

Status of Forest Rights Act in Chhattisgarh

Arnab Bose and Jeet Singh

Background

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, enacted in 2006 and came into force in 2008. It attempts to address the historic injustice done to forest dwelling communities by recognizing individual's right over dwelling and cultivation of forest land under their occupation and community right over community forest resources on common forest land. It is estimated that the rights of over 200 million people in over 170,000 villages should be recognized under FRA¹. Up to March 31, 2019, 4.2 million individual and community forest rights claim were filed, of which 1.9 million claims were accepted and land title were distributed².

The Chhattisgarh is one of the crucial states from the perspective of the Forest Rights Act, 2006. A large population including tribal and non-tribal of the state is directly dependent on forest and forest produces. More than 31% of the State's population is comprises of different tribal groups and they are highly dependent on forest for their live and livelihood.

The Chhattisgarh government received highest number of Individual Forest Right (IFR) claims, which accounts to more than 8.58 lakh. Out of which the state government accepted 4.01 lakh claims and rejected more than 4.61 lakh claims. While the state has received highest number of claims, it also rejected highest number of claims ever since this law came to force. According to the available data, it has rejected more than 52% of forest right claims filed by tribal and other traditional forest dwellers³.

While there are conflict and contradictions on the issue of recognizing rights of forest dwellers and changing land use in the middle of forest, the Supreme Court last year in one of its order asked state governments to evict all dwellers whose FRA claim has been rejected. However, after interventions from various state governments and central government, the Court stayed its own order later. Various state government and central government admitted that many claims were rejected wrongfully and before they can not evict anyone, they need to review the entire process⁴. Moreover, towards the end of year 2018, the Indian National Congress promised in its election manifesto for the state election of Chhattisgarh that if chosen to power, their government will ensure effective implementation of the forest rights Act. After the formation of new government in December 2018, the congress led state government had multi level challenges to deliver on its promise to implement the Forest Rights Act, 2006 in more effective way. These included challenges related to state level governance system, national level policy issues and cases pending against the Forest Rights Act, 2006 in the Supreme Court. This article is an attempt to highlight major challenges and initiative at national and the state level to make the Act more effective in the state of Chhattisgarh.

¹ A Citizens Report on Promise and Performance of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or FRA after ten years of Enactment. December 2016. CFR-LA, India , 2016

² <https://tribal.nic.in/FRA/data/MPRMar2019.pdf>

³ <https://tribal.nic.in/FRA/data/MPRMar2019.pdf>

⁴ <https://www.thehindu.com/news/national/supreme-court-continues-its-stay-on-eviction-of-lakhs-of-forest-dwellers/article29403695.ece>



National Level Key Issues

- **Under-Resourced Nodal Agencies:** MoTA is the central nodal agency for the implementation of FRA. It is severely under-staffed and under-resourced⁵. The state tribal welfare departments also lack human and financial resources. In many states, forest officials have been deputed to the tribal departments who often hinder implementation of FRA.
- **Misunderstandings about FRA:** A lack of in-depth understanding about the FRA amongst officials leading to misinterpretation⁶. Misunderstanding regarding the scope of the Act, particularly in relation to other forest laws. Misunderstanding about its CFR and CFRe provisions. Misinterpretation of FRA as a welfare legislation to distribute land to the landless and other user rights to the marginalized forest dwellers rather than recognition of existing rights. A misplaced fear that forests are being distributed to all the forest dwellers which would lead to ultimate decimation of forests. These misinterpretations lead to frequent violation of provisions.
- **Attempts to Dilute the Act:** Since 2014 there have been many attempts to dilute the provisions of the FRA through creation various rules (such as village forest rules) by side-stepping MoTA⁷. These rules allow the introduction of the forest department in the management of forests. Most of these changes have happened in states which are rich in minerals and as per activists with these rules the government wants the forest department to become an arbiter for forest resources. MoTA had initially opposed these rules but after pressure from the centre there has been a tacit approval.
- **Lack of Cooperation from Forest Officials:** Across the country forest departments have been hostile to FRA with forest officials dictating the agenda of implementation. Several cases of obstruction in the claim and recognition process by not cooperating in the verification proceedings, raising illegal objections to the claims, imposing Joint Forest Management on

⁵ Promise and Performance Report 2016

⁶ MoTA 2012. Regional Consultations on Implementation of the Forest Rights Act: Amendments in the Rules and the Way Forward. Ministry of Tribal Affairs, Gol.

⁷ <https://www.downtoearth.org.in/news/forests/rights-overruled-53977>

areas claimed as CFRs, re-refusing to sign titles approved by District Level Committees and carrying out evictions where claims have been filed but not yet processed.⁸

- **Focus on Individual Rights rather than CFR rights under Section 3(I):** Administrative machinery found to be concentrating more on claims for individual rights rather than community rights. Of the total recognised 19,05,155 claims made till January 31 2019, IFR constitutes 96 per cent⁹. Some issues concerning CFR as highlighted by the 2016 performance report:
 - Gram sabhas have filed large numbers of CFR claims which are pending at SDLCs and DLCs without any response
 - Customary boundaries delineated by the Gram Sabhas arbitrarily changed by forest department officials during field verification;
 - In some states CFR titles being issued to Joint Forest Management committees in violation of FRA.
 - Titles have been issued with illegal conditions, such as the Gram Sabhas having to follow forest department's working plans while exercising CFR rights.
 - No guidance and support systems for CFR management by the Gram Sabha.
- **High Rate of Rejection and Illegal Evictions:** A significant number of Forest rights claims have been rejected without following due process. According to a status report of the Ministry of Tribal Affairs, only around 50% claims approved as of April 2018. The data found in the Supreme Court Order of February 13, 2019 show a rejection rate as high as 75% in some states such as Uttar Pradesh. Additionally, widespread evictions in both protected and other areas continue¹⁰. Large scale evictions in violation of FRA reported from Himachal Pradesh, Telangana, Andhra Pradesh, Karnataka and Assam. Despite provisions of the Act willful destruction of legally mandated livelihoods also continues.
- **Non-recognition of Rights in Protected Areas:** In protected areas, the process of settling the claims is extremely slow. There are efforts to relocate beneficiaries from tiger reserves in violation of FRA. A study on violations of FRA in protected areas¹¹ revealed a large number and types of violations since 2007, including, curtailment of NTFP access, grazing bans, prohibition of fuel wood collection, harassment of villagers by the forest department and evictions.
- **State Control over NTFPs:** In most states policies not aligned to FRA provisions with respect to NTFPs. State control over high value NTFPs such as bamboo continues¹². Gram Sabhas continue to be denied transit permit by forest departments and transport of NTFP remains a challenge¹³. This is despite the amended FRA rules giving authority to issue transit permits to gram sabhas.
- **Little Progress on Habitat Rights of Particularly Vulnerable Tribal Groups:** The provision for habitat rights of PVTGs is not appropriately implemented¹⁴. There are instances of forest diversion for extractive industry like mining in habitats of PVTGs, evictions from protected areas as well as forcible plantations on their traditional cultivation lands under CAMPA, MGNREGA and other programmes.

⁸ Promise and Performance Report 2016

⁹ <https://www.downtoearth.org.in/blog/forests/10-interventions-government-must-make-to-protect-forest-rights-64863>

¹⁰ Promise and Performance Report 2016

¹¹ Siddhartha, A., Rai, N., & Menon, A. (2016). An analysis of the violations of the Forest Rights Act in Protected Areas. Ashoka Trust for Research in Ecology and the Environment. Bengaluru

¹² <https://www.downtoearth.org.in/blog/forests/freeing-bamboo-from-the-state-33345>

¹³ <https://www.downtoearth.org.in/news/forests/despite-forest-right-titles-2-kalahandi-villages-denied-transit-permit-60504>

¹⁴ Promise and Performance Report 2016

State Level Key Issues:

- **Review of FRA Claims:** To clear the air on large number of rejected claim of forest dwellers in Chhattisgarh, a comprehensive review was required. The government of Chhattisgarh issued a circular on January 22, 2019 directing all district administrations to review all rejected IFR claims¹⁵. Recently the department of tribal welfare of the state government has uploaded details of all IFR claims after review on their website for public access¹⁶. While the review reveals various problems related to the implementation of the FRA, this exercise will help to rectify systemic issues in more transparent and accountable manner.
- **Rehabilitation of IDPs:** According to an estimate around 16,000 tribals (5000 families) were uprooted from Bastar region of Chhattisgarh during 2004-05 when Naxal violence escalated in the region. Of these around 3000 families moved to neighboring states of Andhra Pradesh and Telangana. These uprooted families are living miserable life in the forest of Telangana and Andhra Pradesh. Likewise there are other states, from where tribals had to move in distress. The National Commission for Scheduled Tribe (NCST) in July 2019 asked all these states including Chhattisgarh to identify these families to pave way for their rehabilitation¹⁷. These people are called Internally Displaced Persons (IDPs). In December last year, the State government of Chhattisgarh has initiated survey to identify all IDPs in Telangana and Andhra Pradesh.
- **FRA in Maoist Affected Area:** The Abhuj Mar area of Narayanpur district in Chhattisgarh is considered by the government as only stronghold of Left Wing Extremism in the country. An area of 3,884 square kilometer has around 40 thousands Abhuj Maria tribes. Abhuj Maria is categorized as Particularly Vulnerable Tribal Groups (PVTGs). The state government has shown interest in building confidence among people living in Abhuj Mar to counter violent arm struggle of Maoist from this region. The government has initiated the process granting Habitat Right (Special rights to PVTGs under FRA) to Abhuj Marias of the region¹⁸.
- **Mining activities in PESA region:** Chhattisgarh is known for mining of coal, bauxite, iron and many other important minerals and fossils. Over last few years, villagers have complained that mining companies changed land use of the forest in control of local community by violating laws such as Forest Rights Act, PESA and Forest Conservation Act. Recent mining cases in Bailadila, Hasedo Arand and Pathrai village in northern part of the state are few to name such illegal mining in the state¹⁹. In such cases mining companies started mining without having consent of local Gram Sabhas under PESA law.

Recommendations

- Ensure adequate staff and separate funds for implementation of FRA for MoTA. Appointment of officials, dedicated full-time to FRA implementation at sub-divisional and district levels.
- Training sessions for FRC/SDLC/DLC members using simple, accurate material in multiple languages to ensure clear understanding of provisions
- MoEFCC and MoTA need to coordinate to ensure that all rules are aligned with FRA by undertaking systematic review. It needs to be acknowledged that the gram sabhas are the statutory institutions for CFR management instead of JFMCs.
- Government should send circular to forest officials giving clear directions to stop obstruction of FRA implementation

¹⁵ <https://www.downtoearth.org.in/news/india/chhattisgarh-govt-keeps-poll-promise-starts-review-of-rejected-fra-claims-62979>

¹⁶ <http://tribal.cg.gov.in/node/2229>

¹⁷ <https://www.outlookindia.com/newscroll/chhattisgarh-govt-begins-survey-of-internally-displaced-tribals/1697809>

¹⁸ <https://www.firstpost.com/india/chhattisgarh-to-grant-habitat-rights-under-fra-to-tribals-in-maoist-stronghold-abhujmad-forest-bhupesh-baghels-soft-approach-may-score-a-win-7241141.html>

¹⁹ <https://www.sabrangindia.in/article/chhattisgarh-hc-orders-psu-stop-all-mining-activity>

- Social audit similar to that of MGNREGA should be introduced. The report should include disaggregated information on CFRs, CRs, IFRs and, habitat rights.
- Governance of protected areas must be based on FRA. Gram sabha based plans for management of CFRs provides best opportunity for co-existence plans for all PAs.
- All procedural obstacles in the collection, sale and transportation of NTFPs by right holders and gram sabhas need to be removed. Minimum Support Price for NTFP needs to be provided.
- Rights of PVTGs need to be pro-actively recognized and declared suomoto by District Level Committees. Criteria which have been used for declaring them as PVTGs should also be applied as evidence of their forest rights.
- Rules of Panchayat (Extension to Scheduled Area) Act (PESA) needs to notified to protect community and individual forest rights of tribal groups.
- A committee of experts should be constituted to study reviewed IFR cases in Chhattisgarh and dispose them in time bound manner.
- Sensitization of members of DLC, SDLC, Panchayat and village level committees is required to entertain new claims from communities and process them as per the words and spirit of the forest rights Act.
- To protect forest and maintain them in their pristine form, a new system of tree based sustainable cultivation, harvesting, consumption and trade needs to be created especially for people who have been given land title under the forest rights Act.

To see full video coverage of the discussion, click on:

https://www.youtube.com/watch?v=s9gUIIBOjQ4&feature=emb_logo