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Institutional Reforms in Forest Tenure: Implementations of FRA 2006 in Forested Landscape of Odisha

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Abstract

Institutional theory tells us that social political and economic institutions, both formal and informal, shape behaviour and opportunities; define rights and distribute power. It has major implications for poverty and its alleviation. Historically forest dwelling populations in India have been subjected to a range of forest rights deprivations that have affected their livelihood adversely. In the absence of proper institutional mechanism, adequate resource endowment such as land, human capital and access to service sector, forest play a crucial role in the livelihood strategies of many rural household in India. However, the multifaceted deprivations faced by the tribal and other forest dwellers have led to loss of private land, forest land and forest products to these communities. It has severely restricted their access to forest resources. Similarly the people living in un-surveyed areas, and forest villages were also deprived of access to different public services provided by the state. As a result their level of living is at rock bottom. Large scale displacement of tribal on account of development projects including mining activities further eroded their livelihood options.

Due to continuous and concerted efforts by progressive political groups, civil society organisations and intellectuals the historic Forest Rights Act (FRA) was passed in India in 2006. The implementation process started in majority of the states since January 2008 including in the states of Odisha. The implementation process in states is not smooth and the progress has been tardy initially due to a number of factors contributing for the implementation of the Act. Proper implementation of this Act will have a significant impact on the sustainable livelihood of the potential beneficiaries and growth of forest. The provision of inalienable land titles will reduce the tenure insecurity. This will also provide incentives to the households for improvement and development of the land under their possession and thereby increase their livelihood. This in turn, will reduce the excessive dependence on the forest resources. In view of the above, this paper will tries to understand the processes, institutions and mechanisms of implementation of the FRA 2006 in Odisha.

Introduction

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

Recently, the Indian government has legislated to acknowledge the “rights” of the Scheduled Tribes by taking them further towards self-rule. In 1996, the Indian Parliament passed the Panchayats Extension to the Scheduled Areas Act (PESA), 1996. The Act covers nine Schedule V states of Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, and Rajasthan, and instead of individuals, recognises and stresses on traditional community rights over natural resources. The recent Forest Rights Act (FRA) 2006 is a step further as they adopt a rights-based perspective and acknowledge the pre-eminent rights of STs to natural resources.

The basic proposition is that the STs and other forest dependent communities are the most disadvantaged with respect to land, which largely accounts for their perpetual poverty and makes them vulnerable to injustice and exploitation. However, attempts have been made by the union and state governments to promote and protect their rights with regard to the control and use of forest land. The nature of legislative measures and their implementation such as the FRA 2006 and their achievements are likely to vary from state to state. This

variation is due to the influence of the complex interaction of historical necessities and socio-political and economic forces, which are largely state or region specific. The emergence of the Act highlights both the pressure and the obstacles that were faced in its making. One of the consequences of the disagreements was the delay in the finalisation and notification of the Act. The Bill, which was drafted on 13th December 2005, was tabled in the parliament on 18th December 2006, and was finally notified on 1st January 2008. Moreover, the rules that were notified are truncated, taking away the spirit of the Act in many ways.

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

In the absence of adequate resource endowment such as land, human capital, and access to the service sector, forest plays a crucial role in the livelihood strategies of many rural households in Odisha (Sarap & Sarangi, 2009). However, the multifaceted deprivations faced by the tribal and other forest dwellers have led to the loss of private land, forest land, and forest products to these communities. This has severely restricted their access to these sources of livelihoods. Similarly, the people living in un-surveyed areas, and forest villages had also been deprived access to any sort of service provisions provided by the state. As a result, their level of living is at the rock bottom. Further, large-scale displacement of tribals on account of development projects, including mining activities also eroded their livelihood options¹. As a result, they had to survive on loans borrowed from moneylenders at exorbitant rates of interest by mortgaging their tiny pieces of private land which they could not recover due to lack of funds or the malpractices adopted by the moneylenders. Thus, cultivable lands held under private ownership were lost due to indebtedness in many parts of the states (Sarap & Sarangi 2010a).

Access to land, especially the average sized-land, and the quality of land available to the tribals in the Scheduled Areas of Odisha is very low. Clearly, the tribals of these states were characterised by landlessness and small holdings – which resulted in low level of crop

¹ See 'Rich Land Poor People', 6th Citizen Report, CSE, New Delhi.

output and income. In such a situation, the dependency of the tribals on forest would be high. However, due to loss of forest land and forest resources, they have to foray further deep into the forest or work as uncertain wage labour. Moreover, majority of the tribal workers are agricultural labourers and marginal farmers. Deforestation has a particularly negative impact on women as collection of NTFPs has been their primary occupation and access to resources outside these areas is not ensured. Several decades of special development efforts by Government of Odisha through the Tribal Development Plans has not resulted improvement of their livelihood (Sarangi, 2013).

This paper is divided in to five sections including the introductory section. The *second* section gives an overall socio-economic condition of tribes in Odisha along with the database and methodology. The *third* section discusses different forest policies and rights deprivation in a historical context. The *fourth* section critically analyses the outcome of the forest tenure reforms and their impact on livelihood of the forest dwellers at villages and state level. The *last* section comes out with some way of conclusion.

II

Socio-Economic Condition of Tribes

The Scheduled Tribe (ST) population of Odisha forms about 22.8% of the total population according to the 2011 Census constituting 62 tribes including 13 Primitive Tribal Groups (PTGs)². About 44.7% of the total area in the state is Scheduled Area as per the Fifth Schedule of the Constitution of India. The majority of the tribals live in the 12 districts coterminous with the Scheduled Area located in the southern Odisha (the most backward area), and other hinters land districts (also underdeveloped area). About 75.6% of the ST population in Odisha in comparison with 46.4% at the overall Odisha level lived below the poverty line during 2004-05 (Government of India 2011). They also lack access to education, health care, and food security. The major proportion of working population among the ST communities comprises agricultural labourers (47%), small and marginal cultivators (33%), and others (2001 Census).

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

Odisha's Forested Landscapes

Odisha contains extensive forest landscapes. The actual forest cover is 48,855km² (Forest Survey of India 2011). The *recorded* forest area is significantly higher than this, at 58,136 km², which constitutes 37.34% of the geographical area of the State.

Table 1: Recorded forest area in Odisha

Forest land classification	Area in km ²	Percent of total (FSI)	Comments
Reserved Forests	26,329.12	45.29%	Under direct control of Forest Department. Declared as RF under Section 21 of Orissa Forest Act, 1972 or deemed as Reserve Forests under Section 20(A) of Indian Forest Act, 1927
Demarcated Protected Forest	11,689.84	26.70%	Land under control of Revenue Department. Declared as Forest under section 33 of OFA, 1972 or deemed as protected forests under Section 33(4) of OFA, 1972. The protection and management is controlled by Forest department.
Undemarcated Protected Forest	3,838.78		Land under control of Revenue Department although the protection and management is controlled by Forest department.
Unclassed Forests	20.55	0.04	Land under control of Revenue Department. The protection and management is controlled by Forest department.
Other Forests	16261.34	27.97	Land under control of Revenue Department. Legal status is not clear. The protection and management is controlled by Forest department.
Total Forest Area	58139.63	100%	

Source: Forest Survey of India, 2011

Database and Methodology

The study is based on evidence, collected from a number of sources including primary field survey, interaction with different stakeholders and secondary materials. The primary data was collected from six different villages located in the districts of Deogarh and Sambalpur in Odisha. Area under forest in these districts is high and a significant proportion of population constituted tribal and other forest dwellers. The number of households in each of the villages varied from 40 to 90. Majority of these households are ST communities – except in two villages (Rangamatia and Chandankhunti) – and more than four-fifth of the total households are poor. Collection of Non-timber Forest Products (NTFPs), wage labour

and subsistence agriculture are important sources of livelihood of the villagers as well in these districts.

Primary data was collected through intensive field survey and group meetings with households having forest land under possession and dependence on forest. Several visits have been done in all the study villages at different point of time between the periods of first quarter of 2008 to last quarter of 2012. It coincided with the period of formation of Forest Rights Committees (FRC) and immediately after that, the time for arranging evidence and submitting of claim forms to the FRC, time of verification of records at the villages by a team of officials from the respective sub-division; after the distribution of titles to the selected beneficiaries; and finally, after some time gap of possession of distributed titled land. A number of interactions have been carried out with several implementing and facilitating agencies such as Non-Governmental Organisations (NGOs), FRC members, officials at the block, sub-division, district, and state level, and discussed the issues with them relating to implementation of the Act.

III

Forest Policies and Rights Deprivation in Odisha: Historical Context

Institutional theory tells us that social political and economic institutions, both formal and informal, shape behaviour and opportunities; define rights and distribute power. It has major implications for poverty and its alleviation. Institutional Reforms are easier said than done, partly because the apparently ‘bad’ policies, including the colonial ear laws, often reflect the preferences of national elites who benefit from resource extraction (Ascher, 1999). Historically forest dwelling populations in India have been subjected to a range of forest rights deprivations that have affected their livelihood adversely. The forest policies in pre-independent India have mostly focussed on revenue generation for the state. These also restricted tribal access to forest for their livelihood. In independent India these policies continued and were followed by environmental concern during late 1970s. The state had the monopoly over most of the forest products after independence. The state gave monopoly rights for buying NTFPs to private traders during 1970s, who exploited these communities by paying them very low prices. Forest related institutions have emerged around these policies till 1980s which had adverse impact on the livelihood of tribal (Sarap and Sarangi 2010b). It was only since 2000 that the provision of control of giving licensing power to the *Panchayati Raj* Institutions (PRIs) to the traders was started. Given the lack of capacity of PRIs the

traders continue to dominate in the purchase of forest products even now. However, the control of major forest products (such as *kendu* leaves, bamboo and *sal* seeds) has been still under the state's control.

Since late 1980s forest policies have undergone some changes towards participatory forest management type under the state sponsored Joint Forest Management (JFM). The JFM is a promising route to improve the income of forest dwellers through sale of non-timber forest products but the JFM has not been working properly in the state and its impact on the livelihood of tribal has been marginal (Sarap and Sarangi, 2009, Sarap, Sarangi & Naik 2013). Similarly the *Panchayats* Extension to the Scheduled Areas (PESA) Act which gives special powers to *Gram sabhas* to increase the voice of tribal communities in development including in the management and mining leases and infrastructural development has not been implemented properly in the state. The working of PESA has not been satisfactory and the participation of tribal in the decision making process relating to development and management of natural resources present in the area is cursory due to unequal power relation of the scheduled groups vis-a-vis others³ (Khosla, 2010).

A pivotal role in the legislation of the FRA has been played by protagonists and organisations spearheading the cause of tribal uplift, like the Campaign for Survival and Dignity (CSD), who feel that the tribals and forest dwellers have undoubtedly been victims of a 'historic injustice'. They have been rendered homeless. Tribals and forest dwellers cannot be sacrificed at the altar of development.

Such organisations consider the FRA vital for three main reasons: (i) Tribal lands are forcibly taken away and handed over to private corporations in the name of public interest. Numerous MoUs involving land acquisition are being signed between state governments and mining and other industries, all in the name of 'development' and 'industrialisation'; (ii) Where community lands and resources are officially owned by the government, they are being handed over to private companies directly; (iii) Special Economic Zones in many areas are encroaching upon *adivasi*, community and forest lands denying tribal rights. As a result the *adivasis* and forest dwellers become everyone's cheap migrant labour. When required they can be easily displaced or expelled, since they have no legal protection. The FRA is thus seen as a necessary step towards securing their ultimate and professed aim of bringing a new democracy in the forests.

³ See also Frontline, 17 April, 2013.

The Forest Right Act 2006, which is supposed to reduce historical injustices meted out to tribal / forest dwellers, has been implemented in the state since 2008. It will provide livelihood support through the provision of community rights on forest and individual rights under forest land under the possession of tribal and improve their livelihood. More than three *lakh* forest dwellers have been given land rights on the forest land under their possession and some community forest rights on forest. Proper implementation of FRA in its wider perspective and reforms in forest management would enhance the livelihood of tribal through generation of income and also provide incentives to them for conservation of forest (Sarap, Sarangi & Naik 2013). There is need to understand the working of different provisions of FRA and its impact on the livelihood of and conservation of forest.

The historical processes of state appropriation of forests and its subsequent management of them have led to a range of deprivations. The state is characterized by uncertain tenure rights for majority of tribal and other poor who live in forest fringe and forest dwelling villages since long. This situation is severe in ex-Madras Presidency areas. The land records in Odisha are in dismal conditions and land rights of majority of state's tribal living in hilly areas, in all categories of forestlands are yet to be settled. Tribal populations have numerous claims to forest lands which have not been resolved and their rights have not been settled.

A large number of tribal people continue to cultivate and live on lands declared to be government lands without any formal land titles. In the absence of recognized rights over land many poor cultivators including tribal and non tribals, have often become 'encroachers' on their own customary land in the eyes of the law.

The range of main forest rights deprivation scenarios on the ground depend on the prior situations of these groups and the historical processes through which the state has extended its estate. The major ones are summarized as follows.

The Central and state government have taken a number of measures in the tribal areas since 1950s in order to improve the livelihood conditions of tribal people and tribal areas under tribal sub- plan (TSP) approach. The TSP approach envisages integrated development of the tribal areas in which all development programmes irrespective of their source of funding operate in unison for achieving the common goal of economically developing the area and the improving the quality of life of the tribal living in the area.

Presently, 21 Integrated Tribal Development Agencies (ITDAs), 17 micro-projects for primitive tribal groups, 46 Modified Area Development Approach (MADA) pockets and 14 cluster pockets are functioning in the State with financial support from State Plan and Special Central Assistance (SCA) made available by Ministry of Social Justice and Empowerment, Government of Odisha. Despite such approaches the socio-economic conditions of tribals in the state has improved marginally over the years.

Rights deprivations have led to unrest and conflict, and growing insurgency in Odisha. Particularly after attempted evictions in 2002 tribal land rights campaigning became coordinated with mobilisation across the country, and this led to the passage of the Forest Rights Act in 2006.

The passing of the Forest Rights Act 2006 undoubtedly represents a seminal moment in India's highly contested forest politics. For the first time an Act has recognized the 'historical injustice' perpetrated by the state:

... The forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers... (FRA 2006)

Box 1: Entitlement to Households under FRA

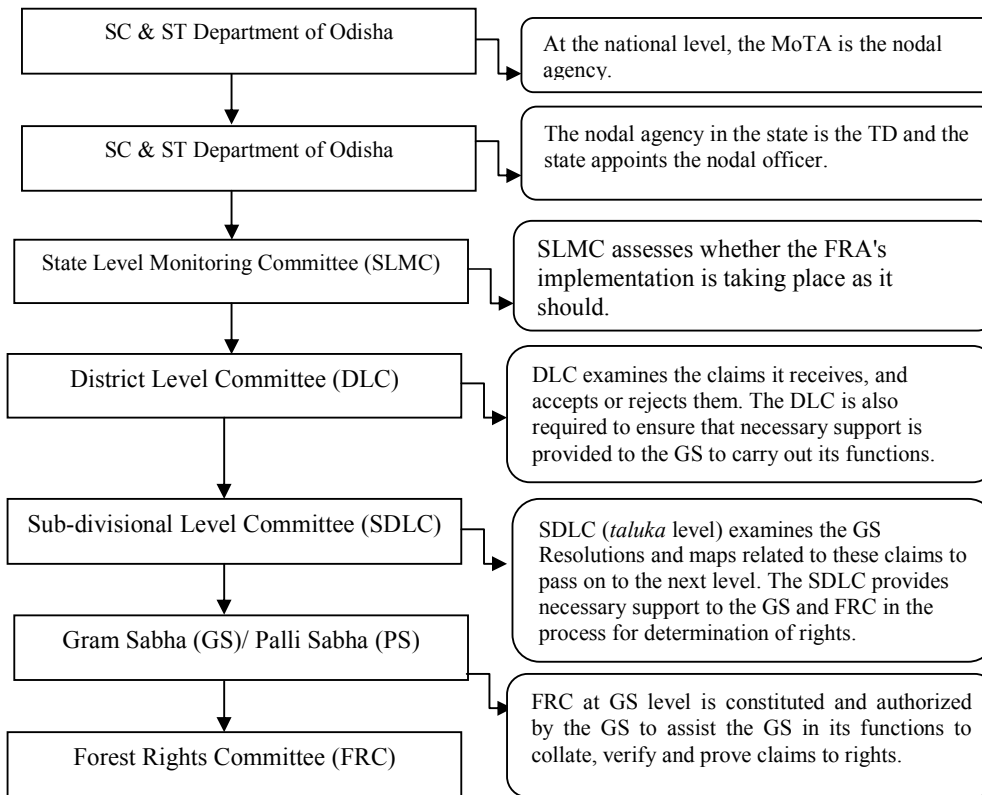
Proper implementation of FRA will lead to a number of entitlements to the claimants. The benefits include:

- Ownership rights on forest land (subject to a maximum of four hectares) under possession (up to 13 December 2005) by the claimants such as tribals and Other Traditional Forest Dwellers (OTFDs).
- The people who have constructed small houses on the forest land and living there would get the right on the land to dwell perpetually.
- Right to settlement of old habitations and un-surveyed villages.
- Right to habitat and habitation for primitive tribes.
- Right to conversion of forest villages into revenue villages.⁴
- Right for conversion of *pattas* (record of land) or lease or grants issued by the state government on forest land to titles.
- Right to rehabilitation of illegal eviction or forced displacement.
- Right to ownership, access to collect and dispose minor forest products that have been traditionally collected within or outside village boundaries, and grazing rights.
- Right to protect, regenerate, conserve or manage any community forest resources. The community forest resources may be in reserved forest, protected forest, and protected areas such as sanctuaries and national parks to which the community has access.
- Community rights to intellectual property related to forest diversity, cultural diversity, and any other traditional right customarily enjoyed by the forest-dwelling communities excluding the right to hunting.
- Other community rights for use or entitlements, such as fish and other products of water bodies, grazing, and traditional seasonal resource access for nomadic or pastoralist communities.

It is to be noted that the vested forest rights are heritable, but not alienable or transferable.

⁴ Presently, households in forest villages are deprived of several benefits under anti-poverty programmes including monetary assistance under the *Indira Awas Yojana* (IAY).

Role of Different Institutions in FRA Implementation



Source: The Gazette of India Extraordinary (2007 and 2008).

The FRA makes provision for the restitution of rights to forest dependent households. However, the FRA is only an enabling legislation. The actual allocation of rights at the local level depends on the ways the Act is implemented.

Box 2: Steps for FRA Implementation Process in Odisha

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

- A meeting of the *palli sabha*⁵ is convened by the *sarpanch* on the request and presence of a representative of the *panchayat samittee* and the secretary of the concerned GP/village/hamlet *panchayat* to elect the Forest Rights Committee (FRC) comprising 10 to 15 members including one-third women representation. The role of FRC is to assist the *gram sabha* in its function to collate, verify and approve claims to rights.
- The FRC receives claim forms from individuals and communities on behalf of the *gram sabha* / *palli sabha*. It has to provide reasonable time and opportunity to the FRC and the claimants to prepare maps demarcating the area of each recommended claim as prescribed under the Act. The claim form is to be accompanied by at least two evidences (out of nine given in the Act) authenticating the claim. The *gram sabha* shall, then, pass a resolution on the claims submitted and forward a copy of the same to the Sub-Divisional Level Committee (SDLC). Any person aggrieved by the decision of the *gram sabha* may apply to the SDLC within 60 days from the passing of resolution by the *gram sabha* for a decision on the petition.
- The SDLC consists of the SDO, tribal welfare officer, forest range officer, and three members from the *Panchayat Samittee* (PS), appointed by the PS. The SDLC examines the resolution/decision of the *gram sabha*, prepares the records of forest rights and forwards it through the SDO to the district level committee for a final decision.
- The District Level Committee (DLC) composed of the collector, District Forest Officer (DFO), district welfare officer (in Odisha it is the DRDA/ITDA), and three representatives of the *Zilla Parishad* (ZP), appointed by the ZP. The DLC is the final authority to decide and approve on the forms (both individual and community) prepared by the SDLC.
- The state level monitoring committee monitors the progress of recognition and vetting of the forest rights.

Source: Forest Rights Act 2006.

IV

Outcomes of Forest Tenure Reforms in Odisha

In the state of Odisha the process of implementation of the Act started since January 2008. A number of agents are involved in the process: four departments namely tribal, revenue, forest and *panchayati raj* are working in coordination for implementing the Act, with the Tribal Welfare Department being the nodal agency. The Tribal Welfare Department being the nodal agency passed a resolution on 1st February 2008 about the formation of monitoring committees at sub-division, district and state levels and notified the same to the concerned departments on 15th February 2008. The *Panchayati Raj* department, in

⁵ Village-level assembly is known as *Palli Sabha* in Odisha.

consultation with other departments, directed the officials at the district and block levels to hold a *palli sabha* on 16 and 23 March 2008 to form the FRC at the village/hamlet level. The dates of holding the *palli sabha* were published through the local media, and the official to be entrusted for implementation of the FRA at different levels were familiarised through discussion and training on the different provisions of the Act. However, dissemination of different provisions of the law could not be widely given to the villagers due to shortage of time as well as officials at the local level conversant with the act.

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

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

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

However, it is to be stressed that given the low level of literacy among the STs/SCs and other backward caste households in general and rural areas in particular, all these efforts of awareness building had limited impact on the prospective claimants and FRC members⁶ initially; but later on, it picked up. Awareness campaigning was largely absent in the remote areas⁷.

⁶ Many claimants found it difficult to get a caste certificate (for STs) as they have no *patta* land – they only had customary rights on the land under their possession – and hence, there was confusion as to who should issue the caste certificate. Because of this type of confusion, many potential claimants could not submit the claim forms in time, even though they had forest land under their possession.

⁷ See also Sathyapalan (2010) for similar experience in Kerala.

Even though the Act has to be implemented within a time frame, most of the departments of the state have taken the task of implementation as one of the several functions it has to perform. Initially the attitude of the Forest Department was not proactive, given its control over the forest for over a hundred years. However, this department later became a part of the process and co-operated in the implementation, along with the other departments. There was inadequate sanction of funds for hiring technical personnel (*patwaries* and other personnel) for the preparation of maps for the claimants and verification of land records.

Due to the legal and technical grounds on the control and management of land by both Revenue and Forest departments, only the maps for the lands occupied and cultivated within the revenue boundary were prepared while the areas under Reserve Forest (RF), Protected Forest (PF), National Parks, Sanctuaries, etc., were excluded. This was observed only in case of individual rights over forestland, while the rights over Community Forest (CF) were not given much attention for a long time. The FRA has been largely considered as land rights over a piece of forest land negating the Community Forest Rights (CFR). This has been a major gap in understanding the FRA at the government level as well as at the civil society level. Besides, there are specific provisions for the PTGs, pastoral, and pre-agricultural nomadic communities displaced under the FRA, which has been a non starter in the state. In this regard also, there has been complete lack of clarity at the government as well as the civil society levels.

Table 2: Timeline of FRA Implementation in the Study Area

1	2	3	4	5	6	7	8	9	10
Name of the District	Name of the Village	Presence of Community Forest, (area in Acre);whether applied under section 3.1 of FRA	Whether under Joint Forest Management (JFM)?	Capacity building of FRC	Invitation by FRC to submit claims: (a) individual (b) collective	Process of submission of claim by FRC on behalf of Gram Sabha	Field verification of claims followed by Resolution of Gram Sabha over claims for recommendation	Verification of claims and preparation of record by SDLC	The approval of claims by DLC and distribution of Title
Deogarh	1. Brahmanimal (15)	00	Yes	Yes	May 2008	June 2008 A	Completed	Completed	A
	2. Rambhei (15)	00	Yes	Yes	May 2008	June 2008	Completed	Completed	A
	3. Rangamatia (10)	400 (No)	No	No	May 2008	Yet to be done	Yet to be done	Yet to be done	Yet to be done
	4. Chandankhunti (15)	1100 (Yes)	No	Yes	April 2008	June 2008	Completed	Completed	A
	5. Burodhi* (15)	150 (No)	Yes	No	April 2008	June 2008	Completed	Completed	A
	6. Anandpur* (15)	00	No	No	April 2008	June 2008	Completed	Completed	A
Sambalpur									

Col. 2: Figure in the bracket represents total number of members selected for the FRC.

Col. 6: Community claim were made only in Chandankhunti (for 1100 acres) village for which verification is not yet done. Even though community forest present in two other villages (col.3), villagers have not applied for it. Because, they didn't have information about CFR.

Col. 8: A = Joint verification was conducted in the villages by officials from the Forest Department and Revenue Department in the presence of FRC members and the claimants. Except in Rangamatia it has been completed in all other studied villages and Gram Sabha has passed resolution in support of it

Col. 10: A = The titles have been finally approved by the DLC and distributed to the beneficiaries.

Outcome of FRA at different institutional level in Odisha

The position with regard to the progress of implementation of the FRA in Odisha up to June 2013 December 2012 is discussed below:

Table 3: Progress regarding the Distribution of Individual and Community Claims under FRA in Odisha up to June 2013

Particulars		Status		
		Total	Individual	Community
1		2	3	4
1	Number of claims filed at <i>Gram Sabha</i> level*	5,32,464	5,29,160	3304
2	Number of claims recommended by <i>Gram Sabha</i> to SDLC	4,12,458	4,11,008	1,450
3	Number of claims recommended by SDLC to DLC	3,17,995	3,16,994	1001
4	Number of claims approved by DLC for title	3,09,564	3,08,662	902
5	Number of titles distributed	3,01,200	3,00,321	879
6	Extent of forest land for which titles distributed (in acres)	5,39,277.45	4,84,025.80	55,251.65
7	Average amount of land distributed per title holder (in acres)	1.80	1.62	64.25
8	Number of claims rejected**	1,31,817	1,31,208	609
9	Percentage of claims accepted by SDLC to total claims received by SDLC	77.10%	77.16%	69.04%

Source: Government of India, Ministry of Tribal Affairs, 2012.

Note: *It is to be noted that the number of claims received at the *Gram Sabha* level has increased from 4,08,560 during October 2010 to 5,32,464, by the end of June 2013 i.e. an increase of 1,23,904 during two years. Out of this increase a major proportion of these were during November 2010 to October 2011. This is due to some efforts for increased awareness and capacity building by civil society and other and certain clarifications relating to implementation process by the state in recent past.

**Out of the 4,87,728 claim forms received at the *Gram Sabha* level up to April 2011, 7.14% have been remanded to lower level (such as SDLC and *Gram Sabha*) and 15% are pending, without processing, at different levels.⁸

⁸ The rate of rejection of FRA claims are high for other states including Andhra Pradesh (46.43%), Bihar (56.11%), Chattisgarh (55.4%), Jharkhand (40.37%), Madhya Pradesh (68.10%), Uttar Pradesh (79.10%) and West Bengal (57.28%) (See the Status Report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 30th June], Ministry of Tribal Affairs, New Delhi).

After the formation of FRCs by the *Gram Sabha / Palli Sabha* in 47,345 villages, about 5,29,160 individual claims and 3304 community claims were submitted to the *Palli Sabha / Gram Sabha* by the end of June 2013. The *Gram Sabha* has recommended 4,12,458 claims (4,11,008 individual and 1,450 community) to the SDLC after verification. The SDLCs, after joint verification of the claims and agreed by the *Gram Sabhas*, have recommended 3,17,995 to the DLC for final approval. Finally, the DLCs have approved and distributed 2,99,878 claims (2,99,018 individual⁹ and 860 community). The area involved in the case of individual claimants was 4,84,025.80 acres of land, which amounts to 1.62 acres of land per family, while in the case of community claims, it was 64.25 acres of forest land per group¹⁰. It is to be noted that 77.1% of the claims received at the SDLC level were finally approved at the SDLC level.¹¹

However it is to be noted that out of the 21 *lakhs* tribal households in the state, more than four-fifth of them live in forest-fringe villages and majority of them live in scheduled areas. Most of them may be cultivating forest land. In such a situation the number of three *lakhs* tribal households getting land rights under FRA appears to be low given their large numbers. Many of tribal households may have been excluded from FRA fold because the process has not spread adequately in the state and many are not aware of it.

Further, the claims submitted by non-scheduled tribe claimants have not been taken of till date and it has not been officially publicised. As a result many of the OTFDs claimants have not applied under FRA or those who have applied their applications have not been processed. Presumably the implementing agencies feel that this category of households may not be in a position to provide evidence of possession the land of 75 years even though the Act required 75 years of residential proof of potential beneficiaries.

⁹ It is to be noted that in many cases the individual titles given to the claimants are vaguely worded without clear maps or any boundary, area etc. This may lead to conflicts or exclusion of these title holders vis-a-vis the forest department later (Manthan 2010, pp-77). It has also been found that many claimants who have given titles on land, the amount of area is far less than the area they have been possessing and cultivating for long years in certain villages of Keonjhar and Deogarh district of Odisha (see also AITPN 2012, pp-16).

¹⁰ It is to be noted that the High Court had given an interim order not to distribute final titles to the claimants until its stay is vacated; but there was no bar to expedite the finalisation of the claims forms at different levels. On the intervention by the state government, the High Court has vacated the interim stay on 16 August 2009. As a result, the distribution of land titles began in the state since 2009. Symbolically, it began from the district of Koraput. However, in the district of Kandhamal the progress of implementation was minimal due to communal tension and conflict between tribals and non-tribals on land issues during the initial period (i.e., up to March 2009).

¹¹ At all India level the rate of rejection is around 46.7% as compare to around 24.8 % in Odisha.

Even the claims submitted by women households have not been accepted leading to gender discrimination. Further, the case of PTG who's community stay in forest across the states in one area the tribe is considered under FRA but same tribe is not treated equally in other area. Similarly there are many cases where the implementing agencies at the SDLC/DLC level have rejected the claim forms on the ground that the plot claim is not considered as forest land although it is forest land as per FRA according to the state circular indicating that they are eligible (Government of India 2010). All these lead to deterrence for the potential claimants coming under this category.

Community Claims

Community Forest Right allows community groups to encourage and organise forest protection efforts at local level in return for harvesting and marketing of Minor Forest Produce. It is also a dependable source of livelihood for them. But the emphasis on providing such rights by the implementation agencies has been lukewarm since the beginning on the implementation of FRA. By the end of June 2013 about 3304 community claims have been filed at the FRC level in the state. Out of this 879 titles, on a forest area of 55,251.65 acres, have been issued and 73% claims have been rejected (Table 3. Col. 4). But many of the titles issued are not community rights under section 3 (1), but developmental facilities under section 3 (2) of the Act¹². The community claims and titles issued so far if compared with the number of forest fringe villages in the state which is 29,302 (about 60% of the total villages of the state) and the number of villages protecting forests which is around 12, 000 is meagre (Kothari 2011a). This is due to the fact that there was ambiguity in the interpretations by the implementing agencies on the various type of CFR, the procedure of claiming and how the claims should be mapped and processed and over emphasis on individual rights. Further, lack of awareness campaigns by the implementing agencies, lack of supply of appropriate forms, and opportunistic behaviour of some individual households that were not interested for

¹² As per the provision of FRA, the Section 3 (1) of FRA allows the individual/community rights to be claimed for habitation and self-cultivation of forest land. But in practice, majority claims for habitation and self-cultivation have been submitted as individual claims. Where as the Section 3 (2) of FRA is for allotment of forest land for infrastructural development. In state like Odisha out of the total number of CFR title distributed a major proportion of them are distributed for the infrastructural development (i.e. claim under section 3.2). This has not much impact in improving the livelihood of the forest dependent community as it does not pertain to access to forest products by them. The Tribal welfare department is not giving separate list of figures for distribution of ownership rights under these two different categories.

such claims¹³ (Mahapatra et al, 2010), are responsible for this situation (Kothari 2011b). As mentioned earlier there was no political pressure for implementation of Community rights on forest.

V

Conclusion and Way Forward

A critical analysis of the process and outcome of the reforms in forest tenure such as implementation of FRA 2006 at different institutional level; clearly highlights the need for closer scrutiny of community rights under the Act, pointing out that state governments have been paying inadequate attention to its last mile implementation. The FRA amendment rules mandate the issue of CFR titles for every forest dwelling village; and in cases where this is not possible to issue the same, the DLC must give a proper written explanation. The implementation as well as the operation is crucially linked to grass-root governance, which is possible only by empowering the *gram sabhas* to take control of the implementation thus protecting the rights of tribals and other forest-dwelling communities.

The FRA is a landmark in the struggle of forest dwellers and other tribes for legal recognition of their environmental rights over forests. It has definitely has converted key environmental interests of forest dwellers into environmental rights that could be enforced by courts. The strength and value of the FRA, however, has been diluted by the rules that have been approved for its implement and by the rules that are missing, leaving gaps instead of covering the entire charter of forest rights (Perera 2009). However, in September 2012 the MoTA came up with a notification on various changes and amendments called (Recognition of Forest Rights) Amendment Rules 2012¹⁴. As is often said, India has some of the best environmental and human rights legislations among all countries, but their implementation is often poor. One problem is that many laws seem to contradict each other, or contain self-contradictory clauses. This is particularly evident in the FRA 2006, which has been rightly celebrated as a milestone, granting the tribals and other forest dwellers their natural rights, which were long overdue (Padel 2012). There is no doubt that the Act has provided a stopgap

¹³ Some individual claimants, who are influential in the villages, felt that if community claims for forest resources are filed then the individual claims for forest land may not be considered for them. We found that in many villages where there is community management of forest (as is the case in Deogarh district), individual claims have been submitted by the claimants.

¹⁴ See, *The Gazette of India Extraordinary*, Part- II, Section-3, Sub-section-(i), September 6th 2012, Ministry of Tribal Affairs, New Delhi.

measure for movements opposing dozens of destructive displacement projects that cannot proceed until the forest rights have been settled.

Another implementation problem with the Act is that it marginalises community rights claims compared to individual rights. Applications for community rights are harder to make and few have been granted. On the other hand, granting individual rights to forest plots may undermine the essence of tribal culture and the future growth of forests (Sharma 2006). Hence, processing community claims over forest is probably the best way to ensure tribal communities' long-term food security. However, it is only in last week of November 2012 that the Government of Odisha issued instructions to the implementing agencies at the district level (collectors) to emphasise the implementation of community forest rights¹⁵.

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

Further, lack of information/dissemination regarding the provisions of the Act has also prevented stakeholders from submitting their claims to the authorities. Similarly, lack of co-ordination between government departments, corruption, and attempts to use forest land for development projects and commercial plantations, are also important constraints to the implementation of the FRA. At its first joint meeting on 17 May 2010, the national FRA committee stated on the issue of titles that “the high rate of rejection without field verification by the officials has made a mockery of the provision of the law” (Government of India 2010).

¹⁵ The circular, dated 26 November 2012, by the ST and SC Department of the Government of Odisha, is as follows: the FRA amended rules September 2012 have put a thrust on settling community rights through a new format of application for community forest resources. Consequent upon the amendment, the definition of “the disposal of minor forest produce” has been expanded to include the right to sell as well as individual or collective processing; storage, value addition, and transportation within and outside forest area through appropriate means of transport for use of such produce.

It is also expressed that claims are often rejected without even informing the applicant and in most cases no reason is cited. At the same time the claims are settled without proper verification and survey (ibid.). All these facts and findings lend credence to the evidence of the very poor performance of the FRA in India as a whole during the last few years after it was enforced. This illustrates the difficulties of granting formal property rights to the forest-dwelling peoples and the communities.

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

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

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

References

- Ascher, W., 1999. Why Governments Waste Natural Resources: Policy Failures in Developing Countries. The John Hopkins University Press, Baltimore & London.
- Asian Indigenous and Tribal People Network (AITPN) (2012): “The State of the Forest Rights Act: Undoing of Historical Injustice Withered”, *AITPN*, New Delhi.
- CSE (2008): “Rich Land Poor People”, *6th Citizen Report*, Centre for Science and Environment, New Delhi.
- Forest Survey of India (2011): State of Forest Report 2011, FSI, Dehradun.
- Government of India (2007): *The Gazette of India (Extraordinary)*. Part II- Section I. Delhi. 2 January, Ministry of Law and Justice (Legislative Department), New Delhi.
- Government of India (2008): *The Gazette of India (Extraordinary)*. Part II, Section 3, Sub-Section (1), January 1, 2008, Ministry of Tribal Affairs, New Delhi.
- Government of India (2008): Development Challenges in Extremist Affected Areas: Report of an Expert Group to Planning Commission, New Delhi.
- Government of India (2010): “Manthan”, Report by National Committee on Forest Rights Act (A Joint Committee of Ministry of Environment and Forests and Ministry of Tribal Affairs), December.
- Government of India (2011): “Press Note on Poverty Estimates”, *Planning Commission*, New Delhi.
- Government of India (2012): *The Gazette of India (Extraordinary)*. Part II- Section 3 (i). Delhi. 6th September, Ministry of Tribal Affairs, New Delhi.
- Government of India (2012): Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 31st March, 2013], Ministry of Tribal Affairs, New Delhi.
- Mahapatra L.K., (2005): Tribal Rights and Entitlements in Land, Forest and Other Resources. Paper prepared for the UNDP Orissa Resettlement Policy Project.
- Padel Felix, (2012): How Best to Ensure Adivasis’ Land, Forest and Mineral Rights?, *IDS Bulletin*, Volume 43, Number S1, July, Blackwell Publishing, Oxford, UK.
- Parera Jayanta (2009): Land and Cultural Survival – The Communal Land Rights of Indigenous Peoples in Asia, *Asian Development Bank*, Philippines.
- Reddy, M. Gopinath, Kumar, K. Anil, Rao, P. Trinatha and Baginski, Oliver Springate (2011): “Issues Related to Implementation of the Forest Rights Act in Andhra Pradesh”, *Economic and Political Weekly*, April 30, 46 (18), pp-73-81.
- Rights and Resources Initiative (2012): “*Deeper Roots of Historical Injustice: Trends and Challenges in the Forests of India*”, Washington, DC: Rights and Resources Initiative.
- Sampat, Preeti (2013): “Limits to Absolute Power – Eminent Domain and the Right to Land in India”, *Economic and Political Weekly*, May 11, Vol-XLVIII, No-19, pp-40-52.
- Sarangi, T.K. (2013): “Legalising Rights through Implementation of Forest Rights Act 2006: A Critical Review on Odisha and Jharkhand”, *Working Paper No. 126, RULNR Working Paper No. 20*, Research Unit for Livelihoods and Natural Resources, Centre for Economic and Social Studies, Hyderabad.
- Sarap, K, T.K. Sarangi and J. Naik (2013): “Implementation of Forest Rights Act 2006 in Odisha: Process, Constraints and Outcome”, *Economic and Political Weekly*, September 7, Vol. XLVIII, No. 36, pp- 61-67.
- Sarap, K & T.K. Sarangi (2009): “Malfunctioning of Forest Institutions in Orissa”, *Economic and Political Weekly*, September 12-18, Vol-44, No-37, pp-18-22.

- Sarap, K & T.K. Sarangi (2010a): “An Analysis of Working of Forest Institutions in Orissa”, *Journal of Social and Economic Development*, Volume 12, No 2, July-December, pp-193-210.
- Sarap, K & T.K. Sarangi (2010b): “Factors Contributing to Erosion of Access to Forest and Private Land in Contemporary Tribal Orissa” in Kailas Sarap (Ed.) “Institutions, Livelihood and Natural Resource Management”, Bookwell, New Delhi.
- Sarin, Madhu (2010): “Democratizing India’s Forests through Tenure and Governance Reforms”, *Social Action*, Volume-60, April-June, pp-104-120.
- Sathyapalan Jyotish (2010): “Implementation of Forest Rights Act in Western Ghats Region of Kerala”, *Economic and Political Weekly*, July 24, Volume-XLI, No-30, pp-65-72.
- Sharma, B.D. (2006): “Forest Rights Act 2006: Undermining the Foundational Position of the Forest”, *Economic and Political Weekly*, 46 (15).
- Springate-Baginski, Oliver., M. Sarin., S. Ghosh., P. Dasgupta., I. Bose., A. Banerjee., K. Sarap., P. Misra., S. Behera., M.G. Reddy and P.T. Rao (2009): “Redressing ‘Historical Injustice’ through the Indian Forest Rights Act 2006 – A Historical Institutional Analysis of Contemporary Forest Rights Reform”, *Discussion Paper Series*, IPPG, School of Environment and Development, University of Manchester, Manchester.
- Springate-Baginski, O., Madhu Sarin and M. Gopinath Reddy (2012): “Resisting Rights: Forest Bureaucracy and the Tenure Transition in India”, *Small Scale Forestry*, Published online, 09 October, Springer.
- Vasundhara (2011): Report of the National Workshop on Management of Community Forest Resources under Forest Rights Act, 2006, 26-27 March, Bhubaneswar.

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