

## **Community Forest Rights: A Revolution in the Making?**

**Ashish Kothari**

A quiet revolution may be brewing over a quarter of India's landmass. Very slowly, almost imperceptibly, communities are beginning to challenge centralized state control over forests, and assert their local governance. They are reclaiming their rights to use and manage forests, using the space available by new legislation. How far they will succeed, will depend on how well they are able to organize themselves, how much civil society helps them, and how serious the government is in implementing its own policies.

The context for this probable transformation is the Scheduled Tribes and Other Traditional Forest-dwellers (Recognition of Forest Rights) Act 2006, also called the Forest Rights Act (FRA). Section 3(1) of the FRA provides several kinds of rights to communities: traditional use rights such as *nistar*, right of ownership (i.e. access, use and disposal of) minor forest produce (MFP), rights over the products of water bodies and grazing grounds, habitat rights of Primitive Tribal Groups (PTGs), and rights to manage community forest resources, amongst others. Section 5 empowers and enjoins upon communities the duty to protect forests, wildlife and biodiversity, safeguard their habitat and cultural heritage from destructive practices, regulate access to forest resources, and ensure that adjoining catchment areas and water sources are protected. This is so not only where community forest rights are vested, but even where individual rights are recognized. Rules under the Act mandate the gram sabha to set up a committee to take on these functions.

### **The Revolutionary Potential**

Taken together, the FRA's provisions have the potential to radically transform forest governance. It is not as if legal provisions for community rights and management have not existed before. Even as the colonial government took over forests in much of India in the 19<sup>th</sup> and 20<sup>th</sup> centuries, it provided for community management under the Village Forests clause of the Indian Forest Act 1927. But this has hardly ever been used in the 80-plus years of the Act's existence. Amongst the few long-standing community governed forests with legal backing, other than in several parts of north-east India where forest ownership has always remained with communities, are Van Panchayats in Uttarakhand and forests under the Chhota Nagpur Tenancy Act in Jharkhand. However, forests in the vast part of India have been under the control and management of the Forest Department. While the Department has done its job with a mix of commitment and callousness, one clear result of such centralized governance has been the alienation of tens of millions of forest-dwellers from their surrounds, constant harassment and suffering, and the erosion of their own customs, institutions, and knowledge related to forests. This is a recipe for disaster, as forests simply cannot be conserved in the midst of hostile and dispossessed communities. Every country of the world has begun to realize this.

The FRA could help avert such disaster. For several hundred million people, secure access to forest produce would be a crucial boost to livelihood security. It could also provide the crucial incentive for them to invest their time and effort into long-term conservation of these forests. The potential for this is shown at the several thousand sites where communities have, on their own or through official schemes like Joint Forest Management (JFM), shown that they can conserve forests. Orissa alone has over 10,000 such self-initiated efforts; and official figures put the spread of JFM at 22 million hectares, managed by over 100,000 committees. The JFM figures are most likely an exaggeration, with many committees being only on paper, and the JFM scheme suffers from seriously iniquitous relationship between the Forest Department and communities. But if even a fourth of this is working on the ground, it shows the potential spread of community-based forest management.

### **Ignorance and sabotage**

Overall figures of the implementation of the FRA put together by the Ministry of Tribal Affairs (MoTA) sound impressive. As of February 2011, some 3 million claims have been made, and about 1.12 million titles to forest land given. One of the sorry facts these statistics hide, however, is the abysmal status of community forest rights (CFR) claims. The vast majority of the claims processed so far have been for individual plots of land (though even in these there are severe problems, as brought out by the MoEF-MoTA Joint Committee on the FRA, at <http://fracommittee.icfre.org>).

According to a 10-year-old estimate by the Forest Survey of India, about 170,000 villages have forests within their boundaries, covering about 32 million hectares (half of the total forest cover of the country). So there should have been at least as many CFR claims. But according to the MoTA, only about 51,000 CFR claims have been made (as of February 2011). The situation is actually worse: many or most of these were claims to development projects that the FRA allows (roads, transmission lines, health and educational centres, and so on) and not to the use and management of forest resources. Most States have not disaggregated the data regarding these two different kinds of community rights, and MoTA does not seem to be asking.

The abysmal failure with respect to CFR is a result of several factors. Much of the focus of the FRA implementation has been on individual land rights, with both state governments and civil society organizations believing that this will generate much greater political support than CFRs. Partly as a result of this, communities and officials in many parts of India, , simply do not know about these provisions, or are not aware how to use them. In the hills of Uttarakhand, where the community-forest interface is intense and age-old, ignorance of the FRA and reluctance of the state government to start the process, has meant that not a single claim has been made.

A widespread bit of misinformation is that CFRs do not provide anything more than what communities already enjoy under the Indian Forest Act, or under JFM. Yet another wrong impression that has spread is that CFRs (or FRA in general) cannot be claimed in wildlife protected areas, especially tiger reserves. MoTA and MoEF in fact had to issue a

clarificatory circular informing states that the FRA does apply in such areas. There however remains widespread resistance from the forest bureaucracy, which either feels threatened by the community empowerment that would ensue, or fears that communities will not be able to ensure the protection of forests. In Mt. Abu area, CFR claims were reportedly rejected as the area is an Eco-sensitive Area.

Villages with a predominance of non-scheduled forest dwellers are also being denied, or their claims put on indefinite hold, because state governments have decided to give rights only to scheduled tribes or are insisting on proof of 3 generations (75 years) occupation of the land, whereas the FRA simply requires proof of residence for this period.

Even where CFR claims are being considered, there are many delays and distortions. In Ranpur block of Orissa, for instance, where over 100 villages have made CFR claims, several are pending for the last 2 years. In several states the Forest Department has artificially restricted the claims to boundaries set under JFM or related schemes, though the FRA recognizes rights over the entire customary use area of a community. This is widespread in Andhra Pradesh, for instance. In several villages, such as Brahmanikumbei in Ranpur block of Nayagarh district, Orissa, the CFR area over which rights have been recognized is much less than what the village has been protecting and had claimed. In Chhattisgarh, tiny patches are being given as CFRs, with the Forest Department retaining control over most forest. Yet others who have got titles have various kinds of conditions imposed on them, e.g. in Rajasthan some villages have got limited management rights by the Department retaining powers to make closures or carry out other operations. Other titles have omitted to mention specific forest produce that is crucial for villagers, such as bamboo (in Orissa), tendu and gum (in Rajasthan), while listing what all they are given rights to.

Yet another problem being faced by communities that have received CFR rights, is the refusal of the Forest Department to issue transit permits for the sale of their produce outside the village. Mendha-Lekha village in Maharashtra, for instance, has not been able to sell bamboo for over a year since it received the title to its CFR.

The denial of transit permits is part of a larger and long-standing malaise afflicting community access to bamboo. Despite the fact that its use is vital for the livelihoods of millions of families, the Forest Department has kept a tight leash on its utilisation and sale by declaring it a timber, notwithstanding the biological fact of its being a grass. Finally when the FRA has listed it as 'minor forest produce', the MoEF has had the good sense to declare it as such. In a circular issued on 21 March 2011, it has asked all state governments to facilitate its use and sale by villages, and where CFRs are obtained, to allow gram sabhas to issue transit permits. This is still, however, subject to gram sabhas making management plans for commercial use of bamboo, in consultation with the Forest Department, which could end up continuing the latter's dominant role in situations where the gram sabha is not fully empowered. The intent behind MoEF's circular will be tested as more and more villages get CFRs and attempt to benefit from bamboo sale.

**Good News**

Notwithstanding the overall dismal performance, the potential of CFRs is beginning to be felt wherever there have been pro-active organisations or officials. For instance:

- Several villages that have got rights are planning CFR initiatives. Mendha-Lekha and Marda villages in Maharashtra, amongst the first, have discussed possible management strategies, and what kind of role they want outside agencies like the Forest Department to play.
- Dozens of villages in Dangs and Narmada districts of Gujarat have formed committees for protection even before they have got CFR rights, and some have already caught truckloads of stolen wood or stopped bamboo felling by the Central Paper Mill. Villagers in Gadchiroli district of Maharashtra have removed encroachments by outsiders on their claimed CFR areas, and moved to take control over several wetlands forcing the government to withdraw fish contracts to outsiders.
- The potential conflicts that could arise by several villages claiming the same patch of forest have been resolved in several states by gram sabha representatives coming together for collective mapping, or coordinating their respective claims. At several sites such as villages in Dediapada (Gujarat) and in Ahmednagar (Maharashtra), they have also made room for the use of the CFRs by nomadic or seasonal users, who would otherwise have been left out of the process.
- CFRs are being claimed in several protected areas; in places like Badrama and Karlapat Sanctuaries (Orissa), Biligiri Rangaswamy Temple Sanctuary (Karnataka), Shoolpaneshwar Sanctuary (Gujarat), and Mudumalai Sanctuary (Tamil Nadu), communities are discussing possibilities of doing wildlife conservation, on their own or in collaboration with the Forest Department.

Though there is no comprehensive estimate, available information suggests that several hundred villages across many states have already claimed hundreds of thousands of hectares. This includes contiguous forest blocks that could enable landscape level community management over several hundred square kilometres such as in the sanctuaries, or the Ranpur block of Orissa, mentioned above. This still however, represents only the tip of the potential CFR iceberg.... or more appropriately, the undergrowth of a massive rainforest.

### **CFRs and Development**

The provisions of the FRA imply that communities should have a strong say in how forests and forest land over which they have rights, are to be used. As mentioned above, Section 5 empowers communities to protect their natural and cultural heritage in such land. Recognising this, MoEF in July 2009 issued a circular to all states, asking for proof of two things in any application for non-forest use of forest land (under the Forest Conservation Act 1980): that the FRA process has been completed for this land, and that the relevant gram sabhas have consented to its diversion for non-forest use.

The potential of the FRA to stop destructive development processes has already been shown by its use by the Dongria Kondh tribe to deny permission to Vedanta corporation to mine bauxite from its sacred hills. In a rare show of respect to this, MoEF rejected its application for mining, in 2010. However, in dozens of other cases both state governments and MoEF have violated the 2009 circular, by not requiring the relevant proof, or ignoring its absence. A blatant example of this is the Polavaram Dam in Andhra, yet another one is the POSCO steel plant in Orissa. In both of these, communities have objected to the proposals, and their FRA claims have not been processed, yet permissions have been given by the state and MoEF.

Nevertheless, the FRA, and particularly CFR rights, are likely to be a powerful tool in the hands of communities to stop activities that would be destructive to their forests and heritage.

### **The Way Forward**

Based on a detailed examination of FRA implementation, the Committee of MoEF and MoTA provided in December 2010 a series of recommendations on achieving the potential of CFRs. It urged a full new phase of CFRs, including widespread awareness and training, pro-active facilitation of claims by government agencies and civil society organizations, correction of distortions relating to boundaries and size mentioned above, replacement of JFM or other such schemes by CFRs, clear and unconditional titles, legal powers to gram sabhas to manage and protect CFRs, conversion of the Forest Department into a service and monitoring agency, denationalization of non-timber forest produce along with a support price by the government (such as in agricultural produce), and other such actions. It has also recommended changes in governance above the village, e.g. across larger landscapes and up to the state level, and pro-active facilitation by other government agencies in converging relevant schemes to aid in regeneration and restoration of degraded areas, enhancement of livelihoods, and appropriate developmental and marketing links. A special focus was recommended for disprivileged groups thus far left out of the FRA process, such as nomadic and settled pastoralists, shifting cultivators, forest villages, and Particularly Vulnerable Tribal Groups, for all of whom the CFR provisions of the FRA are especially relevant. The Committee also suggested that the July 2009 circular on development projects be put in as rules under the Forest Conservation Act or the FRA, to make it more strongly binding by law.

A national workshop on CFRs organised by Vasundhara and Kalpavriksh in March 2011, came up with similar recommendations based on detailed sharing of experiences from several states (see <http://www.kalpavriksh.org/laws-a-policies/tracking-forest-rights-act>, and <http://www.fra.org.in/>). It strongly demanded that government-dominated schemes like JFM and ecodevelopment be replaced by community-based or genuinely collaborative processes based on the FRA. A major stress was on empowering the gram sabha at the level of single settlements (hamlets, revenue villages, etc), to be the fulcrum of a decentralised process of planning and decision-making regarding not only forests but all natural resources and development. This would help dovetail various schemes and institutions together into a comprehensive livelihoods and conservation framework,

including those available under the National Rural Employment Guarantee Act, the Biological Diversity Act, the Panchayat (Extension of Scheduled Areas) Act, and others. Several villages in Maharashtra and Orissa have already moved towards such convergence.

These are other recommendations are before the government. Experience suggests that on its own, it will not act on the more radical ones, without continued civil society pressure. Meanwhile, communities will need to continue mobilizing to reclaim their rightful role in forest governance, and force policy changes and implementation by the government, if the full potential of the CFRs is to be achieved. This will not happen in a hurry. But a few slow steps in the right direction are better than rapid jumps in the wrong one.

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