Undoing Historical Injustice: The Indian Forest Rights Act, 2006

By Madhu Sarin
Unique Characteristics of the New Act

• Acknowledges historical injustice done to forest dwelling communities
• Challenges classification of tribal lands as state forests
• Spearheaded by alliance of grassroots movements, rights activists, academics & professionals,
• Tabled by Ministry of Tribal Affairs instead of by Ministry of Env & Forests,
Legal Context

- India has powerful forest & wildlife laws:
- The colonial Indian Forest Act, 1927 (Govt. can notify any ‘wasteland’ as state forest after settling pre-existing rights)
- Wildlife Protection Act, 1972 (Any area can be notified a sanctuary or national park)
- Forest Conservation Act, 1980 (central permission mandatory for diversion for non-forest use)
Judicial Interventions

• Indian Judiciary taken up mission of forest protection
• A forest PIL case since 1995
• Issued sweeping orders, most with drastic impacts on forest based livelihoods
• Little attention to governance issues – extreme centralization of power in forest bureaucracy
Trigger for the new Act

- MoEF’s May 3, 2002 order
- Evict all ‘encroachers’ by September 30
- Cited Supreme Court’s concerns
- Bet May 02 & Aug 04, evictions from 152,000 ha
- At 1 ha/hshld, 152,000 families or 750,000 impoverished people brutally evicted.
- No evidence of powerful forest land grabbers being targeted
Outrage & birth of ‘Campaign for Survival & Dignity

- Protests and demonstrations in several states.
- Lobbying with MPs, MLAs, state governments.
- Letters to PMO by Commissioner, STs.
- Issue reached Parliament
- Birth of CSD demanding **Right to Survive with Dignity**
MoEF and GoI response

- MoEF admitted that all forest dwellers without titles are not ‘encroachers’
- Affidavit in SC about ‘historical injustice’
- Asked state govt to stop evictions till rights examined
- Previous govt’s manifesto included stopping evictions
- Persistent lobbying led PM to ask MoTA to draft bill
Roots of the Problem: Unsound Land Classification & Definition of ‘Forests’

• Most forestry interventions a-historical
• Unquestioning acceptance of official ‘forest’ land classification
• Plantations on lands under other uses destroy livelihoods, rights, & biodiversity
Legal Construction of Indian Forests

• Colonial rule used two processes:
  • Appropriation of commercially valuable forests
  • Declaration of non-privatized commons as state ‘forests’ or govt ‘wastelands’
  • Decimation of communal tenures
  • Latter include large areas ecologically incapable of supporting forest cover (snow covered peaks, alpine grasslands)
Post-Independence expansion of the forest estate

- Poorly surveyed tribal areas declared ‘state forests’ without ecological surveys or recognition of rights.
- 60% forest cover in 187 tribal districts in one-third of country (a lot in the NE outside ‘state’ forests).
- Between 1951- 88, ‘national’ forest estate enlarged by 26 million ha (from 41 to 67 mha) through sweeping notifications
Disenfranchisement of Tribal Communities

• Deprived of:

• Customary resource rights

• Holistic landuse systems without rigid forest-non-forest boundaries

• Diverse traditional institutions

• labeled ‘encroachers’ on their ancestral lands.
Impact of FCA

- Trapped millions of forest dwellers as illegal occupants of their own lands through freezing unsound land use
- No public mechanism or consultation
- Centralised forest clearance through non-transparent, unaccountable process
- No compensation for lost rights
Dissonance between tribal and conservation laws

• Major violation of constitutional provisions for safeguarding tribal cultures, livelihoods and resource rights

• Widespread negation of communal tenures & land use systems through rigid application of conservation laws in tribal areas.
Tribal impoverishment through large scale displacement

• By 1990 about 8.5 million tribals (about 12.6% of all tribals) had been displaced by mega projects and Protected Areas.
• Tribals only 8% of the population but upto 55% of those displaced.
• 6.4 million displaced adivasis left to fend for themselves without any rehabilitation.
• No state accountability to those without recognised rights.
A new geography
Rich lands
Poor people
Re-invent growth
A Lot of legal ‘forest land’ is not legally notified

- All India Recorded Forest Area (considered ‘legal forest’): 774,740 km² (23.57% of country’s area)

- Consists of: RF = 51.6%; PF = 30.8%; 17.6% = ‘Unclassed’ forest (which not legally notified) (SFR 2003)
Dismal condition of land records

- Forest and Revenue records don’t tally
- According to MoEF, RFA = 77 million ha
- According to MoA, RFA = 67.87 mha
- 9.13 mha ‘disputed’ between them with millions of cultivators caught in the middle
Overall situation

- Poor procedures & unsound premises for defining forests and assembling the national forest estate
- Serious tenurial and land use conflicts, unclear boundaries, jurisdictional disputes between departments & communities
- Imposition of inappropriate management objectives on non-forest lands declared state ‘forests’ through sweeping notifications.
JFM privileged over resolving land conflicts

- 3 months after its June 1990 JFM circular, MoEF had issued circulars for:
  - FP (1) Review of encroachments on forest land.
  - FP (2) Review of disputed claims over forest land, arising out of (faulty) forest settlement.
  - FP (3) Disputes regarding pattas/leases/grants involving forest land.
- These still unimplemented while JFM attracted huge donor funding
Impact of PIL Godavarman case

• Aggravated crisis in forest and protected areas
• All regularisation of forest land occupation and conversion of forest villages stayed (despite the 1990 orders)
• Feb 2000 order banned removal of any forest produce from PAs- livelihood crisis for 3.5 to 4 million people
• Evictions order of May 2002
Impact of PIL Godavarman case 2

• Over ruled existing community tenures
• Appropriation of forest like lands without legal process
• Converted diversion into monetary exercise
• Empowered FD to collect NPV of others’ lands – eg Manipur
• Inaccessible to forest dwellers
FCA promotes structured Inequity

- All occupants with disputed claims on forest land equated with ‘encroachers’ despite being there since generations
- Legal permission to destroy rich forests and tribal habitats for mining, industry and hydro projects granted liberally without considering local rights.
Change of Goal Posts by the Forest Rights Act, 2006

- Objective - to undo historical injustice done to tribal & other forest dwellers in the consolidation of state forests
- “to recognise and vest the (listed) forest rights and occupation in forest land in forest-dwelling STs & OTFDs who have been residing in such forests for generations but whose rights could not be recorded”
Democratization of Forest Governance

- rights to include “responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance”
- To strengthen the conservation regime while ensuring livelihood and food security
- To make STs & OTFDs primary stakeholders in combining conservation with sustainable use.
Claimant Categories & types of Tenures

• Claimants can be individuals, families, groups & communities
• Granting of secure individual as well as community tenures
• Gram Sabha empowerment
• Clear recognition of women’s rights
• Rights to be heritable but inalienable
Categories of Rights to be Recognised

• rights to land for existing non-forest uses
• to customary community lands for usufructs and grazing including the right to protect, regenerate and /or conserve or manage ‘community forest resources’
• rights over NTFPs & habitat and habitation rights of PTGs & pre-agricultural communities.
• Other customary rights
Transparent process for Recognition

- the Gram Sabha (hamlet/village assembly) to initiate determination of rights in open meetings
- MoTA to be the nodal Ministry for implementation
- Sub-division & District level Committees of tribal, revenue & forest officials & elected local govt reps to examine Gram Sabha recommendations
Potential Outcomes

• Initiation of democratisation of forest governance 60 years after independence
• Poverty reduction thru livelihood & tenurial security thru declassification of non-forest lands as ‘forests’
• Creation of legal space for diverse community institutions managing their local resources
However, Goal Posts Changed

- Process of the Act’s enactment brought issues of forest rights on the national agenda for the first time
- MPs become aware of underlying issues
- Due to the Act being an outcome of grassroots demands, demand driven pressure for implementation is continuing.