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by C.R. Bijoy

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ABSTRACT

Ever since the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in 2006, the Environment Ministry relentlessly resisted this law, its substance and implementation, and its nodal ministry, the Tribal Affairs Ministry. This law is to operationalise the transition of forest governance from a colonial repressive forest regime to a democratic regime, realigning the power relationship at the national, state and the local levels, if not in all of the forests, at least in a substantial part of the forest. The Environment Ministry and its forest bureaucracy perceive this law as debilitating their inherited hegemonic power which they have grown to believe as their exclusive domain over vast areas designated as “forest”. The paper chronicles this resistance, the methods adopted and the intended outcome. The Forest Rights Act, an enabling law, could finally give the forests the much needed democracy, security and nurturing.

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INTRODUCTION

Four recent developments mark a watershed for the Ministry of Environment, Forest and Climate Change (MoEFCC) in its bid to retrieve its hegemony over forests that it lost with the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA). The first is the tender that it floated in June 2021 calling for Expression of Interest to short-list consultancy organisations for preparing a draft comprehensive amendment to the Indian Forest Act, 1927 (IFA). The second is the “Joint Communication for more effective implementation of the Forest Rights Act” in July 2021 by the Ministry of Tribal Affairs (MoTA) and MoEFCC.¹

The third is the notification of rules to the Forest Conservation Act 1980 (FCA) in June 2022. The fourth is the expansion of Protected Areas under the Wildlife Protection Act, 1972 (WLP) and the cover that wildlife protection requires exclusion of forest dwellers and their rights, if not, relocation from these areas. MoEFCC has been waging a persistent no-holds barred battle to retain its hegemonic control over forests and all its inhabitants. The assaults have been to nullify relevant substantial parts of the law itself and in its operationalisation, mainly forest diversions and protected area regime, free from the clutches of the Gram Sabha² regulation and governance. This is in addition to the resistance to forest rights recognition at many levels.

MoEFCC and the state forest departments that spreads across the country covering almost a quarter of India's land mass and the institutional structures that it has spawned over the decades entrusted with various functions, can be traced back to the forest department set up in 1864.

¹ CR Bijoy, “India's Forests, and Their Peoples, Are Caught Between Two Ministries”, *The Wire* (30 July 2021) <https://science.thewire.in/environment/indias-forests-and-their-peoples-are-caught-between-two-ministries/>.

² A statutory body under FRA, literally meaning village assembly of all its adult members at the level of habitation or a group of habitation, the face-to-face community. This is not to be confused with the “Gram Sabha”, also a statutory body, in the State Panchayat laws (local government) which refers to a larger population, usually a large number of habitations constituted within the Gram Panchayat, a larger administrative unit.

The Forest Act in 1865, the creation of the Indian Forest Service in 1867 and Provincial Forest Service in 1891, the introduction of what went under the name of ‘scientific forest management’ in 1871, and the consolidation of forest legislations into the Indian Forest Act of 1927 (IFA) constitute the primary instrument that colonised the forests and her peoples.

The 42nd amendment to the Constitution in 1976 brought the subject of ‘forests’ under the purview of the union government by inserting it into the concurrent list which until then was a state subject. “Forests” and “protection of wild animals and birds” which were handled by the Ministry of Agriculture, came to their own when the Ministry of Environment and Forests was constituted in 1985. “All matters, including legislation, relating to the rights of forest dwelling schedule tribes on forest lands” was carved out from the subject of forests and allotted to the MoTA through an amendment to the Government of India (Allocation of Business) Rules, 1961 in March 2006.³ This ended the monopoly of forests by the Environmental Ministry and its forest bureaucracy. Climate change was added to this ministry's portfolio in 2014.

The IFA, a much protected colonial legacy, and the corresponding state forest laws empowered the States to notify any land as forests to bring them under the sole administrative control of the State forest departments. This was to be achieved by progressively establishing and extending their exclusive sway by arbitrarily extinguishing rights and regulating the remaining rights of the forest-dependent people residing inside and on the fringes of the forests, and whose livelihood is largely dependent on the forest. The lands notified as forests are categorised as reserved, protected and village forests. All rights of forest dependent communities, those residing on forest lands and those outside but accessing the forest lands as well, are extinguished, unless allowed, in reserved forests. Their rights are allowed unless prohibited in protected forests. Or reserved forests and rights are assigned to communities in village forests. These rights are subject to modification or regu-

³ Gol, Government of India (Allocation of Business) Rules 1961 (as amended up to 28 December 2017), (2017) 52 and 150 https://cabsec.gov.in/writereaddata/allocationbusinessrule/completeaobrules/english/1.Upload_1368.pdf

lation, or are extinguished in due course. IFA and the state forest laws list out prohibited activities for which the accused can be arrested and punished with fines and imprisonment. This process of colonisation not only criminalised the forest dependent peoples, and most of their life sustaining activities since generations, but also made them encroachers in their home lands.⁴

The “recorded forest area” increased to 76,700 sq. km covering 23.34 per cent of India’s land area. Of this, 56.66 per cent are reserved forests, 26.53 per cent protected forests and the remaining unclassified forest that are not notified as forest. The December 1996 Supreme Court ruling in *TN Godavarman Thirumulpad v Union of India & Ors.* redefined the term ‘forest land’ in Section 2 of the FCA thus: it “will not only include “forest” as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership” of the land.⁵

Post-independence, the Wild Life Protection Act of 1972 (WLPA) created rapidly expanding swathes of National Parks - forests with no rights - invariably surrounded by the Wildlife Sanctuaries that are regulated with progressively diminishing concessions introducing and further strengthening the exclusionary fortress conservation model. This model is based on the belief that biodiversity protection is best achieved where ecosystems can function in isolation from human disturbance, primarily traditionally forest dependent peoples. The WLPA carves out protected areas.⁶ The National Parks and the Critical Tiger Habitats (CTHs) of Tiger Reserves are to be kept inviolate, Wildlife Sanctuaries and Buffer Areas of Tiger Reserves have rights that are permitted until extinguished, Community Reserves are established on lands where the community or an individual has volunteered to conserve wild life and its habitat. Conservation Reserves are on uninhabited gov-

ernment lands that communities access and are not notified as forests. WLPA lists out offences related to accessing flora and fauna and prescribes punishments. The protected area is 173,053.69 sq. km covering 5.26 per cent of the land area (24.43 per cent of the recorded forests).⁷

Both IFA and WLPA do not prohibit forest diversion and denotification of forests. Over these progressively rights-negating forest and protected area regime is laid the forest and wildlife negating forest diversion regime, the Forest Conservation Act (FCA). It provides for diversion of forests for non-forestry purposes. These are handed over to user agencies which are the government agencies or the private sectors. An equivalent land outside the forests on revenue land are to be afforested and notified as forest to compensate the loss of forest diverted for non-forestry purposes. If non-forest land is not available, then double the land diverted in degraded forests (with a crown density below 40 per cent which is measured as the percentage of total light blocked by trees) is to be afforested. Compensatory Afforestation (CA) is carried out with funds that user agencies pay for the forest lands that they receive; the funds are managed under the Compensatory Afforestation Fund Act, 2016.

Afforestation is now additionally driven by funds under the National Mission for Green India,⁸ launched in 2015-16 with Rs. 46,000 crores for “greening” 10 million ha over the next 10 years.⁹ This is justified with India’s Nationally Determined Contribution which has committed creating carbon sink of 2.5 million tonnes of CO2 equivalent through additional tree cover by 2030. Carbon stock in forest and tree cover was 28.12 billion tonnes CO2 equivalent in 2005. It is estimated to rise to 31.87 billion tonne CO2 equivalent in 2030 adding 3.75 billion tonnes of CO2 equivalent in 25 years. This has become an ad-

⁴ Shomona Khanna and others, “Criminalisation of Adivasis and the Indian Legal System” (Indigenous Peoples Rights International 2021)

⁵ *TN Godavarman Thirumulpad v Union of India & Ors* (1997) 2 SCC 267.

⁶ For the list of Protected Areas as on December 2021, see ENVIS Centre on Wildlife & Protected Areas, Wildlife Institute of India, Dehradun, “Protected Areas of India” http://www.wiienvis.nic.in/Database/Protected_Area_854.aspx

⁷ 106 national parks (44,372.42 sq. km), 564 wildlife sanctuaries (122,509 sq. km), 216 community reserves (1,445.71 sq. km) and 99 conservation reserves (4,726.24 sq. km). 52 tiger reserves have been carved out from within notified forests (71,027 sq. km of which 40,340.12 sq. km is critical tiger habitat and 30,686.98 sq. km is buffer area).

⁸ One of the eight missions outlined under national action plan on climate change.

⁹ Lok Sabha Unstarred Question No.874 (5 February 2021) <https://pgals.nic.in/annex/175/AU874.pdf>

ditional push factor for MoEFCC to lord over the forest. MoTA, the FRA and Gram Sabha do not feature in the decision making of these plans.¹⁰ This is examined below.

DECOLONISING FOREST GOVERNANCE

The Forest Rights Act

The tipping of the scale against the colonial forest regime was triggered by MoEFCC's May 2002 order¹¹ directing the states and union territories to summarily evict all post-1980¹² encroachments by 30 September 2002. Between May 2002 and March 2004, evictions were carried out from 1,524 sq. km of forest land, out of a total of 13,430 sq. km of encroachment of which 3,656.69 sq. km were regularised till then.¹³ Repeated orders to regularise all pre-1980 "encroachments" had hardly evoked any compliance by the state forest bureaucracy. Forest dwellers without titles came under threat of eviction for being "encroachers" on their own lands. Resistance against these evictions triggered a nationwide struggle for forest rights.¹⁴ Paradoxically at the same time, MoEFCC repealed the Forest Conservation Rules 1981 and replaced with another set of rules in 2003

to make way for faster and easier forest diversions for non-forestry activities.

Widespread protests against the evictions led MoEFCC to hastily issue a series of orders. First were the two orders to regularise forests villages with pre-1980 encroachments in February 2004. Then the cut-off date for eligibility for regularisation of encroachment was shifted to 31 December 1993 from 24 October 1980¹⁵ which the supreme court stayed within days. MoEFCC filed an affidavit in the Supreme Court in the Godavarman case in July that year conceding "historical injustice" as forest dwellers' rights are being violated, regularisation of pre-1980 encroachers were not properly taking place, and that this government failure "must be finally rectified". The MoEFCC ordered discontinuance of eviction in December.¹⁶ In mid-2005, MoEFCC clarified that only post-1980 encroachment should be evicted.¹⁷

With momentum building up for forest rights, the MoEFCC issued guidelines for forest diversion outside protected areas for 11 public facilities, each less than one hectare involving felling of not more than fifty trees per hectare.¹⁸ This was later incorporated with modifications as section 3(2) development rights in FRA. Even before drafting of FRA that began in January 2005 reached final stages, MoEFCC frantically issued guidelines in November for verification and recognition of rights of forest dwellers, including individual land for agriculture, customary right over minor forest produce and claims of shifting cultivators and pre-agricultural communities.¹⁹ It adopted similar structures as the

¹⁰ CR Bijoy, "India" in Ashok Kumar Chakma and others, South Asia, Country Reports from Bangladesh, India, and Nepal. Nationally Determined Contributions in Asia: Are Governments Recognizing the Rights, Roles and Contributions of Indigenous Peoples? (Asia Indigenous Peoples Pact (AIPP) 2022) 46 https://aippnet.org/wp-content/uploads/2022/06/NDC_South_Asia_April2022-digital-compressed.pdf

¹¹ MoEFCC, "Letter to all States and UTs to evict illegal encroachments on forest lands" (3 May 2002) http://mpforest.goav.in/img/files/Prot_New79.pdf

¹² All encroachments prior to 25 October 1980 were ordered to be regularised by MoEFCC in 1990. See Circular No. 13-1/90-FP of Department of Environment, Forests & Wildlife. MoEF, dated 18.9.90 to the Secretaries of Forest Departments of all States/UTs <https://www.fra.org.in/13-1-FP-1%20to%206.pdf>

¹³ Lok Sabha starred question No.284 (16 August 2004) <https://loksabha.nic.in/Questions/QResult15.aspx?qref=22766&Isno=14>

¹⁴ CR Bijoy, "Forest Rights Struggle: The Making of The Law and The Decade After" (2017) 13(2) Law, Environment and Development Journal 83 <http://www.lead-journal.org/content/17073.pdf>

¹⁵ MoEFCC, Letter to the States and UTs No. 2-1/2003-FC (Pt), "Regularisation of the rights of the tribals on the forest lands, 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)" (5 February 2004) 104-6 <https://www.latestlaws.com/wp-content/uploads/2015/04/Forest-Conservation-Act1980-PDF-File.pdf>

¹⁶ Andhra Pradesh Forest Department, Compendium on the Forest (Conservation) Act, 1980; the Forest (Conservation) Rules, 2003; GoI Guidelines & Clarifications (up to November 2013) and Government of Andhra Pradesh Orders on FC Act, and Circular Instructions on FC Act or Principal Chief Conservator of Forest, Andhra Pradesh (November 2013) 177-9 http://forests.telangana.gov.in/Documents/FCA/FCAct/Compendium_on_FCA%20upto%202013.pdf

¹⁷ *ibid* 180.

¹⁸ *ibid* 39-41.

draft FRA, except that the posts of the secretaries of the committees were with forest officials instead of tribal welfare officials. MoEFCC then went ahead and drafted two Bills. The draft Model State/Union Territory Minor Forest Produce (Ownership Rights of Forest Dependent Community) Bill, 2005, keeping protected areas out of the ambit of the law. The forest officials would decide who are the forest dependent communities and have overall control. MoEFCC then did what it resisted all along: actually drafted the Forest Rights (Recognition and Vesting) Bill, 2005 in a bid to displace the MoTA draft.²⁰ Their desperation was ignored by the government.

FRA was enacted in December 2006, after the subject of "forest rights" was removed from the purview of MoEFCC and handed over to MoTA. Rules notified in 2008 was further amended in 2012.²¹ With one stroke of law, a few lakh habitations with a few million forest dwellers finally got back their legitimacy to democratically govern and nurture their forests.

FRA nullified in toto the prevailing colonial repressive rights-denying exclusionary forest and protected area provisions in forest laws on forest lands that come within the purview of FRA. FRA is applicable on 'land of any description falling within any forest area and includes unclassified forests, un-demarcated forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks' [section 2(d) of FRA]. This was in consonance with the aforementioned 1996 Supreme Court definition of forests. MoEFCC, in its report to the FAO, concluded way back in 2009 when FRA was operationalised with the notification of its Rules in 2008, that FRA "assigned rights to protect around 40 million ha of community forest resources to village level democratic institutions. The fine-tuning of other forest-related legislations is needed with respect to the said

Act".²² 46,468.11 sq. km of forests have been titled under community rights as on June 2022,²³ 11.62 per cent of the minimum MoEFCC estimated potential of 40 million hectares.²⁴

FRA restores the traditional and customary rights of forest dependent communities by recognising and vesting these rights. All rights except hunting, including those not listed in FRA, were accorded to them on all forest lands. These include individual rights, the community and the territorial rights of the habitations. The Gram Sabha, the assembly of people in a hamlet or a group of hamlets as the case may be (not to be equated to the Gram Sabha, at the Gram Panchayat²⁵ level under panchayat laws) is the authority to protect forest, wildlife and biodiversity within their territorial jurisdiction, and adjacent water catchment areas and habitat (section 5 of FRA). In effect, this is both a transfer of power and democratisation of forest governance, nothing less. FRA was enacted as 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' according to its preamble. With the assured loss of over half the forests to the Gram Sabha, the MoEFCC, since then, has relentlessly resisted FRA implementation, chipping away at FRA and rewriting forest laws to regain its lost turf.

Reengineering the law

MoEFCC's tender²⁶ in 2021 calling consultancy firms to prepare a draft IFA amendment came

¹⁹ MoEFCC, Letter F. No.2-3/2004-C, "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" (3 November 2005) <https://www.aranya.gov.in/downloads/guide-line-for-diversion-of-forest-land-for-non-forestry-purposes-under-FC-Act-1980.pdf>

²⁰ Bijoy (n 14) 83.

²¹ MoTA and UNDP, "Forest Rights Act, 2006 - Act, Rules and Guidelines" (2014) <https://tribal.nic.in/downloads/FRA/FRAActnRulesBook.pdf>

²² MoEFCC, "India Forestry Outlook Study" (2009) Asia-Pacific Forestry Sector Outlook Study II, Working Paper No. APFSOS II/ WP/2009/06, 75-6 <http://www.fao.org/3/am251e/am251e00.pdf>

²³ MoTA, Monthly update on FRA implementation of MoTA (which is the latest available update as of December 2022) [https://tribal.nic.in/downloads/FRA/MPR/2022/\(A\)%20MPR%20Jun%202022.pdf](https://tribal.nic.in/downloads/FRA/MPR/2022/(A)%20MPR%20Jun%202022.pdf)

²⁴ Much later in 2015, another study too independently estimated that 40 million hectares of forest land are managed, used and interacted with in more than 170,000 villages. See Rights and Resources Initiative and others, "Potential for Recognition of Community Forest Resource Rights Under India's Forest Rights Act: A Preliminary Assessment" (2015) 5 https://rightsandresources.org/wp-content/uploads/CommunityForest_July-20.pdf

²⁵ An elected village council at the lowest structure of governance constituted with a number of revenue villages which itself consists of one or more habitation.

after it attempted to ram in an amendment overhauling IFA earlier in 2019.²⁷ According to the proposed 2019 amendment, the forest staff could use fire arms to shoot anyone in the name of forest protection; no criminal action will be taken if they claim to have done this in accordance with law, and without the prior inquiry of the executive magistrate and state government sanction [section 66(2)]; end forest rights of any forest dweller in the name of forest protection by just compensating them in cash or kind [section 22A (2), 30(b)]; conduct raids and arrests without warrant, and confiscate the property of any forest dweller. It was also proposed that if the forest department accuses anyone of possessing any illegal object, the accused would have to prove their innocence and not the accuser. If this had become the law, conflicts would further intensify turning India's forests into a fierce battleground. The amendment would also have overridden FRA.

The then environment minister hastily disowned this draft in November when faced with widespread opposition for its tyrannical provisions unheard of in a democracy.²⁸ MoEFCC's invite to draft IFA amendment sets the task to 'decriminalising relatively minor violations of law, expeditious resolution through compounding relatively small offences, reducing compliance burden on citizens, rationalisation of penalties, preventing harassment of citizens, de-clogging criminal justice system, expanding and improving of the use efficiently of resources'. Relinquishing the law-making responsibility and outsourcing it to private consultancies raises questions of propriety of the government.²⁹ It is unclear whether such a

contract was issued. MoEFCC continued to pursue this by inviting public comments in July 2022 on the proposed decriminalisation of certain offences under the IFA. This too came in for severe criticism.³⁰

Tribal ministry hands over the reins

The second development that is claimed to be "a paradigm shift from one of working in silos to achieving convergence between ministries and departments" is the signing of "Joint Communication for more effective implementation of the Forest Rights Act" in July 2021 by the MoTA and MoEFCC.³¹ A result of parleys between the ministries since August 2020, it proclaimed that henceforth "both ministries may take a collective view on the matter, including issuing joint clarification, guidelines etc."³² The frontline forest staffs are asked to assist the Gram Sabha prepare conservation and management plans for the forests under its jurisdiction and to integrate them with working plans of the forest department. The State governments are to instruct the Gram Sabha to harness the joint forest management committees of the forest department to protect and manage the forest. In short, the Joint Communication asked the MoEFCC and the forest bureaucracy to take control of FRA outcomes at all levels which is contrary to the law. The subject of "forest rights" is under the tribal ministry, not MoEFCC. MoTA is the nodal Ministry for FRA implementation. The Gram Sabha not only are to make their own plans, but also to modify working plan of the forest department.³³ Now it is the Gram Sabha who are to "protect

²⁶ MoEFCC, "Call for Expression of Interest (EOI) for Shortlisting of Consultancy Organisations for Preparing Draft Comprehensive Amendment to the Indian Forest Act, 1927" (2021) <https://moef.gov.in/wp-content/uploads/2021/06/EOI-IFA-23062021a.pdf>

²⁷ MoEFCC, Amendment to Indian Forest Act 1927 (2019) <https://forest.mizoram.gov.in/uploads/attachments/4bdb5e07743b1d97755783ec4d88459b/pages-226-proposed-amendments-to-ifa-dated-7032019.pdf>

²⁸ Press Information Bureau, "Government Clears Misgivings of Amendment in the Indian Forest Act, 1927. Rights of tribals & forest dwellers to be protected fully: Shri Prakash Javadekar" (15 November 2019) <https://pib.gov.in/PressReleasePage.aspx?PRID=1591814>

²⁹ Ritwick Dutta, "Glimpse of MoEFCC's Plans to Amend Forest Act - Based on Who Gets to Edit It" The Wire (15 July 2021) <https://science.thewire.in/environment/moefcc-indian-forest-act-1927-proposed-amendments-expression-of-interest/>

³⁰ Jayashree Nandi, "Centre Plans Decriminalising Forest Act Provisions, Activists Fear Exploitation" The Hindustan Times (12 July 2022) <https://www.hindustantimes.com/india-news/centre-plans-decriminalising-forest-act-provisions-activists-fear-exploitation-101657549775419.html>

³¹ Press Information Bureau, "Joint Communication for More Effective Implementation of the Forest Rights Act Signed by Environment and Tribal Affairs Ministries" (6 July 2021) <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1733177>

³² Press Information Bureau, "Salient Features of the Joint Communication" (6 July 2021) <https://static.pib.gov.in/WriteReadData/specificdocs/documents/2021/jul/doc20217611.pdf>

³³ MoTA, "Guidelines under Section 12 with regard to recognition and vesting of Community Forest Resources (CFR) and its management under FRA" (23 April 2015) <https://tribal.nic.in/FRA/declarations/clarifications/GuidelinesregardingvestingofCFR23042015.pdf>

the wildlife, forest and biodiversity” within their community resource rights areas.

TWO PRONGED STRATEGY

Targeting policy and law

MoEFCC opened up two fronts. The first was to hit at the very ground on which FRA stood. The second was to chop away its roots one by one.

The National Forest Policy of 1988³⁴ recognised “the symbiotic relationship between the tribal people and forests”. This gave expression a full decade and a half later with FRA. MoEFCC tried to replace this with a new Draft National Forest Policy in 2018.³⁵ The draft ignored FRA and its Gram Sabha. This was commercial plantation-centric investment-seeking forest management through privatisation of forests under the rubric of private-public participation. It sought to increase tree cover and productivity to meet industrial and other needs. It disregarded the legal reality that over half of the forest now fell within the jurisdiction of Gram Sabha under FRA.

The MoTA reminded the MoEFCC some months later that it no longer has ‘exclusive jurisdiction’ to frame policies related to forests. It required to consult the MoTA as well as forest dwellers before drafting the policy. MoTA averred that the draft “disregarded the traditional custodians and conservatives of the forests, namely, tribals”, gave “thrust to increased privatisation, industrialisation and diversion of forest resources for commercialisation” and “the public-private partnership models for afforestation and agro-forestry detailed in the policy will open up the areas over which tribals and forest dwellers have legal rights under FRA”.³⁶ The draft got shelved.³⁷ Yet another Draft National Forest

Policy, 2020 which is not yet in the public domain as of December 2022, is finalised and under consideration for adoption.³⁸

Targeting FRA and its implementation

A spate of petitions³⁹ were filed in the High Courts of Andhra Pradesh, Tamilnadu, Maharashtra, Odisha and Karnataka, mostly by Retired Forest Officers Association, and in the supreme court by non-government environmental organisations and institutions (Bombay Natural History Society and Wildlife Trust of India later withdrew their petitions) challenging the constitutional validity of FRA. The Court did not accede to their contention that Parliament does not have the authority to enact such a law. By then the union government was reluctant to defend FRA in the Supreme Court when they repeatedly failed to appear in the court.⁴⁰ Instead of examining the constitutional validity of FRA, the petitioners got the Supreme Court all worked up that the rejected FRA claimants continue to occupy the forests, an issue not raised in their petitions. The Court in WP(C) No. 109 of 2008 *Wildlife First & Ors v MoEF & Ors*, directed the state governments in mid-February 2019⁴¹ to report on the status of people’s claims and ordered the eviction of the claimants whose rejections “attained finality”. Faced with wide-

³⁴ GoI, “National Forest Policy 1988” (1988) <https://www.latestlaws.com/bare-acts/state-acts-rules/state-laws/national-forest-policy-1988/>

³⁵ MoEFCC, F. No. 1-1/2012-FP (Vol.4), “Draft National Forest Policy 2018” (2018) <https://moef.gov.in/wp-content/uploads/2019/06/Draft-National-Forest-Policy-2018.pdf>

³⁶ Kumar Sambhav Shrivastava, “Tribal Affairs Ministry Opposes Centre’s Draft National Forest Policy for its “Privatisation Thrust” “ Scroll.in (17 July 2018) <https://scroll.in/article/886708/thrust-on-privatisation-tribal-affairs-ministry-opposes-centres-draft-national-forest-policy>

³⁷ States such as Tamilnadu immediately notified a State Forest Policy the same year on these very lines, contradicting the existing 1988 Policy in most ways. See “Tamil Nadu State Forest Policy – 2018” https://www.forests.tn.gov.in/app/webroot/img/document/publications/gotn/SFP_2018-Eng.pdf

³⁸ MoEFCC, Annual Report 2020-21 (2021) 54 <http://moef.gov.in/wp-content/uploads/2017/06/Environment-AR-English-2020-21.pdf>

³⁹ For a brief on the court cases, see <https://forestrightsact.com/court-cases/>

⁴⁰ CSD, “Opposition Leaders, People’s Organisations Ask if Govt Has Decided to Sacrifice Forest Rights Act” (The Forest Rights Act, 4 February 2019) <https://forestrightsact.com/2019/02/04/opposition-leaders-peoples-organisations-ask-if-govt-has-decided-to-sacrifice-forest-rights-act/>

⁴¹ Supreme Court in *Wildlife First & Ors v MoEF & Ors* WP(C) No 2008 (13 February 2019) https://forestrightsact.files.wordpress.com/2019/02/writ-petition-civil-109_2008-13-02-2019.pdf

spread protests⁴² by forest dwellers and conservationists,⁴³ the union government filed a modification petition; the Supreme Court put on hold the eviction order in end February 2019.⁴⁴ Most States reported back that rejections grossly violated FRA; hence review of all rejected claims was necessary and it will take months if not years. In most of the states, FRA implementation is at a standstill. There the matter remains and was listed for hearing in September 2022. Yet forest officials continue to haunt the forests with evictions.⁴⁵

TRAMPLING THE LAW

For forest diversion

Faced with a national highway blockade by adivasis,⁴⁶ MoEFCC reissued its July 2009 order in August 2009 complying with FRA in all forest diversions for non-forest purposes under the FCA.⁴⁷ FRA implementation and Gram Sabha's prior informed consent for diversion became preconditions for admissibility of the forest diversion proposals. These are to be certified by

the Gram Sabha and the state governments, and included in the proposal itself.

MoEFCC then informed all states in 2013 that an inter-ministerial committee had recommended that Gram Sabha consent for forest diversion 'may not be required for the projects like construction of roads, canals, laying of pipelines/ optical fibres and transmission lines etc. where linear diversion of use of forest land in several villages are involved, unless recognised rights of primitive tribal groups (PTG) and pre-agricultural communities (PAC) are being effected'.⁴⁸ MoEFCC reiterated in 2014 that this was after concurrence of the MoTA. But MoTA hit back writing to all states in March 2014⁴⁹ that the Supreme Court judgement of 2013 in the Niyamgiri Case (W.P. (C) No.180/2011 Orissa Mining Corpn. v MoEF & Ors.)⁵⁰ clearly held that FRA applies to all projects; Gram Sabha consent is required even for linear projects; orders from other ministries, as the 2013 MoEFCC order, should not be honoured as it is not in accordance with law; and subsequent MoEFCC circulars of July 2013 and January 2014 were also against the Supreme Court directions. However, forest diversion continues without any respect for the laws.

FCA rules were tweaked in 2014⁵¹ and 2017.⁵² Getting the Gram Sabha certificates on completion of FRA implementation and Gram Sabha consent were transferred to the District Collector, the chairperson of the district level committee under FRA who finally approves the forest rights claims and issue titles. With this, the Collector's certificates substituted the Gram Sabha's certificates. The Collector, complying in a time bound manner with the FCA rules, will be scrutinised by the higher authorities. Absence of scrutiny and monitoring by any higher au-

⁴² CSD, "BJP Sarkar Jawab Do! Tens of Thousands Will Join National Andolan For Forest Rights" (The Forest Rights Act, 26 February 2019) <https://forestrightsact.com/2019/02/25/bjp-sarkar-jawab-do-tens-of-thousands-will-join-national-andolan-for-forest-rights/>

⁴³ CSD, "Conservationists Speak Out Against Evictions, Say This Is Not Pro-Conservation" (The Forest Rights Act, 27 February 2019) <https://forestrightsact.com/2019/02/27/conservationists-speak-out-against-evictions-say-this-is-not-pro-conservation/>

⁴⁴ CSD, "SC Puts Eviction Order on Hold: Centre Finally Does Its Job After Nationwide Protests and Anger" (The Forest Rights Act, 28 February 2019) <https://forestrightsact.com/2019/02/28/sc-puts-eviction-order-on-hold-centre-finally-does-its-job-after-nationwide-protests-and-anger/>

⁴⁵ The slackening of FRA implementation, poor and often incorrect implementation and the increasing demand to heed FRA besides actual attempts to evict forest dwellers (as in Telangana resulting in violence) has spread a pall of uncertainty in many areas.

⁴⁶ Literally meaning indigenous people, often used synonymously with the legal and administrative category - Scheduled Tribes. Most of them are notified as Scheduled Tribes.

⁴⁷ MoEFCC, Letter F. No. 11-9/1998-FC (pt), "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" (3 August 2009) [http://forestclearance.nic.in/writereaddata/public_display/schemes/981969732\\$3rdAugust2009.pdf](http://forestclearance.nic.in/writereaddata/public_display/schemes/981969732$3rdAugust2009.pdf)

⁴⁸ MoEFCC, Letter F. No. 11-9/98-FC(pt), "Diversion of forest land for non-forest purposes under Forest (Conservation) Act 1980 - ensuring compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006" (5 February 2013) [https://forestclearance.nic.in/writereaddata/public_display/schemes/1082641597\\$5-2-2013.pdf](https://forestclearance.nic.in/writereaddata/public_display/schemes/1082641597$5-2-2013.pdf)

⁴⁹ MoTA, Letter No.23011/02/2014-F (7 March 2014) [https://tribal.nic.in/downloads/FRA/Development and FRA/DoFL-2 Position of law against MoEF CC circular dated 3rd Aug 2009 dated 07.03.2014.pdf](https://tribal.nic.in/downloads/FRA/Development%20and%20FRA/DoFL-2%20Position%20of%20law%20against%20MoEF%20CC%20circular%20dated%203rd%20Aug%202009%20dated%2007.03.2014.pdf)

⁵⁰ Supreme Court judgement, W.P. (C) No.180/2011 Orissa Mining Corporation v MoEF & Ors (18 April 2013) <https://main.sci.gov.in/jonew/judis/40303.pdf>.

⁵¹ Forest (Conservation) Amendment Rules 2014.

⁵² Forest (Conservation) Amendment Rules 2016.

thorities on actual FRA compliance adds to the complicity in subverting laws.

MoEFCC then clarified to all states that forest diversion need not even comply with FRA for "in-principle" Stage - I approval,⁵³ and that these are required only for final approval (Stage-II). This made a mockery of MoEFCC's own 2009 FRA compliance order. MoTA opposed this change reiterating that its view was communicated after discussion with MoEFCC, FRA compliance by project proponent at stage II of FCA clearance would prove to be fait accompli leaving the tribals to a great disadvantage, that MoEFCC and MoTA had agreed that FRA compliance should be completed for stage I clearance itself which was not followed, and that this 2019 circular was also not endorsed to MoTA.⁵⁴ This clarification had no effect.

In 2014, MoEFCC granted the District Collectors the unilateral power 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 2011.⁵⁵ MoEFCC did not have the authority to issue any order exempting FRA. Whether rights exist or not can only be determined through the process under FRA. The assumption that these are areas free from any forest rights claims are simply absurd. In fact, the area may be accessed by eligible forest dwellers from adjacent habitations. In January 2015, the Prime Minister's Office (PMO) overruled MoTA's objections for exempting projects under five categories of projects from obtaining Gram Sabha consent.⁵⁶ Later that year, PMO and the cabinet secretariat wanted to sidestep FRA and obtain-

ing Gram Sabha consent for projects such as underground mining. MoTA insisted that it was "illegal, encroaching upon the jurisdiction of the judiciary and the legislature".⁵⁷

To minimise the land under the regulatory purview of FCA and liberalise forest diversion, MoEFCC proposed amendments in October 2021.⁵⁸ It proposed to strike down the Supreme Court expanded definition of 'forest' as understood in the dictionary sense and all areas recorded as forest irrespective of the ownership. The proposal includes lands alongside railways and highways with tree plantations notified as protected forests, lands left fallow having wild growth, private lands under tree plantation and revenue lands with trees or afforested after 12 December 1996. Further, a number of non-forestry activities such as amenities and habitations up to 0.05 ha in each case alongside roads and railway lines with strip plantations, infrastructure development along the international border, extended reach drilling which enables exploration or extraction of oil and natural gas deep beneath the forest land by drilling holes from outside the forest areas and without impacting the soil or aquifer that supports the forest in the forest land, construction of structures for bonafide purpose, including residential unit up to an area of 250 m², in private land notified under state specific Private Forest Acts or simply forests as per the dictionary meaning, survey and investigation activities, activities ancillary to conservation of forests and wildlife such as establishment of zoos, safaris, and forest training infrastructures etc., were to be taken out of category of "non-forestry activity", and therefore out of the purview of FCA. All these are without reference to FRA and Gram Sabha consent.

⁵³ MoEFCC, Letter F. No. 11-43/2013-FC, "Compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006- regarding" (26 February 2019) http://forestsclearance.nic.in/writereaddata/public_display/schemes/1191986937%26_2_19_FRA.reg.pdf

⁵⁴ MoTA, Letter F. No. 23011/23/2012-FRA, "Compliance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 - regarding" (05 April 2019) <https://www.indiaspend.com/wp-content/uploads/2020/09/FRA-MoTA-Forest-Diversion-190405-MoEF-26.2.19-no-FRA-for-St-I.pdf>

⁵⁵ MoEFCC, F. No.11-09/98-FC (pt), "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 - reg." (28 October 2014) https://forestsclearance.nic.in/writereaddata/public_display/schemes/171727711%5Guideline.pdf.

⁵⁶ Jay Mazoomdaar, "NDA Pulls Out UPA Report to Restrict Gram Sabha Veto" *The Indian Express* (24 February 2015) <https://indianexpress.com/article/india/india-others/nda-pulls-out-upa-report-to-restrict-gram-sabha-veto/>

⁵⁷ Ajoy Ashirwad Mahaprashasta, "PMO Wants to Sidestep Gram Sabha's Consent for Underground Mining", *The Wire* (4 May 2016) <https://thewire.in/politics/pmo-wants-to-exempt-gram-sabhas-consent-for-underground-mining>

⁵⁸ MoEFCC, F. No. FC-11/61/2021-FC "Inviting Comments/ suggestions on Proposed Amendments in Forest (Conservation) Act, 1980" (2 October 2021) <https://moef.gov.in/wp-content/uploads/2021/10/Public-Consultation-Paper-2.10.21.pdf>

It is in this background that the third and most recent development to retrieve its lost turf took place. In June 2022, MoEFCC notified FCA rules replacing the 2003 rules.⁵⁹ FRA compliance has been completely done away with for final forest clearance. Now the state is left with FRA compliance for diversion and settlement of rights before finally handing over the land to the user agency.⁶⁰ It is sealed fait accompli now. The National Commission for Scheduled Tribes, upholding the widespread opposition to this Rules as violation of FRA, asked the MoEFCC to “immediately keep the 2022 Rules in abeyance” and “reinstate, strengthen and strictly monitor for compliance” of existing Rules of 2014 and 2017.⁶¹

2,531.79 sq. km were diverted for non-forestry purposes during 2009-19. 474.35 sq. km degraded forests were diverted for tree plantations to compensate the former diversion, under CA.⁶² Whether the 2009 MoEFCC FRA compliance order was complied with has never been reported by MoEFCC, MoTA, the state level monitoring committees or the state tribal departments. There has been no reported instance of any alternative land or compensation being provided for the forest rights that were simply extinguished except in large scale diversions affecting a huge population such as the Polavaram dam in Andhra Pradesh that has the national project status.⁶³

When forest is diverted for non-forestry purposes, an equivalent revenue land, and if not available, then double the land in degraded forests, is to be afforested under CA. Often,

delays in identifying lands for CA delays forest diversion approvals. To avoid these delays, MoEFCC's 2017 guidelines asked the states to create land banks by identifying degraded forest lands and revenue lands for CA.⁶⁴ This guideline makes no reference to FRA, forest rights, acquisition of forest rights, compensation, Gram Sabha consent etc. Over 26,300 sq. km of land were identified as lands under land bank in Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Jharkhand, Odisha, Tamilnadu, Rajasthan and Uttar Pradesh.⁶⁵

Another de facto diversion is through leasing out forests to private sector. In 2015 MoEFCC issued guidelines declaring its intention to lease out 40 per cent of forests, classified as “degraded forests”, to private companies through joint agreements with the forest department. This was to “carry out afforestation and extract timber”, with access to 10-15 per cent of the leased-out area for minor forest produce to tribal communities.⁶⁶ FRA is applicable to degraded forests. Where rights are claimed and recognised, the Gram Sabha is the statutory authority to manage the forest. Leasing out such forest lands without Gram Sabha consent for afforestation and timber extraction is a violation of FRA.

Yet another example of de facto forest diversion is the use of forest land for temporary work for “unavoidable public purposes” not exceeding two weeks with permission by an officer not below the rank of district forest officer. This was informed by the MoEFCC to all states in 2019 and 2020.⁶⁷ Here too there is no reference to FRA or Gram Sabha consent. In March 2020, the MoEFCC agreed with the Mineral Laws (Amendment) Act 2020 that new lessees of expired mines do not need fresh approval, and therefore do not

⁵⁹ See <https://parivesh.nic.in/writereaddata/FCRule2022Notificationdated28062022.pdf>.

⁶⁰ CR Bijoy, “Environment Ministry's New Forest Diversion Rules Are Bad News for Forest Rights” *The Wire* (10 July 2022) <https://thewire.in/government/environment-ministrys-new-forest-diversion-rules-are-bad-news-for-forest-rights>

⁶¹ Subodh Ghildiyal, “Put ‘Anti-tribal’ Forest Rules on Hold, Panel Tells MoEF” *The Times of India* (20 October 2022) http://timesofindia.indiatimes.com/articleshow/94974415.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpps

⁶² CR Bijoy, “How Land Diversion Laws Threaten Forests and Forest Dwellers” *IndiaSpend* (25 September 2020) <https://www.indiaspend.com/how-land-diversion-laws-threaten-forests-and-forest-dwellers/>

⁶³ Shagun, “Polavaram — Displaced and Nowhere to Go: Several Await Houses, Compensation” *Down to Earth* (30 November 2021) <https://www.downtoearth.org.in/news/water/polavaram-displaced-and-nowhere-to-go-several-await-houses-compensation-80448>

⁶⁴ MoEFCC, F. No.11-423/2011-FC, “Identification and Suitability of Non-forest Land for Compensatory Afforestation under Forest (Conservation) Act, 1980 - regarding Identification of Land Bank for Compensatory Afforestation (CA)” (8 November 2017) [http://forestclearance.nic.in/writereaddata/public_display/schemes/553905943\\$11_423_2011.pdf](http://forestclearance.nic.in/writereaddata/public_display/schemes/553905943$11_423_2011.pdf)

⁶⁵ Bhasker Tripathi, “As States Create Land Banks for Private Investors, Conflicts Erupt Across India”, *The Wire*, (19 September 2017) <https://thewire.in/banking/states-create-land-banks-private-investors-conflicts-erupt-across-india>

⁶⁶ Chandra Bhushan and Ajay Kumar Saxena, *Fumbling with Forests: Why We Should Not Handover Forests to the Private Sector* (Centre for Science and Environment 2016) 7 <https://cdn.cseindia.org/userfiles/Fumbling-with-Forests.pdf>

need the Gram Sabha consent to operate on the same land for two years.⁶⁸ The legality of this is questionable.

For the tigers

The tiger-less Sariska Tiger Reserve in Rajasthan resulted in "Joining the Dots", a report of the tiger task force in 2005. Consequently, WLPA was swiftly amended in 2006 a few months prior to the passage of FRA.⁶⁹ Provisions of Critical Wildlife Habitat (CWH) under FRA spilled over into this amendment. Developing scientific and objective criteria for identifying CTH for keeping it inviolate, recognition of forest rights and Gram Sabha involvement in determination of the Tiger Reserve, became fundamental to notifying tiger reserves. Where the forest dwellers are unable to coexist with the tigers by any means whatsoever, then they are to be voluntarily relocated and rehabilitated on mutually agreed terms and conditions without adversely affecting their rights providing "livelihood for the affected individuals and communities" under WLPA and "secure livelihood" under FRA. With this, Tiger Reserve, which until then was merely an administrative and a project category, became a statutory category

In 2007, the National Tiger Conservation Authority (NTCA) of MoEFCC asked the chief wildlife wardens of all tiger reserves for proposals, giving less than 13 days' time, to identify and notify core or CTHs before 29 November 2007 with a minimum area of 800-1000 sq. km. The proposals for the Buffer area were to be sent by 31 January 2008.⁷⁰ MoEFCC did not formulate 'scientific and objective criteria' as required under WLPA. All the provisions were in effect violated.⁷¹ The existing core and buffer area of the

tiger reserves were invariably proposed together as CTH and notified in 24 tiger reserves securing 23,248.25 sq. km at a breakneck speed before the end of 2007, just days ahead of the January 2008 notification of FRA rules. The area under tiger reserves trebled to 73,666.76 sq. km in 52 tiger reserves⁷² since then even as the Protected Area saw an 8.9 percent increase from 158,879.18 sq. km to 173,053.69 sq. km with Community Forest which are owned by communities or individuals outside forest land seeing a whopping fourteen-fold increase during this period.⁷³

NTCA issued an order on March 2017 to the chief wildlife wardens of tiger range states barring the recognition of rights under FRA in the CTHs.⁷⁴ Again, the NTCA does not have the authority to issue such an order. This violated the provisions of WLPA and FRA that requires rights recognition in tiger reserves. The reason given for the ban was the absence of guidelines for notification of CWH under FRA, which MoEFCC was to issue. The CTHs now cover an area of 40,898.97 sq. km. MoEFCC had drafted CWH guideline in 2007 and revised it in 2011. Triggered by a case in Mumbai high court, the Ministry finally issued the "Guidelines for notification of Critical Wildlife Habitat" in January 2018.⁷⁵ NTCA then issued an order in 2018 sup-

⁶⁷ MoEFCC, F. No.FC-11/203/2019-FC, "Clarification on the Guidelines dated 7.10.2014 and 11.10.2019 Issued by the MoEFCC Regarding Temporary Use of Forest Land" (10 January 2020) [http://forestclearance.nic.in/writereaddata/public_display/schemes/73577112\\$11_203_2019_sw.pdf](http://forestclearance.nic.in/writereaddata/public_display/schemes/73577112$11_203_2019_sw.pdf)

⁶⁸ MoEFCC, F. No.11-97/2018-FC, "Guidelines under Forest (Conservation) Act, 1980, in Pursuance of The Mineral Laws (Amendment) Act, 2020 - regarding" (31 March 2020) [http://forestclearance.nic.in/writereaddata/public_display/schemes/1045037159\\$guidelines dated.pdf](http://forestclearance.nic.in/writereaddata/public_display/schemes/1045037159$guidelines dated.pdf)

⁶⁹ "The Wildlife (Protection) Amendment Act 2006" <http://extwprlegs1.fao.org/docs/pdf/ind149941.pdf>

⁷⁰ NTCA, MoEFCC, No.1501/11/2007-PT (Part), "Identification and notification of core or critical habitats in Tiger Reserves" dated 16 November 2007, Compendium of Guidelines, Advisories & Orders (Vol. II, January 2020) 76-7 <https://ntca.gov.in/documents/#orders-circulars>

⁷¹ CR Bijoy, "The Great Indian Tiger Show" (2011) 46(4) Economic & Political Weekly 36.

⁷² ENVIS Centre on Wildlife & Protected Areas, Wildlife Institute of India, Dehradun, "Tiger Reserves of India" (as on December, 2022) http://wiienvis.nic.in/database/trd_8222.aspx#tiger_reserve_india

⁷³ National Parks increased from 38,219.72 sq km to 44,372.42 sq. km, Wildlife Sanctuaries from 120,543.95 sq km to 122,509.33 sq. km, Conservation Reserves (on area owned by the Government particularly the areas adjacent to National Parks and sanctuaries and those areas which link one protected area with another, but not notified as "forest") from 20.69 sq. km to 4,726.24 sq. km and Community Reserves (on private or community land, but not notified as "forest") from 94.82 sq km to 1,445.71 sq. km. See ENVIS Centre on Wildlife & Protected Areas, Wildlife Institute of India, Dehradun, "Protected Areas of India (as on December 2022)" http://wiienvis.nic.in/Database/Protected_Area_854.aspx

⁷⁴ NTCA, F. No. 1-7/93-PT (Vol. I) "Conferring Rights in Core/Critical Tiger Habitats of Tiger Reserves - reg." (12 March 2018) <https://tribal.nic.in/downloads/FRA/Implementation%20of%20FRA%20in%20Protected%20Areas/CWH-10%20Conferring%20Forest%20Rights%20in%20CWH%20dated%2012.03.2018%20%2028.03.2017%20.pdf>

pressing its earlier 2017 ban on rights order.⁷⁶ But rights continue to be denied in CTHs. Unlike WLPA which does not ban diversion or denotification of protected areas including CTH, CWH of FRA once notified “shall not be subsequently diverted”, precisely why no CWH has been notified till date!

CTHs are to be kept inviolate, not violated or harmed. Only voluntary relocation of forest dwellers from CTH is permissible when no coexistence is possible. All forest rights are to be recognised; secure livelihood is to be ensured prior to relocation. Gram Sabha consent is to be obtained. The provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 requires the determination of compensation for loss of forest rights and the resettlement package. Logically and in all fairness, these provisions should also apply when the forest rights are acquired by the State in relocations from Tiger Reserves. Not to be browbeaten by laws, MoEFCC continues to ignore all these sticking to the Rs.1 million centrally sponsored scheme under Project Tiger of 2012 which was hiked to Rs.1.5 million per family in April 2021.⁷⁷ If there are no suitable revenue land for their relocation, then they are to be relocated on forest to the extent vacated “after extinguishing all existing rights” as per its May 2019 order.⁷⁸ Existing forest rights, whether recognised or not, are not to be acquired or compensated; just extinguished.

MoEFCC confirmed that 14,441 families (25.17 percent) out of 57,386 families in 50 Tiger Reserves were relocated. 42,398 families remain in the CTHs under the Centrally Sponsored Scheme of Project Tiger as on 12 July 2019.⁷⁹ Of the 2,808 forest villages, 334 are located within

these CTHs.⁸⁰ The funds now available for CA are now available for “voluntary relocation”. They are recorded as having voluntarily relocated, even when they are forcibly relocated, which is usually the case.

CONCLUSION

Although accepting the long standing historic injustice and the need to redress it, the MoEFCC’s willingness to offer minor concessions progressed towards full-fledged recognition of rights, but only under its hegemonic control. MoEFCC relentlessly pursued all possible ways to undermine FRA at all stages, even before FRA got operationalised.

The above narrative brings forth what strategy MoEFCC adopted. They are:

- exclude the lands that got included with the expanded definition of forests of the Supreme Court, particularly from FCA, in order that these lands are available in the market for investment and development;
- easier and faster forest clearance to enable forest diversion for non-forestry activities and improve the ease of doing business;
- increase the area under protected area regime while promoting conservation based economic interests;
- open up the remaining forests for investments and economic gains, especially carbon stock and trade;

These require a systematic multipronged offensive against FRA and the dismantling the law itself. From the use and misuse of forest related laws as the FCA and WLPA, it spawned the constitutional challenges to FRA in high courts and the Supreme Court and other numerous forest related cases, and legal reforms to re-

⁷⁵ MoEFCC, F. No. 1-23/2014 WL, “Guidelines for Notification of Critical Wildlife Habitats” (4 January 2018) [https://tribal.nic.in/downloads/FRA/Concerned Laws and Policies/Guidelines for Notification of Critical Wildlife Habitat, 2018.pdf](https://tribal.nic.in/downloads/FRA/Concerned%20Laws%20and%20Policies/Guidelines%20for%20Notification%20of%20Critical%20Wildlife%20Habitat,%202018.pdf)

⁷⁶ NTCA, F. No. 1-7/93-PT (Vol. I) (n).

⁷⁷ NTCA, F. No. 15-3/2008-NTCA (Vol. III) Pt, (8 April 2021) https://ntca.gov.in/assets/uploads/guidelines/Village_Relocation_Order.pdf

⁷⁸ MoEFCC, F. No. 8-34/2017-FC, “Order of the Hon'ble Supreme Court dated 28.01.2019 on I.A. No.3924/2015 in WP (Civil) 202/1995 regarding changing status of forest land to revenue land in case of voluntary relocation of villages, reg.” (20 May 2019) http://forestsclearance.nic.in/writereaddata/public_display/schemes/93439154248_34_2017.pdf

⁷⁹ Lok Sabha, Unstarred Question No. 3405, “Tiger Projects” (12 July 2019) <http://164.100.24.220/loksabhaquestions/annex/171/AU3405.pdf>

⁸⁰ Lok Sabha, Unstarred Question No.816, “Villages in Forest Areas” (14 December 2018) <http://164.100.24.220/loksabhaquestions/annex/16/AU816.pdf>

claim absolute control over the forests. With the Supreme Court affirming FRA with regard to its application, the Court was diverted from any questions of constitutionality of FRA to eviction of claimants whose forest rights claims stood lawfully rejected.

The “concede, but maintain dominance and contain the process” by ignoring the law and limiting its impact, subversion from within and violation of the law gets its support from the neo-liberal thrust in economy, the push for “ease of doing business” to access forests for the “make in India”, and monetisation of everything that can possibly be monetised to attract investment and “growth” constitute the combined force against democratisation of forest governance. But the forest dwellers, with their long history of resistance, continue to resist the violations and assert their rights. At the same time, the struggle of the adivasis asserting their autonomy and governance jurisdiction over their territories is widespread, often sporadically bursting out.⁸¹

The expansion in focus from forest right claims and titles to the assertion of Gram Sabha as the governance authority over their customary and traditional territory on forest lands could be the decisive turning point in establishing democracy in the forests. This, along with the strengthening of the multi-level engagements in the political, administrative and legal space could well provide the much needed counter to the resistance to democratising forest governance.

⁸¹ Central India, for instance, experienced the unprecedented Pathalgarhi movement in 2017-19. See Tarique Anwar, “Pathalgarhi Movement: In Massive Crackdown, 250 Tribals Booked Under Sedition” Newsclick (25 January 2019) <https://www.newsclick.in/pathalgarhi-movement-massive-crackdown-250-tribals-booked-under-sedition>

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