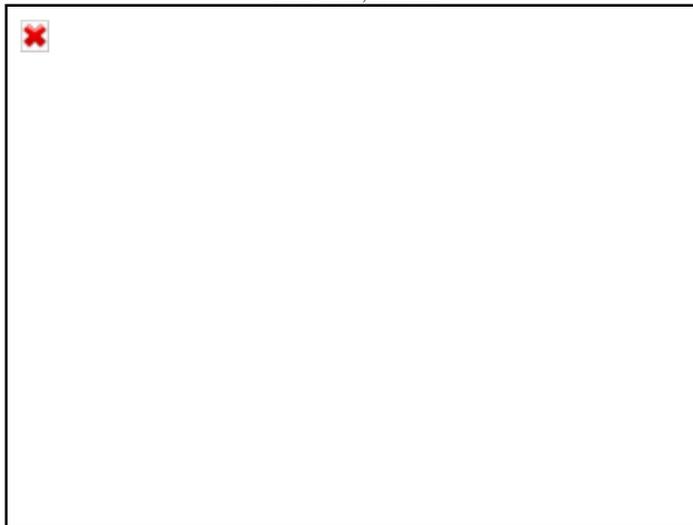


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NEEMA PATHAK AND ARSHIYA BOSE

The FRA provides an opportunity to resolve a number of issues that have plagued forest management in India for decades.

MANDAL, ATREE



A Group of Soligas, a forest-dependent community, with the customary forest resource mapping of the Biligiri Ranganaswamy Temple Wildlife Sanctuary in Karnataka.

THE Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, or Forest Rights Act (FRA) in short, was heavily debated right from its inception up to its coming into force on December 31, 2007. While most of the arguments that preceded its notification focussed on the perceived positive or harmful effects of the Act, they are yet to become evident. The Act recognises four main rights: (i) the right of traditional forest dwellers to claim forest land held before December 13, 2005; (ii) the right of the government to divert forest land for 13 kinds of development activities, including building of schools, hospitals, aganwadis and roads; (iii) the rights of individuals and a community as a whole over minor forest produce, grazing land and water resources, and so on; and (iv) the right of communities to protect, conserve, regenerate or manage any forest or community forest resource that has been traditionally protected.

Some of the concerns raised about the FRA relate to individual holdings of forest land and development activities on them. Many people fear that indiscriminate regularisation of forest land could encourage encroachments on forest areas. It is also felt that any emphasis on private landholdings will lead to further individualism among communities instead of fostering a community feeling. Additionally, the provision of development facilities could lead to

fragmentation of forests and open up the possibilities of misuse of the Act.

The pace of implementation of the FRA has varied from rushed to relaxed in different States. The various awareness campaigns undertaken by non-governmental organisations (NGOs) and government agencies during the past year have focussed on a few provisions rather than the Act in its entirety. As a result, the thrust of the implementation so far has been on claiming individual rights to land. Community rights have remained largely invisible.

Why are community rights important? Across India, forest-dependent communities have access to and use most forests. While in most cases these communities do not have the legal rights to use the forests, their *de facto* management of the forests lies with the community as a whole rather than individuals or households. In many cases, community resource use is considered more equitable since through this model most or all households within a community, including the poor and the landless, can gain access to resources. Given that forest resources are crucial for survival, forest-dependent communities have used elaborate systems of resource use. These include well-defined boundaries and regulations regarding the time and amount of utilisation.

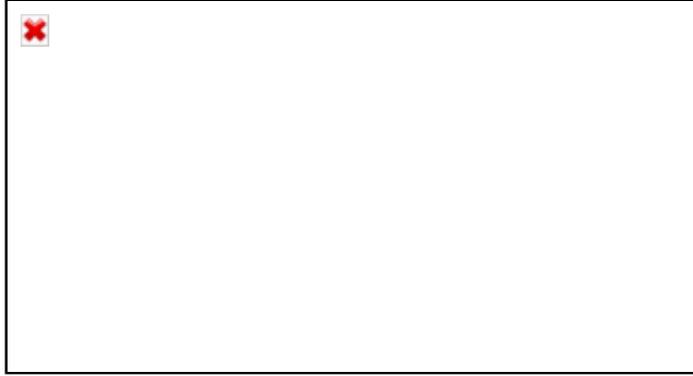
However, over the years a number of factors and complicated ground realities have broken down some of these community systems. One such factor has been the takeover of natural resources by the state. As the state assumed control over natural resources, forest-dependent communities experienced a sudden lack of access to, control of and responsibility over them, resulting in the indiscriminate use of common forest resources. While the use of forests is illegal, it is done informally under the watch of some forest staff, resulting in acts of bribery and harassment. Overall, a deeply negative relationship has developed between forest officials and communities living around the forests. The outcome of this complex situation is that forest areas that were once managed by these communities have become degraded.

Given this situation, it is imperative that communities claim community rights under the FRA. Otherwise, the current conflict between the Forest Department and the people will worsen. This means that the state could at any time, and without prior notice, restrict access to forest resources on the grounds that the communities should have claimed the rights when the opportunity was presented under the Act. The absence of tenure security brings about a lack of involvement among the local communities in the well-being of forests.

On the other hand, there are several communities that even today remain closely linked to the forests around them. They are known to protect patches of forests although they have no legal mandate to do so. The reasons for such protection include sustainable use, religious beliefs and conservation of biodiversity. However, many of these protected sites are threatened by local conflicts and development projects and often require some form of legal protection. The FRA provides one of the few spaces available in the legal system to support such conservation efforts by communities. The most important aspect of the Act is that while supporting community-protected sites it does not prescribe a uniform blueprint for management of forests by these communities. For example, it does not specify the role of local institutions or the rules and regulations. Given the diversity of forest management systems in India, this flexibility will help a number of community-conserved areas to bring their own systems of management under a legal umbrella.

Strong tool

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A community-conserved forest at Mendha-Lekha village in Gadchiroli district, Maharashtra.

The FRA could become a strong tool for forest-dependent people who have been struggling to protect the forests and their resources from being diverted for development and industrial projects. The community rights provisions of the Act can be actively used to fight the ecological destruction wrought by such projects. Currently, much of the diversion of forest land for industrial use is done without taking into account the importance of the area for the survival of biodiversity, local cultures and livelihoods. If forest dwellers claim community rights, their consent will have to be sought when forest land is allocated for industry. In Dhinkia village in Orissa, the gram sabha has passed a resolution stating that the forest land meant to be diverted for a POSCO steel plant is actually a “community protected forest”, which is to be claimed under the FRA.

Even in cases where community-managed forests are acquired for setting up industries, people will have far greater bargaining power in respect of compensation provided their rights are recognised. As things stand now, either compensation is not paid or, if it is paid, it is not fully reflective of the full range of benefits that forest-dependent communities avail themselves of from the forests. Usually, only land use is accounted for. Claiming community rights would ensure not only that the loss of use of forest resource is compensated for but also that all members of the community (including the more marginalised) are adequately compensated.

Additionally, in the absence of adequate compensation and alternative livelihood options, many communities displaced by development projects have occupied more and more forest lands. An increasing population, occupation of forest land by powerful local individuals, the failure of communities to take stock of the situation, and other socio-economic factors have made communities shift their focus towards individual land ownership instead of community management. Fresh encroachments upon forest land in anticipation of its being regularised under the FRA could become a major cause for concern.

While law enforcement is one possible solution, establishing resource rights for the communities could be another. The premise of this argument is that a community is not likely to tolerate encroachment on its communal forest. In Mendha-Lekha village in Gadchiroli district of Maharashtra, the residents have increasingly moved from individualism to community resource management by adopting principles such as *gram dan*.

It is hoped that many communities can use some provisions of the FRA (specifically, Section 3(1) (i) and 5) to support their conservation efforts and to manage forests as a community entity. However, as of date, this remains a hope since only a few communities have come forward to claim their protected forests under the Act.

Why then have community rights not been claimed? The answer to this could lie in the complicated application process. The Act specifies a three-month deadline to file claims. However, for forest-dwelling communities, this is a complicated and unfamiliar process. Across the country, the implementing agency, the State Tribal Welfare Departments, have conducted only a few training programmes for local officials. The multi-department sub-divisional level committees have not adequately provided translated copies of the Act, claims forms and training material to forest dwellers. The awareness exercises have mainly focussed on individual land claims, and in many areas the application forms for community claims are not even available. Additionally, given the “illegal” nature of the land they occupy, the fear of eviction, and the means often adopted by the state to evict them such as burning of crops, it is not surprising that achieving some security for individually held lands is of primary concern to these communities.

It is imperative that the Tribal Welfare Departments explain the full range of provisions of the FRA in order that communities make informed decisions. Many forest rights activists have suggested that the State governments call a special gram sabha meeting to discuss community rights after the process of claiming individual rights is completed. This would ensure that communities and officials are not bogged down by the complications of having to deal with two kinds of unfamiliar processes. It is also crucial that the State governments issue a clarification on how to claim community rights to protect forests since this option does not exist on the Government of India claims form.

The State governments could perhaps take their cue from organisations such as the Dahanu-based Kashtakari Sangathana in Maharashtra and Vasundhara, an NGO working primarily in Orissa on natural resource management, among others, which have worked out a process for claiming community rights. The governments could provide a set of guidelines based on the experiences of these organisations.

It is crucial for the State governments, forest-dwelling communities and civil society organisations to work on a post-claims scenario where the rights accepted under the Act would get exercised. One key issue needing resolution is the nature of the relationship that is to ensue between a community and its local institutions and the Forest Department. The Act is silent on how conservation duties will be distributed among these actors or through what mechanism community conservation practices will be incorporated into forest management plans. Discussions are also needed on how to monitor the protection, management and use of a forest. Clear systems of checks and balances need to be incorporated to ensure that the exercising of rights does not damage forest resources.

The State governments would do well to create a multi-stakeholder think tank, which could jointly prepare guidelines on how to operationalise the community’s conservation rights. This would include developing a mechanism for effective and equitable joint management of resources and institutions of dialogue between various actors. The FRA provides an opportunity to resolve a number of issues that have plagued forest management in India for decades. State governments and civil society organisations must make the best use of it.

The authors are members of Kalpavriksh Environment Action Group based in Pune.

