_1.html)> accessed 12 July 2017; and Chitragada Choudhury, 'The Keonjhar Take Over', *Outlook*, (8 February, 2016), <<http://www.outlookindia.com/magazine/story/the-keonjhar-take-over/29651>> accessed 12 July 2017.

116 For the text of the Act, see <[http://www.indiaenvironmentportal.org.in/files/file/Forest%20\(Conservation\)%20Amendment%20Rules,%202014.pdf](http://www.indiaenvironmentportal.org.in/files/file/Forest%20(Conservation)%20Amendment%20Rules,%202014.pdf)> accessed 18 July 2017.

Bolstered by the 2013 Supreme Court Niyamgiri judgement upholding the 2009 order, MoTA wrote to all State governments on 7 March 2014 that this judgement clearly held that the FRA applies to all projects and that Gram Sabha consent is required even for linear projects. MoTA also reminded that it is the nodal Ministry for forest rights; hence orders from other ministries such as the 5 February 2013 MoEFCC circular on exemption of Gram Sabha consent for linear projects should not be honoured, as it is not in accordance with law. MoEFCC complained to the PMO. The change of government from UPA to NDA in 2014 did not alter the position of PMO of dispensing with Gram Sabha consent. MoTA continued defending FRA through 2014. Despite this, MoEFCC implicitly wanted to do away with Gram Sabha consent in projects which required public hearing. MoEFCC issued yet another directive on 28 October 2014 in violation of FRA, granting the District Collectors unilateral powers to sanction diversion of forest land in areas notified as 'forest' less than 75 years prior to 13 December 2005 and with no record of tribal population as per Census 2001 and 2011. What is relevant in FRA is not when an area was notified as forest, but whether the non-tribals are residents in the village for 75 years where the claim has been filed and whether they are dependent on this forest land. MoTA strongly responded to MoEFCC on 12 November 2014 that an 'impression is being created that this government is not serious about implementing the Forest Rights Act' and that the 28 October directive was illegal and should be withdrawn. It was also pointed out that 'though the MoTA is the nodal ministry of the FRA, the MoEFCC has been issuing advisories to the states relaxing certain provisions of FRA'. But the PMO overruled the objections of MoTA. The inter-ministerial meeting of 12 January 2015 organised by PMO resulted in the MoEFCC drafting a guideline that exempted five categories of projects from obtaining the Gram Sabhas' consent: where statutory mandated consultation has been carried out, which require public hearing for environmental clearance, linear projects, those on private forest land and minor public utility projects. MoTA objected to the issuance of such a guideline. MoTA also clarified to MoEFCC and the Ministry of Defence on 24 February 2015 that defence projects too cannot be exempted from the purview of FRA, as the law does not provide for any exemption. As recently as 5 January 2017, the Ministry of Mines issued a circular to all the

State governments and Union Territories informing them that MoTA is not 'insisting on FRA compliance for grant of lease' but instead it is enough that conditions for FRA compliance be incorporated into the mining lease<sup>117</sup> deeds for forest clearance by MoEFCC. This violates both FRA and the 2009 order.

### 3.5 Privatisation of Forests

MoEFCC, marching towards privatisation of forests, issued guidelines<sup>118</sup> on 11 August 2015 laying down procedures to lease out 40 percent of forests, which are classified as 'degraded forests', to private companies through joint agreements with the Forest Department, who would 'carry out afforestation and extract timber' as 'national forestry programmes have not been able to make the desired impact in improving productivity and quality of forest cover due to a lack of sufficient investment, capacity, technological upgradation and adequate skilled manpower'. These guidelines, in violation of FRA, limited access for non-timber forest produce to tribal communities to only 10-15 percent of the leased-out area, effectively annulling FRA where implemented.

### 3.6 Compensatory Afforestation

The Compensatory Afforestation Fund Act (CAFA)<sup>119</sup> was enacted in 2016 to manage the Compensatory Afforestation Fund (CA Fund) set up by the Supreme Court order of October 2002 in the T.N Godavarman case, the same case that was used to set in motion the forest crisis. This Fund with the monies collected from the user agencies for compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value (ranging from Rs.4.38 lakh to 10.43 lakh

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117 Applicable to those mining leases for major minerals already approved by the Centre or where the State governments had issued letters of intent before the amendment in 2015 to Mines and Mineral (Development and Regulation) Act, 1957 making auctions mandatory was enacted.

118 Suresh Ghattamaneni, 'Plan to privatise 40% of forests will undermine law giving adivasis control of their habitats', *Scroll.in*, (17 September, 2015), <<http://scroll.in/a/756055>> accessed 23 July 2017.

119 For the text of the Act, see <<http://www.prsindia.org/uploads/media/Compensatory%20Afforestation/CAMPA%20act,%202016.pdf>> accessed 18 July 2017.

per hectare) of diverted forest land, catchment area treatment and all other amounts under the Forest (Conservation) Act, 1980 is to compensate for the loss of tangible as well as intangible benefits from the forest lands which were diverted for non-forest use. This assumes that putting a price tag on forest land will reduce forest diversion, and that loss of natural forest and ecosystem can be 'compensated' by planting trees from money collected by destroying natural ecosystems under the false premise that 'forest' is but a sum total of trees. The fund is to be used for regeneration of forests, forest management, protection, infrastructure development, wildlife protection and management and related activities. Afforestation is to be carried out in double the area diverted if on forest land, and equivalent area if on revenue land (to be later notified as forest land). MoEFCC notified the Compensatory Afforestation Management Funds in April 2004. The Fund grew from Rs 1,200 crores in 2006 to Rs 23,608 crores in 2012 which now stands at over Rs.40,000 crores. Ironically, afforestation carried out in double the area in degraded forest land will destroy the rich biodiversity, including grasslands, wetlands and scrub forest besides the potential rights of forest dwellers. Afforestation in revenue land is carried out on the common lands, which are often under occupation and use or accessed by marginalised communities for livelihood. Between 2003 and 2014 afforestation was carried out on 19.64 million hectares, but the forest cover increased by only 2.4 million hectares 'leaving a hole of 17 million ha'.<sup>120</sup> The Comptroller and Auditor General of India, conducting an audit of compensatory afforestation 'noticed serious shortcomings in regulatory issues related to diversion of forest land, the abject failure to promote compensatory afforestation, the unauthorised diversion of forest land in the case of mining and the

attendant violation of the environmental regime'<sup>121</sup>. CAFA does not acknowledge<sup>122</sup> FRA, despite this being raised in the Parliament when the law was passed. It ignores Gram Sabhas which are the statutory authority in potentially over half of India's legal forests. It opens up another front for confrontation in the forest backed by the 'National Mission for Green India' and nourished by the huge CA funds adding fuel to the resistance by the forest bureaucracy to FRA (CSD 2016). Needless to say, the climate change garb through carbon sequestration is a useful cover for this covetous resource grab what with the much anticipated windfall from the upswing in the global carbon trade.

### 3.7 State Governments undoing FRA

Diabolical efforts to subvert this flagship law are not limited to the Centre.<sup>123</sup> The States too, especially the ones under the national ruling party, have been stealthily moving ahead to undo FRA. The central Indian states with its rich forests, large mineral deposits and where bulk of the tribal population resides with significant Maoist zones of influence are also sites of numerous forest rights struggles. Notably Maharashtra, Chhattisgarh, Madhya Pradesh, Jharkhand and Odisha have proactively created legal and administrative instruments to subvert FRA. The Indian Forests (Maharashtra) (Regulation of assignment, management

120 Kumar Sambhav Shrivastava, 'Plantation projects on an overdrive but green cover shows little increase', *Hindustan Times*, (3 July 2016), <<http://www.hindustantimes.com/nation-newspaper/plantation-projects-on-an-overdrive-but-green-cover-shows-little-increase/story-1518jYvwVPfrVjNiK3KuTO.html>> accessed 17 July 2017.

121 Comptroller and Auditor General of India, Government of India, 'Executive Summary, Report No. 21 of 2013 - Compliance Audit on Compensatory Afforestation in India', Union Government Ministry of Environment and Forests, (2013), <[http://www.cag.gov.in/sites/default/files/audit\\_report\\_files/Union\\_Compliance\\_Civil\\_Compensatory\\_Afforestation\\_21\\_2013\\_exe\\_sum.pdf](http://www.cag.gov.in/sites/default/files/audit_report_files/Union_Compliance_Civil_Compensatory_Afforestation_21_2013_exe_sum.pdf)> accessed 24 July 2017.

122 The recent guidelines issued by MoEFCC on 8 November 2017 on identification of land bank for compensatory afforestation too does not acknowledge FRA or the Gram Sabha.

123 Amongst the many instances, the illegal order of MoEFCC of 23 September 2010 directing the Forest Department that 'where scattered plots of land have been occupied throughout a tract of forest, they may be brought to one corner of the forest to avoid honeycombing and subsequent fragmentation' was withdrawn only recently on 12 October 2017 since these 'have created some confusion as reported by many states. Further the instructions..... are likely to be misinterpreted and misused.'

and cancellation of village forests) Rules, 2014 and the Madhya Pradesh Village Forest Rules, 2015 gave significant powers to the state authorities to manage forests and control forest produce. Though the former is not applicable to the areas where FRA applies and to the Scheduled Area, yet there is a provision to extend the Rules by obtaining Gram Sabha resolution for the same. The latter is applicable to the whole state. These Rules take back control over the forests from the Gram Sabhas, infringing the statutory rights and authority of Gram Sabhas. These cannot be legally justified<sup>124</sup> as they do not conform to FRA which, as a central legislation, overrides State laws and Rules. MoTA repeatedly told Maharashtra government that these Rules were prima facie in violation of FRA. MoTA, despite pressure from the Minister of Road Transport and Highways and the Minister for Environment, Forest and Climate Change, and advice of the Additional Solicitor General, held firm. However, after the Cabinet Secretariat called a meeting of the MoTA and MoEFCC on 17 November 2015, MoTA muted its stand to saying that overlap of powers and unresolved legal differences created by the Maharashtra Rules should be 'harmoniously construed' and that the Rules be amended to state that the rules would apply where rights of tribals are not pending or claimed or Gram Sabhas have concluded that no future rights are likely to be claimed. In June 2016, amendments were made to the Rules exempting its application to Scheduled Areas and stating that the rights under FRA will not be abridged by the Rules. MoTA, despite being the nodal Ministry for FRA, then went on to ask MoEFCC to formulate the procedure for conservation management and sustainable use of Community Forest Resource (final draft guideline sent to MoTA on 17 October 2016), ignoring the Gram Sabha who is the authority to do so. Ironically MoTA had earlier clarified<sup>125</sup> that

the Gram Sabha is the authority competent to prepare its own plan and formulate its own rules.

The undivided Andhra Pradesh titled community forest rights titles to the *Vana Samrakshana Samithis*, the forest protection committees constituted by the Forest Department, instead of the Gram Sabhas. This was in violation of the FRA which MoTA pointed out to the government then. In July 2015, the Jharkhand government ordered its Deputy Commissioners to settle all the 'eligible' claims of FRA within a month and get implementation certificates from Gram Sabhas by 2 October of the same year. Chhattisgarh government actually asked Gram Sabhas in August 2015 to certify that FRA was implemented in full despite large-scale gaps. Such certificates are useful for diversion of forestland for industrial purposes. The Odisha government launched the *Ama Jungle Yojana*, the Community Forest Protection and Management Programme under the Odisha Forestry Sector Development Project, to promote and strengthen Joint Forest Management in 7,000 villages, directly impinging on the statutory powers of the Gram Sabha in community forest resource management.

## 4 CONCLUSIONS

The basic realities of India's political economy as it is reflected in the forest area ignited the forest struggle. Rather than outrightly dismantling the colonial regime of appropriation and control of natural resources, independent India opted to build upon and reinforce the colonial regime. This is particularly manifest in the forested regions of the country in its crudest, unsophisticated and violent form. The untempered move to drive out the forest dwellers to finally enclose the forests and make it the exclusive preserve of capital in the name of development and conservation, unleashed a political mobilisation that redrew the contours of law on forest governance. The FRA challenges 'the powerful forces that is shaping India' while throwing up 'a genuinely different discourse of both "environment" and "development" ... well beyond the way those terms are often understood

124 WWF, 'New State Village Forest Rules', WWF Brief, (2016), <[http://awsassets.wfindia.org/downloads/village\\_forests\\_\\_\\_legal\\_brief\\_2.pdf](http://awsassets.wfindia.org/downloads/village_forests___legal_brief_2.pdf)> accessed 17 July 2017.

125 See letter No.23011/16/2015-FRA dated 23 April 2015, Sub: Guidelines under Section 12 with regard to recognition and vesting of Community Forest Resource (CFR) and its management under Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA), Ministry of Tribal Affairs, <<http://tribal.nic.in/WriteReadData/CMS/Documents/201504230255000176646guidelines.pdf>> accessed 18 July 2017.

today'... 'of a genuinely different, collective and democratic model of the use and conservation of nature, and of the livelihoods of people'.<sup>126</sup> The forest governance frame that this law provides could very well be extended to all natural resources, a counter hegemonic governance structure that enlarges the scope of democracy enabling communities to take collective control over their environment and development. This constitutes a threat to the existing power structure that the very forces that conceded this flagship law have to now vigorously work to undo it.

In the decade that went by, reluctance and resistance to implement FRA is giving way to undoing the law by subterfuge and deceit. Persistent popular political challenges and sustained engagement do make our political democracy receptive: FRA is an example. FRA emerged from a struggle for democratic control over forests by forest dwellers. The popular perception that it is merely a law that concedes and grants titles to a variety of rights that are claimed in forests must give way to what the law really is; : a governance law that transfers the power to govern forests to the forest communities for ushering in democracy in the forests.

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<sup>126</sup> Shankar Gopalakrishnan, 'The Forest Rights Act: Political Economy of 'Environmental' Questions', *Economic & Political Weekly*, (Vol LII, No 31, 5 August 2017) 71-6.

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