

Forest Rights Act

Is There an Underlying Pattern in Implementation?

MADHUSUDAN BANDI

The implementation of the Forest Rights Act, 2006 has been opaque and there is serious lack of awareness about its provisions not only among the beneficiaries but also among the officials in charge of implementing it. Given the complaints from either side, it is time the government reviewed the law and also looked at the objections raised when it was first tabled as a bill.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, popularly known as the Forest Rights Act (FRA), is known to be a contentious legislation. It was debated widely in the Parliament as well outside before being enacted during the Congress-led United Progressive Alliance regime (Bose 2010). It is projected as a landmark legislation concerning tribals, one of the most deprived sections in the country on multiple counts (GOI 2014). Justifying the importance of the legislation, the act acknowledges in its preamble the “historical injustices” suffered by the tribals (*The Gazette of India Extraordinary* 2007). However, when it was enacted, the bill received criticism from several quarters, including the Ministry of Environment and Forests, conservationists, wildlife activists and non-governmental organisations. The forest department’s opposition was mainly on grounds of the inevitable destruction of forest cover and wildlife (Bhullar 2008). Nevertheless, it came into force by 2008 across states.

The FRA provides for individual forest rights to tribals and other forest dwellers (those residing for over 75 years or three generations in the respective area are eligible under it) over the dwelling and cultivation lands under their occupation. The community tenure/rights over “community forest resources” on common forestland within the traditional and customary boundaries of the village are recognised too. The rights are further extended to such lands that fall under reserved forests, protected forests, and protected areas, such as sanctuaries and national parks, to which the community had traditional access (*The Gazette of India Extraordinary* 2007). In brief the three types of rights recognised under the act are: land rights, the right to use

and collect, and the right to protect and conserve.

Process of Alienation

It is undeniable that the struggle for tribals’ rights has been a long one. In the era of kings and kingdoms, they enjoyed their freedom of living and livelihoods in the forest (Guha 1983). The arrival of the British changed their fate for the worse as they were considered “encroachers” in their own land (Bijoy 2008). This process of alienation of the tribals is aptly summed up by Saxena (2006) as a virtual war against helpless innocents which continues to date.

The FRA has been in existence for a little over seven years now. Undoubtedly, it holds the promise to correct the historical injustices meted out to the tribals. However, there is considerable opacity regarding its implementation as is evident from the government’s own statistics, news reports and research studies (Bandi 2014; CSD 2010; GOI 2010, 2015; Kothari 2011; Kothari and Meena 2010; Saxena 2010; Sharma 2010; Writ Petition 2011). There is a serious lack of awareness on the part of not only the beneficiaries but also among the concerned officials mandated to handle the implementation process on the ground. Rejection of claims made by the tribals and “other forest dwellers” on the basis of insufficient deposition of documents has often been cited as reason for the poor implementation of the act. In several places local political dynamics has not helped them in reaping the benefits of the act either (Bandi 2015; GOI 2010; Kothari and Meena 2010).

It is observed, however, that in many regions the forest department’s idea of whom to grant forest rights and the provisions of the act are not in tandem or are in conflict. The implementation of FRA has not been effective or delayed, for instance (i) when the claims made by the “other forest dwellers” are numerous; (ii) where the number of claims with the evidence of occupation of land in forest are either recent or after 25 October 1980; (iii) where the demand for claims on the forestland is more than two and half hectares per nuclear family; and (iv) if the claims happen to be in

Madhusudan Bandi (*madhusudan_bandi@gidr.ac.in*) is a faculty member with the Gujarat Institute of Development Research, Ahmedabad.

the proximity of wildlife sanctuaries or parks (GoI 2010; Saxena 2010; Sinha 2010; Writ Petition 2011). In this, it presents an underlying pattern of the forest department's actions in sync with their consistent stance against the provisions like inclusion of "other forest dwellers" as beneficiaries alongside tribals. This was similar to its position against the extension of the cut-off date to 13 December 2005, and increasing the limit of maximum land claimable per nuclear family to four hectares. The department has also been against including protecting areas for land distribution under the FRA. The power of the forest department is formidable despite the FRA, 2006 rules notified on 6 September 2012 curtailing their role in the affairs of the act.

Interactions with forest department officials since 2008 across the states indicate that their actions are motivated by the anticipation of amendment of the act in the near future. The forest department perceives FRA as a one-sided legislation that may lead to grave compromises at the cost of the environment. It is also seen as an action of a hurried political action programme of the alliance that was in power then. The roles played by both the Joint Parliamentary Committee (JPC) and the Group of Ministers (GoM) have also been criticised. The JPC, constituted to resolve the differences between the pro- and anti-lobbies over the deadlock on the bill failed to address conservation and livelihood concerns. The GoM on their part failed to balance the legislation (Hindu 2006). In short, the perception of forest bureaucracy in managing the forest resources seems to be in conflict with the political calculus of competitive democracy.

The Way Forward

In the interest of the tribals whose genuine claims in the areas where the FRA is implemented, are overlooked and also in order to address the concerns of the forest department as understood in the above discussion, it would be prudent on part of the government to revisit the act. The specific areas that need an urgent examination are: identifying gaps, if any, in the act with respect to conservation of

forest resources; review of the public debates around the provisions of the act during the time of the formulation of the bill and the finalisation of the provisions of the act to record if any stakeholder's inputs were grossly ignored in way to affect any section's interests; and analyse the patterns of its implementation across regions and identify possible conflicts between bureaucratic and political thinking.

The forest department's complaint since the act was enforced is that their voice was not heard by the then government; hence sincere efforts need to be carried out to listen to the views, suggestions and recommendations that would be presented by it and other departments in their respective jurisdictions. Their perceptions and experiences gained from the field should be considered. To ensure free expression of the views, the officials should be heard in a neutral environment.

Given that there is definite substance to the argument regarding plausible damage to forest cover and wildlife, suitable amendments need to be proposed to improve the provisions of the act in concrete ways to eventually bridge the trust deficiency between the forest department and tribals for future cohesive existence.

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Gyan Deep

Near Firayalal, H. B. Road
Ranchi 834 001
Jharkhand
Ph: 0651-2205640