

CAN FOREST RIGHT ACT-2006 BE AN EFFECTIVE INSTRUMENT IN REVERSING HISTORIC INJUSTICE DONE TO THE TRIBALS: A REVIEW OF ITS IMPLEMENTATION IN ODISHA

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Abstract: *The Schedule tribe and other traditional forest dwellers (Recognition of Forest Rights) Act 2006 has been considered a progressive social legislation and a democratic weapon in the forest to undo the historical injustice done to the tribal's since the time of British Imperial Government. The present paper is an earnest endeavor to respond very baffling and pertinent questions pertaining to necessity of the Act, its implementation and feasibility of the beneficiaries in securing their rights and what kind of rights do the forest dwellers get under this Act?. The paper seeks to unfold the conflicting currents of the problem of implementation of FRA in Odisha and suggest the way and means to address the implementation gaps through proper monitoring system, which has to be supplemented by an external agency through use of latest technology, involving civil society organizations for spread of information among tribal community about provision and benefit of the Act.*

Keywords: Historical injustice, Aboriginal, FRA, CFR-LA, CPR, PESA, CSOs, OTFDs, Democratic Decentralization, Community Governance, Sustainable Tribal Development

INTRODUCTION

India is home to one-fourth of the total indigenous population living in word which constitutes eighty-eight million Adivasis who constitutes 20.8 per cent of the total population of the country. But the irony is that these Adivasi communities were subject to continuous exploitation and dispossession by the non-aboriginal. In their own home land on which they were residing and cultivating for generations were denied any rights of ownership rather treated as 'encroachers'. The tribals were forcibly and systematically dispossessed of the resources of their homeland. Historically self-sufficient, forest based communities with independent cultural identities became subject to alienation, dispossession, exploitation and deprivation by the colonial Government, which subsequently also continued in independent India. The Forest Right Act of 2006, is a landmark progressive social legislation, a step towards addressing the life and livelihood challenges of these tribals and their prolong struggle for right over forest land and forest produce.

This Act is an ever democratic intervention to reverse the historical injustice done to the tribals for centuries restricting their access to forest resources through the implementation of various Forest Acts

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starting from the Indian Forest Act, 1864 declaration of the Protected Areas, and displacement and relocation of Forest dwellers for the establishment of various development projects like Dams, Ports and Irrigation Projects (Springate-Baginsk et al 2009, Bose, 2011; Agarwal 2011). In the nineteenth century, the British wanted unrestricted exploitation of timber by enacting the India Forest Act 1876 & 1927, whose primary intention was to take over the lands and deny the rights of the tribal and other forest dweller communities. The post-independent India also could not able to ameliorate the problems of the tribals rather multiplied with their increased victimization. The Forest Conservation Act 1980, while benefited mining Companies, industries, mafias and business houses, deprived lakhs of tribals their livelihood and forest land, those were rather treated as encroachers of their own home land. Again the new guideline and directive of the Ministry of Environment and Forest in 1990 evicted lakhs of tribals and other forest dependent communities all over the country. These interventions had a multiplier effect in terms of increased deprivation of the scheduled tribes (STs) and Other Traditional Forest Dwellers (OTFDs) with respect to the Forest resources uses (Agarwal, 2011).

Further, the tribal issue of land alienation and livelihood deprivation was much echoed in the current neo-liberal globalization policies, with their land, resources and forests taken from them for private capital in the name of economic growth. Unfortunately, even after 70 years of independence the tribal situation in India has not materially altered. Deprived by the British Colonialism, neglected by Post-independence Indian political classes, the tribals are now actively exploited by the modern economy of globalized world. There is still exploitation and dispossession of tribal continued to exist and off late the FRA 2006 has come into being as a great solace to the problems of the tribal by protecting their indigenous right.

OBJECTIVES

The objective of the present paper is (i) to examine how far FRA has become instrumental in reversing the historical injustice done to tribals. (ii) to examine how land alienation and deprivation of tribal owing to various restrictive forest policies prior to enactment of FRA 2006 contributed to backwardness of tribal communities in India and Odisha in particular (iii) to make a review of the implementation status of FRA Act 2006 in Odisha and find out the bottleneck in its effective implementation.

METHODOLOGY

This piece of research article follows historico-analytical method mostly relying on secondary sources of data i.e. books and research papers, Government reports, reports of various research institutes, NSS reports etc. Besides, Secondary data from various published or unpublished reports and studies to examine different causes of “exclusion” of tribes in Odisha are extensively used to meet the research objectives for this paper.

FOREST POLICY AND LAWS CREATED LAND ALLIENATION AND LIVELIHOOD CHALLENGES FOR TRIBAL: A HISTORICAL OVERVIEW

From the time immemorial and dawn of civilization forest was considered as the home of tribal and forest dwellers in the pre-British period. Managing the forest was purely a responsibility of tribal villages which was a perfect tandem balancing the eco-system and life and livelihood of forest dwellers. There was no restriction on them and had enjoyed absolute freedom. The British turned this social management into a matter of state. During the period of British Rule in India, in 1856 the then Governor General Dalhousie appointed Dietrich Brandis (Born 31.03 1824 and Died 28.05.1907), a German botanist from Bonn University, as the first Inspector General of Forests to the Government of India. In order to fulfill the demand for teaks by British Industries and protect imperial interest, Dalhousie suggested that the teak and timber should be retained as state property and trade in teak should be strictly regulated. So, the Forest Department first came into being in 1862. Under Dietrich Brandis, the forest Department was organized and the first Forest Act was enacted.

The Forest Act of 1864 was the first legal step to regulate the forest exploitation, management and preservation, an attempt to regulate collection of forest produce by forest-dwellers in favour of the “public benefit”. Its application was limited to the forests under the control of government and had not any control over forests under private ownership. The pace of Railway expansion from 1349 kms of track during 1860 to 51,658 kms in 1910 (GOI, 1964) indiscriminately destroyed the age old teak and timber forests of India. Railway requirements were „the first and by far the most formidable“ of the forces thinning Indian forests (Cleghorn, 1860, p-60). Brandis (1897) had observed that “each mile of Railway construction requires 860 sleepers, each sleeper lasting between 12 to 14 years. In 1870s it was calculated that well over a million sleepers were required annually. While European sleepers were imported in some quantities, the emphasis was always on substituting them by Indian timbers.” Although state control was not unknown in the early decades of colonial rule, the setting up of a separate department marked a qualitative shift in colonial perceptions of the strategic value of forests with an early attempt to enforce state monopoly over trees such as teak and sandalwood (Cleghorn, 1860). The tribal access to forest was further restricted with the enactment of a new Forest Act in 1875, classified forest into: (1) reserved forests, exclusively for the use of Forest Department except certain concessions like gathering of the fruit of the trees and cutting of the grass, on payment of small dues, (2) protected Forests, managed by the forest department but the people of surrounding villages had certain rights with them such as; gathering fruits and other produce of the trees, and cutting timber and wood specifically for the use of the villagers, but not for sale, freedom to graze their livestock and hunt wild game for domestic purposes and (3) village forests are community property of the villagers. Persons were to be notified to record their claims over land and forest produce in the proposed

reserved and protected forests. Trespassing or pasturing of cattle was strictly prohibited and imposition of duty on timber was introduced. Certain actions were declared as forest offences and violation of its provisions was prescribed with punishment in terms of fines or imprisonment. This was first step to curtail the age old practices followed by tribal people in order to safeguard the British need of forest produces. The forest legislation in the form of Indian Forest Act came into force in 1878 and settlement of forests was started around 1880 and classified forest into reserved forests, protected forests and village forests. The new forest regulations, embodied in the British policy formally initiated in 1894, negated the tribal conviction that the forest belongs to them.

The colonial administration in the name of forest regulation for public interest encouraged commercial exploitation of forests at the cost of forest-dwellers. Equipped with the legal power to maintain strict state control over forest utilization, the 1878 Act provided the underpinnings for the “scientific” management of forests to develop compact blocks of forest for commercial timber production. The revenue and surplus of forest department presented in a table below for information of readers to provide inputs to present how forests exploited for raising revenue in past years. The table exhibits that the department consistently generated surplus for colonial government. There were several factors contributed for consistent surplus from forest department includes demand for forest products such as fuel wood, furniture, timber for building doors/windows and other equipments by urban people. While supply was facilitated by the improved communications which the railway network brought about (Tucker, 1979). The Indian Forest Act, 1927 passed to increase government control over the forest lands and regulate people’s right over forest and produce based on the principle of ‘res nullius’ which implied that any property which does not have a documented legal owner can be appropriated by the government. Taken together, all the rights of the tribal people in the forest were called “nistari”, which means to be free (in this case exemption of tax). Execution of the Acts and rules by forest officials with the high-handed treatment and unjust execution on the part of forest officials made Von Furerhaimendorf (1982) to comment that, “thus arose a conflict between the traditional tribal ownership and the State’s claim to the entire forest wealth”(p-80).

Again keeping tribal plight in view Von Furerhaimendorf has pointed out that: Alienation of tribal lands cannot be prevented without depriving non-tribal landowners of the chance to enlarge their holdings, a curb on exploitation by moneylenders interferes with the activities of local businessmen, and any attempt to eradicate corrupt practices of minor officials diminishes the income of such persons are accustomed to derive from dealings with ignorant and illiterate tribal (P-48). After independence, there was some rethinking on the issue of forest policy. The National Forest Policy was issued as a Government of India Resolution in 1952. In this policy, the rights and privileges have been converted into mere concessions such as: a) to take the water for agricultural purposes; b) to take small timbers for making agricultural

implements; c) to remove the stones for the agricultural purpose; d) to graze the domestic animals in forest grasslands under passes; e) to hunt for small game which are normally eaten by the tribals; f) to collect fuel on head loads; g) to collect the minor forest produces (MFPs)/non-timber forest produces (NTFPs) and sell to the forest departments; and h) to perform slash and burn cultivation where they are permitted.

The NFP, 1952 provided for 33 per cent of the total geographical area under forest cover for restoration of sound ecology also viewed that the optimum requirement for a sound ecology. The National Commission on Agriculture (NCA) in 1976 recommended the classification of forests into a) protected forests-forests on hill slopes and other localities vulnerable to erosion and degradation; b) productive forests- the commercial forests for the production of timber for national economy; and c) social forests- on wastelands for satisfying the rural communities. It has been found that in case of agro-forestry and farm forestry the big farmers have benefited much. “Free supply of forest produce to rural population and their rights and privileges have brought destruction to the forests and so it is necessary to reverse the process. The rural people have not contributed much towards the maintenance or regeneration of the forests. Having overexploited the resources, they cannot in all fairness expect that somebody else will take the trouble of providing them with forest produce free of charge (NCA, 1976 Pp-354-355)”.

The small and marginal tribal farmers became worse sufferers due to such policy. Though there has been crores of rupees spent under various tribal sub-plans but the fruits of tribal development are yet to percolate the target group. Tribal communities have been pushed to corners owing to economic interest of various dominant groups. This is also due to the fact that the nexus between dominant development paradigm and tribal imbroglio can easily be traced to lack of administrative efficiency, development foresight of planners without realizing grassroots level reality, and weak leadership to deliver results of development to all stake holders. A common feature shared by most of scheduled tribe community's habitats is their remoteness and deteriorating quality of territorial resources. Inaccessible habitats of tribes became considered as hub of development due to rapid technological advancement, and acquisition of required area of land without much difficulty. The Land Acquisition Act, 1894 (and amended in 1984) is indiscriminately invoked to alienate tribal's land in the name of public interest. Multi-purpose dams, afforestation, refugee settlement, highway projects, biosphere reserves, national parks in forest areas displace forest dwelling people in general and tribe people in particular. The loss of forests has become a continuous and recurrent phenomena due to a variety of factors which include; rising population pressure, diversion of forest land to non-forest use, rehabilitation of displaced persons, industrialization, grazing of livestock, swidden or shifting cultivation, commercial exploitation of forests etc.

In Odisha 1.41 lakh tribal families resort to shifting cultivation. This practice is bone of contention between tribe and others. The age-old bond between forest and tribal economies is in debilitated state. Forests continued to be the cherished home for many generations of tribals and provide all their requirements. In past as their requirements were very limited isolated economy was based on barter and without depending much on monetized economies. The conservation of a forest is inevitably involves the regulation of rights and the restriction of the traditional privileges of local stakeholders depending upon the importance of forest to national interest, however, irksome such restraint may be to the local residents. While, therefore, the needs of the local population must be met to a reasonable extent, national interests should not be sacrificed just because of they are not directly discernible, nor should be the rights and interest of the future generations be subordinated to the improvidence of the present generation. The situation of listening to the future generations has to be created. Ban imposed by the government of Odisha on commercial harvesting of forests (except bamboo) in Bolangir, Kalahandi and Phulbani in 1988 and Ganjam and Koraput in 1990, is also believed that the act would protect the socio-cultural milieu and environmental state of the region. Forest dwelling tribe communities unsecured livelihood position owing to lack of legal entitlements of the resources they use, both land and NTFPs, push them into deep economic vulnerability, uncertainty and chaotic condition. Though there were many law enacted with a goal to extend legal provisions to protect their interest have been implemented from time to time. Such Acts often proved to be ineffective in solving tribal problems.

TRIBAL POPULATION

During Pre-British period, the tribal communities in India remained either fully or partially isolated from the mainstream, and they remained backward. The British forest policy isolated the tribal and alienated them from their own household. The British development approach affected their tradition, custom and way of life by restricting their access to natural resources available to them.

Table-1: Tribal population in India and Odisha

India					Odisha			
Total population (In million)	ST population (In million)	per cent of ST Population to Total	SC population (In million)	per cent of SC Population to Total	Total population (In million)	ST population (In million)	per cent of ST Population to Total	po (In million)
439.2	30.1	6.86	64.4	14.67	17.5	4.2	24.07	
548.2	38	6.94	80	14.6	21.9	5.1	23.11	
683.3	53	7.76	104.8	15.75	26.4	5.9	22.43	
846.3	67.7	8.08	138.2	16.48	31.7	7	22.21	
1028.7	84.5	8.2	166.6	16.2	36.7	8.1	22.13	
1210.1	104.3	8.6	201.4	16.6	42	9.6	22.8	

Source: Census of India publications 1961-2011

The above table gives us a complete picture on percentage of tribal population in India as well as in Odisha. As per 1991 census the percentage of tribal population was 8.8 in India and it was declined to 8.2 per cent in census 2001 and was 8.6 percent in 2011. Out of total population, in Odisha the per cent of ST population to total population was 22.21 in 1991 as compared to 22.13 per cent in 2001 and 22.8 per cent during 2011. In Odisha, though there has been consistent rise in number of ST population, the per cent to total population has been declining up to 2001 and increases during 2011. In India percent of ST population to total population has been rising consistently. The numbers of ST communities were 664 during 2001 and increased to 705 in 2011. Among the ST communities 75 communities of ST were identified as Particularly Vulnerable Tribal Groups (PVTGs) previously known as primitive Tribal Groups (PTGs) and in Odisha their number is 13. Similarly, the numbers of Scheduled Castes in India were 1221 during 2001 and increased to 1241 in 2011 in Odisha the number of SC communities were 93. In Odisha the per cent of ST population to total population has been declining from 24.07 in 1961 to 23.11 in 1971, 22.43 in 1981, 22.21 in 1991, and 22.13 in 2001. However in 2011 their population was increased to 22.8 per cent due to addition of some communities in the list of tribal communities.

POVERTY AND DEPRIVATION OF TRIBAL IN ODISHA

Odisha is one of the major states in India which still suffers from high incidences of poverty. The Table below represents the percent of people Below Poverty Line (BPL) in Odisha and in India, which has clearly revealed that how poverty in Odisha has always remained higher than the national figures, except with a declining trend since 1973-74 to 2004-05. But it is quite noteworthy that the percent of urban poverty in Odisha had an increase from 1987-88 to 1999-2000, at a marginal rate and again declined to 40.30 during 2004-05. Urban poverty rate has always remained lower than rural areas, except marginally higher during 2004-05 in Odisha and during 2007-08 in India.

Table-2: People Below Poverty Line (BPL) in Odisha and India. (In per cent)

Year	Odisha			India		
	Rural	Urban	Total	Rural	Urban	Total
1973-74	67.28	55.62	66.18	56.44	49.01	54.88
1977-78	72.38	50.92	70.07	53.07	45.24	51.32
1983	67.53	49.15	65.29	45.65	40.79	44.48
1987-88	57.64	41.53	55.58	39.09	38.2	38.36
1993-94	49.72	41.64	48.56	37.27	32.36	35.97
1999-2000 (55th round)	48.01	42.83	47.15	27.09	23.62	26.1
2004-05 (61st round)	39.8	40.3	39.9	21.8	21.7	21.8
2007-08 (64th round)	29.54	19.28	28.17	15.06	15.1	15.07
2009-10	39.2	25.4	37	33.8	20.9	29.86

2011-12	35.69	17.29	32.59	25.7	13.7	21.92
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Sources: Economic Survey of Odisha, (2010-11), Government of Odisha.

Table-3: Incidence of Poverty by social Group in Rural Odisha. (In per cent)

Social Group	1999-2000				1993-94			
	HCR	Contribution To poverty	MPCE	Sample households	HCR	Contribution To poverty	MPCE	Sample households
ST	73.1	41.01	284.55	861	71.31	35.98	175.1	816
SC	52.3	22.74	351.1	747	49.79	18.51	212.02	628
OBC	39.7	26.02	394.96	1069	-	-	-	-
Others	24.01	10.23	477.8	800	40.23	45.51	242.3	1894
Total	48.14	100	372.95	3477	49.81	100	219.8	3338

MPCE: Monthly per capita consumption expenditure.

Source: Economic Survey of Odisha, (2004-05), Government of Odisha.

Table-4: Head count Ratio (HCR) by region and Social Group in Rural Odisha (in per cent)

Region	HCR 2004-05				HCR1993-94			
	ST	SC	Others	All Social groups	ST	SC	Others	All Social groups
1	2	3	4	5	6	7	8	9
Coastal	67.7	32.8	22.4	27.4	87.6	51	40.9	45.3
Southern	82.8	67.2	59.6	72.7	77.4	58.8	59	68.8
Northern	72.8	64.4	46	59.1	63.7	41.4	33.1	45.9
All Regions	75.8	49.9	32.9	46.9	71.3	49.8	40.2	49.8

Estimates based on NSS data Compiled by Panda, 2009.

By examining the Economic Survey of Odisha (2004-05) data we found that so far as the monthly per capita consumption of 1999- 2000 and 1993-94 rounds are concerned the tribal people are worst sufferers. The above table represents a vivid picture of growing poverty among STs and SCs in Odisha from 1993-94 to 1999-2000. The poverty scenario in tribal pocket further worsened in LPG era precisely due to their low literacy, lack of resources, degradation of natural resources on which they were dependants, flow of capital to exploit natural resources commercially which kept them in the rat trap of poverty.

The above tables clearly indicates that tribal poverty always remained high in comparison to poverty level of SCs and other back ward castes. If we look at the figure, we find that poverty of STs in Odisha was decreased from 86 per cent in 1983 to 75.8 in 2004-05 while among SCs declined from 75.8 per cent to 49.9 per cent during the period. Non SC/ST categories of people living below poverty line has been reduced from 56.4 per cent from 1983 to 32.9 per cent during 2004-05 and are generally considered as well to do group always retain poverty ratio at lowest. The region wise and social community wise HCR presented in above table indicated that poverty ratio has reduced from 49.8per cent in 1993-04 to 46.9 per cent in 2004-05 in all regions. Except coastal region where poverty ratio reduced from 45.3 to 27.4 during the above reference

period, poverty has considerably increased in northern and southern region. In 2004-05 poverty increased to 72.7 per cent in southern region from 68.8 per cent in 1993-94 and in northern region from 45.9 per cent in 1993-94 to 59.1 per cent in 2004-05. Poverty among ST and SC people in southern region has increased from 77.4 per cent to 82.8 per cent and 58.8 per cent to 67.2 per cent respectively. It is discernible from the above table that Socio-economic status of tribal people in Odisha has remained irreversible even in the so called development discourse. Planning and its implementation for ameliorating tribal poverty are yet to deliver the desired results. The inclusive growth process has to be more aggressively followed, so that no community across all regions should be suffered.

FRA-2006: AN INSTRUMENT ENSURING TRIBAL LAND RIGHTS & LIVELIHOOD ISSUES

The passage of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Right) Act 2006 is a major victory for the tribals and forest dwellers and a big step in reversing the historical injustice done to the tribals. The Implementation of FRA in the scheduled Areas is intrinsically linked to tribal land alienation, life and livelihood issues. In the name of protected areas, the Govt. has alienated the tribals from their own land they inhabited since generations. Various researches have shown increased concerns with respect to its adverse livelihood implications (Indira, 1992, Vasundhara, 2004) while many other scholars talked about the growing human-animal conflicts (Coal, Campbell, Miles & Humphries, 2008, Madhusudan, 2003, Crop depredation (Kharel, 1977, Jackson & Wangchak, 2004), inadequate compensations against live and livestock damages (Madhusudan 2003) and faulty relocation policies (Brockington, 2004, Karanth, 2007).

Numerous studies including World Bank observation revealed that the idea of protection of Eco-system through declaration of protected areas have failed miserably in meeting its objectives as several threats and at the critical stages of degradation (World Bank,) people were not interested in ecosystem conservation (Fabricius & de Wet, 2002; Cernea & Schmidt-Soltay 2006). It was argued that provision of property rights over land and other resources forms the Key foundation of a Conservation Policy (World Park Congress, 2003; Aagesen, 2000). Many studies also observed that a secure land tenure promotes new investments in conservation and a sustainable resource management (Strasma and Barbosa 1984, Aagesen, 2000) Thus, it has been mentioned that Protected Areas should respect the rights, concerns and interests of the people with an adequate participation in the Protected Area Management which is the corner stone of good governance besides encouraging long term investment in wildlife management (World Park Congress, 2003).

Such prohibitory policies, which in turn created land alienation of the tribals and other traditional Forest dwellers has been echoed in Forest Right Act 2006. This Act recognizes and vests rights with the STs

and OTFDs over the Forest lands where they have been residing for generations. It ensured the Forest dwellers; land rights over the Forest land render their control for generations. This Act empowered the tribals for a sustainable use of Forest resources, conservation of biodiversity and maintenance of ecological balance (Govt. of India, 2006) This Act, while ensuring legal right of forest dwellers over forest land also at the same time empowered them as a stake holder in participatory forest management. Notwithstanding constitutional provision of reservation and affirmative action, and a plethora of schemes designed to enhance their economic and social status, the results on the round continue to be disappointing. A combination of historical resources due to so called development purpose has escalated tribal Vulnerability. At such a critical juncture the Forest Right Act of 2006 has emerged as a ray of hope for the tribals in protecting their life and livelihood.

Thus, the Forest Right Act (FRA) 2006 is indeed a historic Act a progressive social legislation expected to partially undo the historical injustice to India's tribal communities. The FRA act has attempted to legally restore the reaptured tribal- Forest Relationship. The Act, for the first time recognized the Forest dwelling scheduled tribes as Primary stakeholders in conservation by ensuring them tenurial and livelihood security, self-respect and dignity-essentially their citizenship rights denied to them even after 72 years of independence.

The act recognizes the rights of the scheduled tribe and other forest dwelling communities over homestead land, cultivable land, grazing land and non-timber forest produce. It also confers on the tribes duties like protection and regeneration of forests and biodiversity. It also provides that no forest land will be diverted for any other purposes without the consent of Gram Sabha in the scheduled areas.

SALIENT FEATURES OF FRA-2006

The Scheduled Tribes and other Forest Dwelling Communities (Recognition of Forest Right) Act 2006 shortly known as FRA 2006 was approved by the Parliament in 2006. Deprivation of tribal over forest land and forest produce for prolonged years was considered as "historical injustice" and the FRA for the first time recognized the legal entitlement of tribal and provided with long aspiration of the tribal people to secure justice. The salient features of the FRA, 2006 are as follows:

- The Act provided 13th December 2005 as the cut-off date for recognition and claiming forest land right.
- The act recognizes the rights of both tribals and traditional forest dwellers with residence proof for more than 3 generations. Twenty five years will be counted as one generation for the purpose.
- The ceiling of land ownership will be 4 hectares per family.

- MRP includes all non- timber forest produce of plant origin including bamboo, brush, wood, stumps, cane, tussar, cocoons, honey, wax, lac, kendu leaves, medicinal plants and herbs, roots, tubers and the like. The Act recognizes the right of ownership access to collect; use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries.
- Eligibility to get rights under the Act is confined to those who “primarily reside in forests” who depend on forests and forest land for a bonfire livelihood needs.
- No member of a forest dwelling scheduled Tribe or other traditional forest dweller shall be evicted or removed from forest land under his occupations till the recognition and verification procedure is complete.
- It treats forest land as community forest resource and allows the communities in conserving the forest resources.
- The Gram Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling STs and other traditional forest dwellers within the local limits of its jurisdiction. Under thus Act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner for exercise of such rights and the Gram Sabha shall pass a resolution to that effect and thereafter forward a copy of the same to the sub-divisional Level Committee.

It was earlier felt that tribal villages were no longer an essential part of the forest but were the merely on sufferance. The traditional rights of the tribals were no longer recognized as rights. In 1894 they were became “rights and privileges” and in 1952 forest policy made their rights as “rights and concessions”, in 1963 considered as mere „concession“ and finally in FRA, 2006, however, realized “historical injustice” and attempt has been made to redresses their legal problem and secure justice.

SHORTCOMINGS OF THE FRA ACT IN MITIGATING THE TRIBAL PROBLEM

The FRA Act, despite being an honest endeavor, suffers from following criticism.

The first and foremost shortcoming of the Act is that it does not address to the question of equity with regard to definition of tribal. The same tribal community is subjected to differential treatment in two different states.

Secondly, the definition of other forest dwellers under the Act is ambiguous which instead ends up further encroachment of forest land.

Thirdly, residence proof of three generations for other forest dwellers is a difficult task as they have been displaced again and again. Again it is very difficult for the Pastoral Communities (mostly non-tribal's) living in forest area to claim their rights.

Fourthly, the Act does not provide any protection to EDSTs and other traditional forest-dwellers who started cultivating after the 2005 cut-off date.

Fifthly, environmentalist fears that the Act may result in fresh encroachments, loss of forest covers and also transfer of forest land into the hands of the land and timber mafia.

Sixthly, the issue of 'minor forest resource' as defined under the Act is unclear and confusing.

Seventhly, the Act is highly unclear about to access bio-diversity and the community right intellectual property and traditional knowledge related to forest bio-diversity and cultural diversity. It does not provide any details about how such protection will take place; the act is highly on such issues.

Finally, with regard to the issue of displacement, the act with the expanded definition of 'traditional forest dwellers' has opened gates for exploitation of tribals by the land mafia, local elites to some extent by the State Machinery. To conclude the Forest Right Act -2006, despite of the above shortcomings, is beyond doubt a historic progressive social legislation intended to correct a historical injustice to our own fellow citizens. It is hailed as a landmark Act in the annals Indian history in general and tribal history in particular.

The above shortcomings created implementation problem diluting the very objective of the act. However, the success of the Act much depends on its honest implementation with letter and spirit on the ground. The local governing institutions, particularly the Gram Sabhas, which are given huge responsibilities to ensure forest rights of tribals needs to be empowered and the state government and civil society organisations have greater role to play in capacitating such local bodies. To conclude the Act will be effective by its honest implementation so that it could bale to contribute towards better conservation, livelihood security and traditional forest dwellers in India. Again, the Act beyond doubt is a step in the direction of elimination of all forms of discrimination and oppression against the indigenous population of the country, but the fulfillment of its desired objective much on the primary state holder to be vigilant and better organize themselves to benefits fro the historic development.

IMPLEMENTATION OF FRA IN ODISHA

Coupled with previous discriminating Forest Acts enacted since the time of British colonial administration, the Forest Dwellers in Odisha were further alienated from their land with the implementation of wild life Protection Act (WLPA) in its regulated state boundary on 14th August 1974. This Enactment strictly prohibited any human settlements and livelihood related activities inside the protected area. So far as total geographical area coverage of such protected area is concerned, it covered nearly 11.2% of the total Forest area of the State. Various other Acts restricting tribal access to Forest land has significant livelihoods and conservation implications (Vasundhera,2004, Sarangi,2004). Besides protected Area development plan and development projects in schedule areas, posed several threats to tribal life and livelihood to restricting their access to forest resources such injustices not only increased

vulnerability among the forest dwellers but also severely depleted Forest Eco systems. The generation of alternative livelihood activities owing to development projects and protected area projects, failed due to the degradation of Forest resources.

However, the enactment of FRA-2006 opened a new chapter in relation between forest dwellers and forest, easing age old tension and conflict in Odisha too its implementation brought a great solace to the life and livelihood issues of tribals and other forest dwellers. Various studies have revealed that although not only remarkable progress has been achieved in the state with regard to implementation of FRA , but steps taken by the state Government under the provision of the Act has become successful to some extent in reversing the historical injustice of land alienation and livelihood deprivation of tribals in the state. Odisha is one of the pioneering states to have implemented the FRA,2006; which ensured land for their agricultural lands and community common resources such as community centre, schools and ponds etc. The nodal agencies involved in the implementation process include Department of Revenue and Disaster Management, Schedule Tribes and Schedule Caste Development, Panchayati Raj and Forest and Environment Department.

Land diverted Under FRA, 2006 to Tribal and other traditional forest dwellers in Odisha

Despite of short comings and some implementation gap still the act has empowered the tribal by granting individual rights and Community rights which they had conflict with the State prior to its proclamation. In Odisha, the number of titles issued and forest area involved as on 31-01-2014 has been presented in the following tables.

Table-5: No of title distributed under the Forest Rights Act 2006 and land diverted to different ST communities and other traditional forest dwellers. (Forest Area in Hectares)

Sl.No.	Category of Right	Titles Issued (in ha.)	Forest Area involved	Average area per Titles Issued
0	1	2	3	4
1	Individual	325889	208770	0.64
2	Community	3131	61175.27	19.54
	Total	329020	269945.27	0.82

Source: Highlights of Odisha Forestry Sector-2013-14.P-4. Published by PCCF, Odisha.

Table-6: District wise Implementation of Forest Right Act, 2006 in Odisha. (As on February, 26, 2011& April, 2014)

	As on February 26, 2011	As on April 2014
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Sl.No	District	No. of Villages in the districts	No. of Certificates of titles distributed	Area in Acres	No. of Villages Fully covered so far	No. of Certificates of titles distributed	Area in Acres
0	1	2	3	4	5	6	7
1	Balasore	2691	857	339.39		2084	1025.42
2	Bhadrak	1248	175	10.1	1248	175	10.1
3	Cuttack	1857	1419	1076.87	69	1479	1183.47
4	Jagatsinghpur	1230	47	31.83		47	31.83
5	Jajpur	1575	1427	748.54		2502	1309.46
6	Kendrapara	1619	216	-		305	441.9
7	Khurda	1355	528	557.91		787	717.3
8	Mayurbhanj	3758	15748	9229.71	900	18797	12307.07
9	Nayagarh	1516	2348	3133.37		2654	3902.21
10	Puri	1613	0	0			0
	Total CZ	18462	22300	15127.72	2217	28830	20928.76
1	Angul	1632	2490	1509.31		2545	1525.51
2	Baragarh	1207	904	1645.43		1099	2016.24
3	Bolangir	1753	883	2124.44		1190	2828.78
4	Deogarh	774	3982	3713		4568	4663.47
5	Dhenkanal	1030	5051	7282.05		6109	8595.04
6	Jharsuguda	352	2278	2072.88		2354	2107.99
7	Keonjhar	2045	27407	28498.56	1248	44424	40249.72
8	Sambalpur	1262	9818	13839.38	629	12599	17167.32
9	Subarnpur	825	310	611.72	3	333	648.53
10	Sundergarh	1668	9195	17927.07	1668	9421	18476.41
	Total NZ	12548	62247	79223.84	3548	84642	98279.01
1	Boudh	1190	944	1063.6	1164	1417	2245.31
2	Gajapati	1528	25015	43861.62	1438	32650	62719.33
3	Ganjam	2831	4745	12381.23		5252	13698.18
4	Kalahandi	2068	7422	10698.39	110	10077	15299.71
5	Kandhamal	2415	50006	78351	2335	57657	87227
6	Koraput	1890	22559	34171	1188	23711	37431.73
7	Malkangiri	933	20733	54210.81	305	28000	71300.28
8	Nuapada	658	3948	7779.6	658	5629	14953.88
9	Nabarangapur	567	15824	29920.37	454	33023	66654.94
10	Rayagada	2469	13351	21761	2016	18125	29543
	Total SZ	16849	163586	294198.6	9668	215541	401073.4
	Odisha	47859	248133	3,88,550.18	15433	329013	520281.13

Source: O/o the PCCF, Odisha, Bhubaneswar website information from the Department of SC, ST and OBC Welfare, Government of Odisha.

The above table-5 has provided a clear picture on the total land area diverted to different tribal communities and other traditional forest dwellers in Odisha till 31.01.2014. So far as issue of title to individuals is concerned the total area covers 325889 hectares and the total forest area involved for the purpose is 208770 forest areas. The total area of land diverted for community common property is 3131 hectares of land and the total forest area involved for the purpose in 61175.27. Again table-6 provides district-wise implementation status of FRA in Odisha as on 26 February 2011. It provides a clear picture on

the total number of villages covered in each district, no of certificates of titles distributed in each districts and total acres of area covered in each district.

Studies have revealed that although Odisha is relatively better than many other states with regard to its implementation, but failed to achieve the desired objective. Several challenges still exist in the implementation process. In July 2010, a committee appointed by the Ministry of Environment and Forest and Ministry of Tribal Affairs submitted a report, to the effect that programme was started very late in Odisha and that most of the people were not aware of the Act. Due to threat emanating from left wing extremism, no verification was carried out instead people were told not to claim any land other than agricultural lands.

Research Studies have unfolded the truth that in many instances, most of the community Forest Resources (CFR) forms are filled by the Forest officials themselves, where many rights were violated e.g. denying Fire wood and nistar rights, not mentioning the right to manage and protect forests, not allotting the forest area in respect of which NTFP rights are applicable. Studies have revealed about corruption by Revenue Inspectors (RI) demanding bribe for land verification which discourages the genuine beneficiaries to claim their entitlement. Forest dweller, who were relocated due to development project found difficulty to manage in the new places due to lack of water, poor quality of land, the absence of land title (Patta), shortage of land, inadequacy of nearby fuel and fodder sources, and broken promises of various socio-economic benefits. A major implementation lapses witnessed with delayed approval of claims, which often discouraged the beneficiaries to claim their entitlement.

The implementation process found to be very slow and quite complicated in protected areas where the Forest officials and conservationist groups have strong disagreement with reference to provision of individual rights as enshrined in the FRA. The implementation here suffers major setback, due to the conservationist opposing individual rights may lead to further Forest degradation. The FRA could not be implemented as, the rights of people have already been settled under the WLPA with resettlement Process carried out much before the implementation of the FRA. So far as implementation of FRA in Protected Area is concerned, it has several bottlenecks; one such major bottleneck is rejection of individual claims under the pretext that they will be relocated in future hence there is no need for them to claim rights. As per various research findings several complaints were made to the state government against the sub-divisional level committee (SLDC) and District Level Committee (DLC) members for not carrying out the verification process. In most of cases the State Government has remained apathetic to implementation lapses deliberate mal-implementation of FRA. In the name of critical wildlife habitats, recognition of the rights of the Forest dwellers receives severe blow in Odisha. In such cases, there is high possibility of the rejection of individual

claims. Forest areas declared as critical wildlife habitats do not entertain any rights of the Forest dwellers on these Land. In CWHs area the FRA finds great difficulty in implementation. In such area, the forest dwellers were neither properly informed about the procedures involved in the declaration of CWHs, nor about there sultant livelihood loss and the nature of compensation to be paid.

In critical wildlife habitat area, the forest dwellers were evacuated without settling of their rights and without having any adequate compensation. It is also found that State Level Monitoring Committee (SLMC) was also not interested in taking any initiative towards the settling of rights in the C.W.H areas. Here the Forest Department doesn't allow the land verification process under FRA under the pretext of the area to be declared as C.W.Hs area. Another major shortcoming in implementation of FRA in protected areas is passing of information about provision of FRA to forest dwellers instead forced relocations were carried out. The forest dwellers were forcefully evicted from such areas without giving any attention to individual claim procedure. The forest dwellers were denied any cultivation right and access to other forest resources in such protected areas(Govt. of India, 2010).

CONCLUSION

Beyond doubt, the scheduled Tribe and other traditional Forest dwellers (Recognition of forest rights) act, 2006 is an effective instrument in reversing the historical injustice done to the tribals since centuries. But implementation lapses coupled with information gap and muteness on part of villagers has derailed its mission and destination. Researchers have established that many conditions of the Act were violated both by the Government officials and Forest dwellers at various stages of the implementation of the Act. A major drawback of the implementation of FRA was found to be non-recognition of rights of poor OTFDs. Although the title distributed carry severe problems due to lack of awareness of the people, but presence of strong working rules of FRA has made them feel relatively secure about their rights.

It is observed that lower coverage and irregularities in the implementation process are severe issues which needs immediate intervention to achieve the desired result. The Forest officials in particular, should inform the forest dwellers about the detail procedures of making claims under the Act, in which they may seek help from community based organization (CBOs) , Civil Society Organizations (CSOs) and SHGs for implementation of FRA through use of Folklore as a medium of IEC intervention to popularize the Act among the local community and forest dwellers. In transformation of Forest land into agricultural land both Gram Sabha members and Government officials in charge of land verification should strictly follow all the provisions of FRA Act.

To sum up, the implementation process could be effective, through an effective monitoring mechanism. Regular monitoring of the activities of Gram Sabha / FRC members and Govt. officials involved in land verification should be done by an independent agency. There should be a regular reexamination of validity / rejection of the claims and distribution of titles along with finding out the anomalies in implementation. The monitoring agency should adopt a multi-stakeholder community governance approach involving CBOs, CSOs, SHGs Community, beneficiaries and key informants from local community for an effective monitoring of the implementation of FRA. Thus to conclude, effective implementation of FRA in letter and spirit will enable sustainable tribal development by suitably setting the scores of life and livelihood challenges of tribal in the state of Odisha.

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