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The Indian Forest Rights Act, 2006: Salient Features, Scope and 2012 Amendment Rules

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The preamble of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as the Forest Rights Act or FRA) states that the Act was passed to undo the “historical injustice” committed against the forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in the forests for centuries, but whose rights could not be recorded. It may be interesting to know what is The Forest Rights Act, what are its salient features, why this act was required, various hurdles that are observed while its proper implementation and why there was a requirement for 2012 FRA Amendment rules. This legislation is no doubt hailed as the first correct step in recognizing the fact that the forest dwellers are also a part of the forest and they have the equal right to live there as any flora or fauna.

Key words: Indigenous people, Salient features, Scope, Hurdles in implementation, 2012 FRA Amendment Rules

INTRODUCTION

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (or FRA) is a welcome piece of legislation to recognise the customary rights of forest dependent scheduled tribe and non-scheduled tribe communities who have been residing in such forests for generations but whose rights could not be recorded. As per the preamble of the Act, it is an attempt to undo the “historical injustice” done to tribals and forest dwellers since pre-independence. It has been a long developed argument that this legislation came at a very later stage, however, at least there is an assurance that the forest dwellers are given legal recognition and safeguards from now on. The Act offers a framework for recording the forest rights and the nature of evidence required for such recognition with respect to forest land. FRA recognises that forest dwellers have the same right in the forests as flora and fauna and they are an important and integral part of the forests.

The provisions that enshrine in FRA is that it recognises that forest dwellers should be involved in sustainable development, conservation of biodiversity and maintenance of the ecological balance as they have a vast traditional knowledge of such practices. Such a practice was only obligatory under the Joint Forest Management (JFM) scheme that Ministry of Environment and Forests (MoEF) had started prior to FRA. The forest dwellers are now seen as the protectors and conservators of the forests and not as encroachers anymore.

FRA describes that in the process of conflict with regards to development decisions, preference shall be given to the forest dwellers. This was the first time that a historical injustice to forest-dwelling scheduled tribes and other traditional forest-dwellers were acknowledged, and the steps to rectify such a stance were taken in the form of FRA. FRA is a welcome piece of legislation as history has seen the atrocities committed towards the forest dwellers and their horrendous consequences. This Act has made possible that by creating a balance between the livelihood needs of forest dependent tribal and non-tribal communities and governmental development programs, the law brings in a status of harmony and democratisation in the field of forest governance.

Forest Dwellers and their relation with the forests

The forest dwellers have always been dependant on the vegetation found in the forests. It was the government rules that made life of the forest dwellers miserable and the collection of fuel wood, fodder etc. were severely restricted. In West Bengal, post independence right over the forests has always been the cause of problem between the forest department and the local forest dwellers, who happen to be tribals. In few states such as Arunachal Pradesh, the right of the forest dwellers were acknowledged and they were allowed to make their livelihood freely from forests, both reserved and unclassified. In all other states, such a privilege of the rights is available either free or at a minimal cost only from protected or unclassified forests. These however are available under strict government restrictions and regulations. The tribals have always believed that by virtue of their heritage the right over the forests, is their first. Major problems that the tribals have faced in the post independent India are-

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- 1) Grazing in the forests has been prohibited.
- 2) High rates for permits were charged by the government for little forest produce (e.g. Tussar cocoons)
- 3) Agriculture land that comes under the forests which was allocated before has now been asked by the government to be vacated.
- 4) The cattle trenches that are dug to protect the forests prevent free flow of water that was being supplied to their lands.

The forest department however does not agree with the misery of the tribals as mentioned above and therefore there has always been a conflict between the two in regards to who is the rightful owner of the forests. The forest department has always shown a callous attitude towards the forest dwellers and the tribals and have often shown indifference and neglect towards tribals. Such as in the forest department of Karnataka, the tribal was asked to vacate where they planned to open a game sanctuary. Moreover, there were no alternate arrangements made for their resettlement. In another example, the roads constructed for the welfare of the tribals made by NGOs have often been neglected by the forest department as they were responsible to look after the maintenance of these roads. In another example, the water in the tanks within the reserved forests is never released for the benefit of the tribals unless there is an intervention by the local social welfare department. Similar activities by the forest department were seen in Andhra Pradesh, where the forest department in a bid to vacate all encroachers not only seized the tribal land but also made sure that heavy fines were imposed on those who resisted in giving up these lands. Land with no trees were also attached to the forests and in a haste to improve the land mass, even brought forest to the boundaries of the villages.

Major discrimination in Tamil Nadu was seen against the tribals, when land was given to the non tribals on lease or permanently. The tribals only got permission to cultivate the lands on annual basis. It was noticed that a lot of forest land was being cultivated although it was not authorised. The major problem that came for the tribals was that without long term lease they could not take soil conservation measures. Forest department also harassed those creating further hardships for the tribals. Severe disputes erupted between the local tribals and the forest department. While both of them blamed each other for the severity and harshness in attitude towards each other, it was the forests that faced the brunt of this tussle. The tribals complained of harassment by the forest officials and this was a common feature in most parts of Tamil Nadu.

British control over the forest

The Forest Act of 1864 gave the colonial power the authority to declare any land as forest land. The act was strengthened in 1878 further with the classification of forests in to protected, reserved and village forests. The national forest policy of 1894 further restricted the rights of the forest dwellers by putting restrictions on the forest dwellers by curbing their right for collection of fuel, fodder and other means of livelihood. The Land Acquisition Act of 1894 maintained that any land could be acquired by the government for use of public purpose with no or minimal compensation being offered. The rights of forest dwellers were further not acknowledged even in the 1927 act, which continued to maintain that the forest dwellers

had no right over the forests. While the government maintained that this had scientific reasons, the main reason has always been maximisation of profits. In the name of conservation of forests the right of the forest dwellers was curbed. The forest dwellers because of all these restrictions turned to violence and took to looting and plundering. They were termed as encroachers and this led to violence in the areas. Before the 19th century land was a part of local land lords and princely states. The idea for them was to collect taxes from the local people who were dependant on these locations. The day to day management of these lands was largely left to the people in-charge of cultivating these lands. Slowly but surely intricate management systems came in to play which regularised these rules of governance. Private use of land was detested upon and it was for the benefit of people by and large that was the goals of this system. There were a lot of tribal communities that were dependant on this system solely dependent on collection of wood, fuel and fodder for cattle in these areas.

Status of forest after independence

Forest Policy of 1952 maintained that for the conservation and protection of forests it was important to control the exploitation of minor forest produce, and the forest conservation act of 1980 was brought in to play. All forest land was put under the control of the central government and the old acts from the colonial rule continued to play their part in the name of public good and development.

Status of Forest Dwellers

The new rules and regulations of the forest department put the forest dwellers on the mercy of the forest department, especially the lower level officials who for their own benefit would harass these locals. Major causes for this kind of discrimination were also illiteracy and poor economic conditions of these forest dwellers. In some areas of Andhra Pradesh forest guards had a cut in the minor forest produce and in others tribals had to work without any compensation. Since the forests covered huge land mass it was nearly impossible for the forest officials at high levels to inspect these areas leaving the locals at the mercy of the lower level officials. These were a common feature in these parts of Andhra Pradesh. The probationers noted that in different areas of the state the tribals were being exploited at different levels. It was the lower level functionaries that were exploiting who ranged from the patwari to local constable range.

Forest dwellers have also fallen victim to commercialisation of forests. Since the early times, the forest dwellers have been victimised both by contractors and local high ranging officials to do unskilled jobs. It was then recommended to introduce an association of local inhabitants in the exploitation of forest produce in the form of Forest Labour Societies were in the then Bombay state. The purpose was to propose full labour rates for these adivasis and to train them in taking up responsibility for the forests and other related areas by co-operation between locals and the forest departments. The Forest Labour Societies in Bombay was appraised highly in the 1st five year plan. The IInd Five Year Plan in the year 1956 recommended the establishment of Forest Labour Societies in all the states and recognised that it was the role of forest

contractors who had been exploiting the tribals were also responsible for the down ward trends seen in forest conservation. The IIIrd Third Five Year Plan in the year 1961 stated that "development of forestry and forest industries is also essential for raising the income of the tribal people who live in the forest areas". In the IVth Fourth Five Year Plan in the year 1967, the Working Group of Welfare of Backward Classes stated that the current law had totally put the tribals at a complete disadvantage. One major change that was suggested was to replace the labour contractor with forest labour co-operatives. Gradually forest labour co-operatives were set up throughout India but the contractors were still playing a part in the labour force requirements. The Union Minister for Agriculture at that time had promised to put an end to this practice justifying that the tribals were being played way less than the actual payments and the only way they could benefit was through the role of co-operatives.

Another source of income for the tribals was through the construction of roads, bridges and causeways and they were hired by the forest department for the same. They were also hired for the construction of department building giving the much needed additional income to the tribals. With the expansion of industries and the role of forest produce in them, the demand for exploitation of forest produce had increased many folds. Minor forest produce in many states is collected by the government agencies. In states like Madhya Pradesh, the payment for collection of forest produce like tendu, patta, timber, gum, harra, bamboo, sal seeds and khair was extremely less. In Orissa, the forest department has been in charge of collection of tendu leaves. In the foot hills of the Himalayan region namely Uttarakhand people are exploited by labour contractors who employ the locals at very nominal wages. In Chamoli district, the Dashauli Gram Swarajya Sangh intimidated the local people about what their rights were and the prices of the things they collected from forests. They were the stalwarts in making people aware and asked them to sell their produce directly rather than handing it over to a contractor, who was paying them a fraction of a price, keeping all the profit for himself.

Since some of the tribal markets do not have a regular market. Trade takes place through the Sunday markets where whole sale dealers exploit the locals by buying there produce at a cheap price and then selling the same in the cities at a huge profit. At times the tribals are paid very nominal amounts as advance payments towards collection. Most tribals are illiterate and since they do not how to count often the money handed to them are lesser than the actual money they are supposed to receive. Generally traders who happen to be money lenders too often exploit the tribals in the name of repayment of debts paying them often extremely low for their produce. Tribal Development Corporations, Forest Corporations and some other cooperative agencies although have taken initiative in collection of the produce and paying the tribals a higher rate but have not been able to curb the contractors and the middle men completely.

Restrictions on forest dweller

Displacement of the forest dwellers has therefore continued because of poor livelihood. Eviction from their ancestral forest lands by the forest department has also contributed to their

movement from the forest lands. The Wild Life Protection Act of 1972 and its subsequent amendment in the year 1999 further restricted the rights of the forest dwellers in wild life sanctuaries and national parks. These were also a cause for the dislocation of the forest dwellers. Since the tribals were being exploited from all sectors, it brought the tribals together and a social movement uniting the tribals came in to play. They were united and started voicing their discontent with the existing system and started asking for their rights to livelihood. The National Forest Policy of 1988 under pressure from various social organisations recognised these rights and took the first steps towards acknowledging them. The MoEF issued a set of circular in 1990 to help people understand and execute these changes made to the forest act. National Advisory Council over the latter part of 2004 decided to find a solution to this problem once and for all, they went in to discussion with the MoEF and tribal rights activists in regards to the encroachment of the forest land After due discussions. It was decided that a new legislation needs to be formulated for the rights of settlement of the forest dwellers and tribal communities. This meeting was followed by discussions with the Prime Minister who acknowledged the actions and decided to take action on the same with immediate effect. A Ministry of Tribal Affairs was formulated in October 1999, which was to focus on the condition of the tribal people in India.

In an affidavit to the Apex Court, in June 2004, the Government of India admitted to the historical injustice that had been levied upon the tribals and the forest dwellers of the subcontinent. This historical injustice started by the Wildlife (Protection) Act 1972 (the 'WPA') and was followed by the Forest Conservation Act 1980 (the 'FCA') was in the name of environmental protection. However, these Acts has always been at logger heads vis a vis recognition of rights of the tribals. The problems continued with emergence of new rules and regulations even in the post independence era and a need of immediate address to the situation had arisen. This time the Government of India finally recognised the rights of the tribals. This admission was of great importance as it was the acceptance by the government of India that it had adopted the colonial perceptive to the problem of the forest management and had failed to do what it was set out to do. It had alienated the tribals and had evicted a large number of them from their ancestral lands. Following are few instances since pre-independence when historical injustices were committed:

1. Under S. 3 of Indian Forest Act, 1927, the State Government may constitute any forest- land or waste-land which is the property of Government a reserved forest.
2. Under S.29 of Indian Forest Act, 1927, the State Government may declare any forest-land or waste-land as protected forests. Although the state government should record the rights of the people living on them, however in a matter of urgency, such recording of rights can be put under pendency.
3. On 06-02-1937, under S. 29 of Rewa Forest Act, all forested lands within the princely state of Rewa were declared as protected forests.
4. On 10.07.1958, the Government of Madhya Pradesh through a notification had declared and acquired 94 lakh hectares of community land (forest area) as belonging to Forest Department.

5. In 1960, through a report of Survey demarcation of protected forest land in 1960, the government granted rights to those who cultivate lands in protected forests. However, such surveys were flawed as neither the information nor the procedure of survey was communicated at all to the land cultivators.
6. On 12.12.1996, in *T. N. Godavarman Thirumulpad Vs Union of India*¹, the Supreme Court of India defined forests as all areas that are forests in the dictionary meaning of the term irrespective of the nature of ownership and classification thereof shall be under the control of the forest department.
7. On 9. 14.08.2003, Ekta Parishad, a network of social groups working on land rights in central India. In 2003, approached the Central Empowered Committee (CEC), to clarify the status of at least 1.2 million hectares (ha) of forest land known as "orange area"² on which both the revenue and forest departments of the states make claim.
8. On 24.07.2004, the Central Empowered Committee under MoEF asked the revenue officials of Munnar to provide the information/details about the land assignments and the encroachments in Cardamom Hill Reserve, Idukki District, Kerala.

FRA 2006

The Ministry of Tribal Affairs was asked to prepare a draft of The Scheduled Tribes (Recognition of Forest Rights) Bill, which was placed before the Parliament in 2005. This bill came with the backdrop of globalisation, liberalisation and rapid growth. The inflow of multinational companies created chaos in the lives of the tribals who were supposed to benefit from this advent of these companies in to their natural habitat. The Scheduled Tribes and Other Traditional Forest Dwellers Act (or simply known as Forest Rights Act- FRA) was finally passed in 2006 and came into force on January 1, 2008. It notified in the Rules the rights of the forest dwelling people, recognising them in the Indian forest policy formation for the first time. The question now is whether due to existence of contradictions and overlapping of the related forest acts and continued tussle between the Ministry of Environment and Forest and Ministry of Tribal Affairs, implementing of FRA is rendered ineffective.

Salient Features of FRA

Following are the salient features of FRA for proper understanding of the Act.

- a. The act is in fact a means to recognise the rights of these tribals and gives rights to FDSTs and related forest dwellers. These rights have been recognised in Sec. three of the act that includes right to forest land in terms of living, holding, occupying the forest land. Rights to use the forest produce to collect and use it and any other rights that had been held by the forest dwellers traditionally. However, a certain number of rights were reserved with the government and were a subject

to agreement of the Gram Sabha in order to divert land use for certain purposes.

- b. The FRA is basically of a right vesting nature and provides for consolidation and recognition of pre existing rights which meant that the rights were already in existence even before the FRA was formulated. b. It recognises that there has been a failure in recognition of rights of the forest dwellers and tribal people. These people had been living in the forests and their rights had been constantly been ignored and which had resulted in discrimination against these people.

- c. The act also talks about the rights and duties that the forest dwellers hold in terms of protecting the wild life and diversity of the forests and other ecological areas to promote sustainability in these areas. Chapter IV covers these areas and generally covers the procedures for enforcement of these rights. One of the most important areas is the authority of the Gram Sabha. A Gram Sabha can be defined as a village assemble that consists of all the people residing in a village that are a part of the electoral procedure of the Indian constitution. This is an important aspect related to decentralisation of power and under the act the Gram Sabha holds the final verdict in terms of decision on diverting the forest land to any other purposes, it would also be responsible for deciding upon the community rights and that of the individuals in the areas that has been marked as forest areas.

Radical shift in the management and governance of the forests

It was for the first time, however in the Indian forest law that a radical shift was seen in conserving the forest eco systems. Before the formulation of the FRA the forest communities were more or less excluded from the decision making processes, in regards to conservation of the forests. This was changed and it was finally recognised that the forest communities were an essential part in conservation of forests. This was a change from the old school of thought that believed that the forest dwellers were a cause for dwindling forest ecological system. Stress was given on this fact throughout the act and much emphasis given with defining their duties and responsibilities towards the conservation of forests. The debate that had been occurring in terms of conservation of the forests as against the livelihood of the tribal community has been put to rest as there is a clear demarcation in the act in regards to the food security and livelihood of these communities.

More over there is an acknowledgement that in the past injustice had been done to the tribal and they had been evicted from their lands in terms of national development. This was something that needed to be rectified now and the act made it clear that both conservation and rehabilitation of the forests could occur simultaneously. The act is clear in defining the categories in which the people who are eligible for these rights fall in to. The act makes it clear that such people are the ones who have been living in the forests and are dependent on the forest produce for their livelihood. Secondly, the act makes it clear that such claimants have to prove that they have been fulfilling these conditions for the last 75 years and is forest dwellers. Under S.4 (1) of FRA 2006, the claimant can also be a member of the schedule tribe or residing in an area that

¹ Writ Petition (Civil) No. 202 of 1995.

² In 1958, control of over 9 million ha of forestland (earlier under princely states) was handed over to the forest department by a blanket notification but the revenue department did not update the records. These areas are known as orange areas.

has been marked as residence for them. The act recognises a number of rights that can be claimed by these individuals and are as the following.

1. Land held by communities or zamindaris, which were termed as Nistar or user rights to such land by these interim regimes.
2. Basic right to live and occupying the forest lands for self cultivation are embedded in the Constitution of India as well as FRA
3. Perhaps the most controversial of all the benefits given was the right over land that was in dispute with the local or state authorities. Right to convert leases or grants issued by the state government were to be converted in to owner ship rights or title deeds.
4. The right to use the forest produce or to sell minor forest produce that had been collected by these forest dwellers in a traditional method within or outside their villages. These included all non timber forest produce such as bamboo, brushwood, herbs, and other plants and animal products such as honey and wax.
5. The forest dwellers would also be given aid in terms of development and the central government would aid in development of facilities such as schools, hospitals irrigation facilities and roads and so on and so forth. These were to be managed by the government. However these areas would be exempted from inclusion under the Forest Conservation Act of 1980. It was made clear that the use of forest lands for each of these purposes would be limited to less than one hectare and not more than 75 trees would be cut down for such purposes. It was essential to take the permission of the Gram Sabha for development of such projects before they would be commissioned.
6. The act also included other rights such as right to fish and other products that could be obtained from the rivers and seasonal produce, traditional rights such as that for grazing were also ensued for nomadic and pastoralist communities. Rights were also given to communities that were particularly vulnerable and other agricultural communities.
7. Right were also given to the forest dwellers to conserve, protect, manage and regenerate the forests and reserves that they had been conserving and protecting before hand in a sustainable manner. Rights that had been already been recognised by the state or local councils as under the law that was based on local traditions and customs. Right to conserve and access the biodiversity since the local community had the knowledge based on traditions and culture that was related to the local forest areas. The law also included any other rights that haven't been mentioned above. This however did not include hunting and trapping of wild life animals that were a part of the local flora and fauna. Selling of animal bones and skin were also prohibited as it directly contradicted with other laws of the region. The forest dwellers were also given right for rehabilitation in case they had been forcefully or illegally evicted from a forest land without receiving any legal entitlement for their rehabilitation.
8. The forest dwellers were given right to settle and convert villages in to revenue villages that had fall in the category of old habitation, unsurveyed villages and forest villages earlier on. To summarise, the Forest Rights Act recognises three types of rights.

Right to own the land

The act has given the people the right to own the land of title deeds in case they have been engaged in cultivation of these lands before December 13, 2005. No documentary proof was necessary for those who had been cultivating land up to four hectares, as long as it was done to satisfy their own needs. People who had taken up the land on lease or were on a government lease and whose land had been forcefully or illegally taken up by the forest department and was a subject to dispute could now claim title to these lands. However this land cannot be sold or transferred except for the right of inheritance.

Right to use the forest resources and forest land

The law made it clear what could and what couldn't be collected from the forests and were as following.

1. Forest dwellers had the right to collect minor forest produce for example they could collect tendu leaves, medicinal plants and herbs etc that had been collected before also traditionally. They however could not collect timber or fell trees for collection of the same.
2. Grazing areas would be demarcated and water bodies for the same purpose would also be mentioned.
3. The areas would also be marked for traditional nomadic communities that moved from time to time in search of livelihood as against other communities that were mainly based on agriculture.

Conservation rights

The forest dwellers were given a right to protect and conserve the forest areas that they had been residing in. They were given power to conserve the forest resources and of the act gave the community power to protect wild life, forests etc. This right was of utmost importance as it gave the community the right to protect their surrounding being a part of main frame governance.

No arbitrary dislocation

In the national parks of the country especially the wild life reserves, it was often seen that the people were forcefully relocated in the name of saving the wild life species and keeping them free from the human intervention. However this relocation has not been successful in preserving what it had been set out for. All it managed was to dislocate people forcefully. However, such displacements are subjected to certain guideline that needs to be fulfilled for such relocation to take place. Firstly it needs to be proven scientifically that human intervention is actually making the wild life suffer and hence such relocation is necessary this can only be done after due consideration and public opinion. Secondly the locals who are affected need to be convinced that such relocation is necessary for their own safety and the wild life surrounding them. And last of all such a relocation should not only provide a new and better place to live but also ensure livelihood for these people. Similar clauses were also included in the wild life protection act so there were no contradictions or sources for dispute specifically in cases that involved tiger reserves and so on.

How the rights are recognised

A three step procedure in determination of the rights is explained in the Act. Firstly, the Gram Sabha would be responsible for determining these rights and the recognition of the same. Therefore, the Gram Sabha of the local areas as mentioned in S.5 of FRA 2006 would be the one to identify who had been doing what before the act was enforced. This Gram Sabha shall cover all areas both at hamlet level and revenue villages. Once the Gram Sabha makes a decision, it would be referred to two committees both at Taluka and District levels. The final decision lies with the district level committee in terms of this decision. The District Level Committee will comprise of six members that will include three government officers and three representatives from panchayat samiti/ zila parishad. This was done to safeguard the interest of the people. The forest dwellers had the right to appeal against these committees in cases if they prove their case the right is denied. Once the forest dwellers was granted right to the forest land, then that land could not be sold or transferred to any other person. However, it could only be transferred by way of succession.

- State Level Committee- Monitor implementation at state level
- Sub-district and district committees- Examine and maintain records of claims
- Gram Sabha- Receive, consolidate and verify claims in the village

The FRA also provides provisions for both wild life sanctuaries and national parks and areas inside these parks have been defined as critical wild life habitats or core areas. These are the areas that have been defined as critical for wild life survival and have been kept aloof of any form of human activity so that no human interference can damage any form of wild life in these areas, this means that forest dwellers who had been residing in these areas would need to be moved or resettled and newer forms of livelihood need to be arranged for these forest dwellers. The processes should be transparent and in consultation with the locals and although the identification of the critical wild life areas is essential it would be done by a committee that would comprise of experts who belonged to the locality.

However the most crucial part of the act is that even cases where people have been living in the critical areas, they cannot be resettled or displaced without being informed or taking consent from them. The act further clarifies that these areas that have been demarcated as core areas cannot be used for any other purposes in the future, except for wild life conservation. This provision has drawn widespread applause from a lot many environmentalists who have supported this provision and considered it to be a strong legislative measure to protect wild life and forest being overtaken by various industries.

Implementation of the Act

The FRA has been successful in envisioning a three step process in recognising the rights of the forest dwellers and schedule tribes who have been dependant on the forests for generations. These are rather simple in the form that the

people can actually file a claim, which then would be verified and ultimately there would be a felicitation of these rights if everything is in order. These claims can either be filed for an individual or for entire community. The process for filing these claims has also been simplified and people interested in filing these claims need to follow the procedure that has been made, fill up a claims form and submit it to the forest rights committee at village level. What is important is the need for a system that is easy to understand and comprehend. It is also important for all the people who are affected that they be informed of these changes and certain awareness is created in regards to the same. They should be made aware of methods to file the claim. It is important to keep in mind that the act tends to help those who had been mistreated through centuries and are illiterate and belong to vulnerable communities. It is therefore important that the law to actually benefit the people, the people should actually be made aware of the provisions of the act and should be guided and assisted in making these claims. To make this possible the government could use the state owned media and other departments to spread awareness in relation to the same. Certain steps need to be taken by the government for a better implementation of the act:

1. The first recommendation is that information on how many villages are there inside the forests and near the forest is situated. Such a data should be made by the Forest Survey of India and then handed over the States.

2. It is strongly recommended that not only the independent forest rights should be given, but also the community forest rights should be facilitated.

3. To spread awareness about various beneficiary programs and how to apply for the independent and community forest rights claims, help and assistance from the state government, be it in the form of providing help with the claims, or offering programs in regional and vernacular languages, it is suggested that the respective state governments should provide for such help and assistance.

4. Although it is mentioned in the Act that the Gram Sabha or the Forest Rights Committee should be provided with the latest technology to prepare satellite map and demarcate boundary that is claimed. However, an authority must ensure that such technology is actually provided and the members of the Gram Sabha or the FRC are taught how to properly and effectively use that technology. The various technologies that are recommended normally used by the FRC are spatial technologies (including remote sensing, global positioning systems and geographic information systems).

5. It is understood that not all documents that are required for claiming land titles under both independent forest rights and community forest rights are available or are in order. Therefore, it is the duty of the state to keep a record of all the people in the forests, who are the beneficiaries, and how the documents required initiating a valid claim is accessed and organised.

6. As mentioned above, it is pertinent to make available the act and rules in the vernacular language/local language. In addition to this, a comprehensive manual should also be provided in the local language explaining who all are eligible

for claim, what are the requirements for claiming title to the forest land, what is the process of application, the authorities who all are responsible in this process, what documents are required for filing claims, in case those documents are not provided, then what are the substitute documents that may be allowed, etc. This will ensure no confusion in the minds of the forest dwellers and a lot of confusion and unawareness can be avoided with such a procedure.

7. The verification process that is followed after submitting claims needs to be more systemized and more informative. It should be double checked whether Gram Sabha has done the job properly and accurately and whether adequate help was provided to the forest dweller during submission of application procedure. It is important to make the actions of Gram Sabha, SDLC and DLC liable in case of any carelessness or unprofessional behaviour. There should be a mechanism or machinery that may decide on the extent of the unprofessional behaviour and hence they should be made liable for any misdemeanour.

8. A tracking system must be put in place to know the result of the claim. As it is pertinent, forest dwellers live in remote areas and many a times, they do not have proper transportation to reach the place where the information about the claims is put in notice or proper information about when the result of the claims will be provided to them. To not suffer in because of non-availability of the information, state government should make some procedure so that proper information at the right time is conveyed to the forest dwellers.

Problems during FRA implementation

Below are discussed various obstacles/problems/hurdles that are reported and faced while implementing FRA.

a. Lack of awareness and Education

The tribals have been vulnerable and have been subject to exploitation in the hands of forest officials, other minor government agents, money lenders and landlords. They have been subject to exploitation due to their lack of awareness and education that has kept them away from the main stream India. In their narrow confines of the traditional environment the tribals, the tribals have resisted change and this lack of change can also be blamed for their current situation. The tribals who in their secure environment are happy and work in a skilful manner become insecure and detrimental to their interests as soon as they are brought out of their familiar environment. The tribals have been brought in an environment where there has been a lack of written skill and word of mouth was given much importance and trust, the tribals get all confused when it comes to written rules and documents, which in the recent times has more or less started to define all the legal aspects of the tribal lives and social structures. Since most of the tribals are uneducated, it constantly gets more and more frustrating for the tribals to deal with the changing systems. They become easy victims of fraud since they are not able to read and write and often their thumb impressions are taken by the government officials of documents that they are not able to make any sense of. Other more education representatives of the society also take advantage of this situation and often tend to exploit the tribal alike.

To make sure the tribals do not fall victims to this form of exploitation that is basically dependant of education, it becomes important that the tribals are provided proper education. This will not only help the tribals to come in to the main stream India but also help them understand the local languages and officers without the help of a interpreter who often would not be able to interpret the whole thing. Many tribals who have been living in their small communities have their own dialects that are uncomprehendable to the people outside their villages. If the tribals are educated in the local regional languages they would be better able to communicate with the people outside their areas and their fore not only learn the new ways of the system and the society would be less vulnerable to fall victim to exploitation that they were subjected to before. However this is not as easy as it sounds and education the tribals who have been adept at speaking their own dialects pose a lot of difficulties. The first one is to make the tribals learn an additional language that is different from the local dialect that they have been speaking since birth. The teachers that are available in these tribal schools often find it difficult or are not trained in how to teach additional language or how make the children understand or learn an additional foreign language. The medium of instruction is also a difficult subject since it is difficult to find teachers who now both the dialects. It is often a visa versa situation where either the teacher is not well versed with the local dialect or the dialect that he or she has set out to teach the village children.

b. FRA in conflict with other legislations

As discussed earlier an a lot of times in the process of this research the crucial aspect of conflicting nature of the FRA with other laws actually hinder the acceptability and implementation of this law. The law cannot run parallel to other laws that are contradictory in nature and while Sec. 13 of the act states:

“Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.” According to this statement as above, there is contradiction within FRA itself with regards to the applicability of the Act. Under Sec. 4.1, the Act is applicable ‘notwithstanding any other law for the time being in force’. Similarly, the same is reiterated under Sec. 13, whereby it is stated that ‘save as otherwise provided in this Act and the provisions of PESA’, however, it is also written that the provision that this Act shall be ‘in addition to and not in derogation of any other law in force’. Now, whether this Act will comprehensively be applicable notwithstanding any other law for the time being force or whether this Act is in addition to and not in derogation of any other law in force. This has created utter confusion and ambiguity as anyone may interpret the applicability of the Act as per their interpretation. It is seen that mostly this Act is interpreted in the sense that this Act is in addition to and not in derogation of any other law in force. As seen above and in subsequent chapters, such an ambiguity creates disputes when the forest officials on one hand says that rights of the forest dwellers will be recognised as per the procedures mentioned in the related laws to FRA, and on the other hand, pro-forest dwellers community states that rights of the forest dwellers should be recognised as per the procedures

mentioned in FRA and FRA Rules. This situation especially occurs in wildlife sanctuaries and national parks, where it is unclear whether the provisions of other existing forest and wildlife laws are applicable, especially as we have observed that there is a lot of confusion and disharmony when it comes to recognising rights in protected areas. As mentioned above, we have seen that as Joint Forest Management, although not a legal provision mentioned in any forest related laws, still is applicable in practice, and that JFM is totally against the provisions of FRA, this has completely made it difficult for the forest dwellers to apply for the community forest rights. For example, the community forestry groups in Odisha have been strongly opposing JFM provisions that are being applied for ascertaining management rights of the forest between the forest department and forest dwellers, which were reiterated by the Odisha Government again in the year 2011 when the government passed a new JFM resolution. The fear in such cases are that if JFM is applied by a certain state, then the Forest Department may restrict the claims to boundaries set under JFM, thereby making it virtually impossible for the forest dwellers to claim for community forest rights and hence going against the spirit of FRA.

According to Sec. 3(2) of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, community development projects such as schools, hospitals, anganwadis (child and mother care centres), fair price shops, electric and telecommunication lines, tanks and water bodies, water pipelines, rainwater harvesting structures, minor irrigation canals, vocational training centres, roads and community centres require the permission of Gram Sabha. The question simply is not contradiction of forest related laws with FRA, but also the attitude and actions of the concerned Ministries, namely MoTA and MoEF. For example, On 5 February 2013, Assistant Inspector General of Forests under MoEF issued a circular stating that proposals seeking prior approval of Central Government under the Forest Conservation Act, 1980 for projects like construction of roads, canals, laying of pipelines/ optical fibres and transmission lines etc. where linear diversion of use of forest land in several villages are involved, unless recognised rights of PTG/ PAC are being affected, are exempted from the requirement of obtaining consent of the concerned Gram Sabhas.

It further stated that that the decision was taken after consultations with an inter-ministerial committee. Such a letter undermines the spirit of FRA and even MoTA has also written to MoEF to revise the circular. This was earlier instructed by the MoTA vide letter dated 7 December 2012 and again reiterated by the MoTA on the same date, i.e. 5 February 2013, whereby MoTA wrote to the Principal Secretaries of all the States and Union Territories of India that for any diversion of forest land for non-forestry purpose, compliance with FRA 2006 needs to be ensured and that compliance by the Gram Sabha is mandatory before diverting any forest land for non-forestry purposes.

c. Limitations of MoTA

Although MoTA has been taking many corrective measures for proper and smooth implementation of FRA (as seen in Chapter V below), this is also true that many a times, MoTA fails to successfully prevent that. Few pro-forest dweller

groups blame that MoTA is short of eligible staff that are properly and completely aware of provisions of FRA and therefore fail to ensure that proper application process is applied while recognising rights of the forest dwellers. Due to such unawareness, the provisions applicable from the first stage from the application of the claim until the claim is granted remains faulty that make the FRA ineffective. Such an example is seen from the government data where individual claims are claimed more than the community rights. With the arbitrary actions of MoEF, the job of MoTA becomes more and more difficult where in case of violations, they can simply write a letter to MoEF suggesting taking back the orders released by MoEF against FRA. For example, it is seen in many states that even after many years of passing of FRA, MoEF still issue notifications of diversion of forest land to non-forestry purposes without taking the consent of the forest dwellers or the Gram Sabhas as stipulated in FRA.

Moreover, setting deadlines or timelines in recognition of rights, either by MoTA under FRA and many a times by MoEF in other forest related laws to FRA, is completely in violation to the spirit of FRA. The major concern that is seen with the status of MoTA is that it has reduced only to asking the status of implementation of FRA or monitoring the actions of the state, but very little is done by them to find reasons for non-implementation of FRA, or to finding its consequences. There is a very thin line between MoTA issuing letters to MoEF for issuing circulars that are in violation of FRA and MoTA issuing such circulars that are in direct violation of FRA. For example, under Forest Conservation Act, compensatory afforestation has to be undertaken by communities in forest land for development facilities, which is totally exempted under FRA by Section 4(7) of the Act that provides that the forest rights under FRA shall be conferred free of all encumbrances and procedural requirements, including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land. However, MoTA did issue such a circular requiring the communities on forest land to do compensatory afforestation.

There are few examples within FRA that shows how non-implementation of the Act results into defeat of FRA. For example, S. 3 (1) (a) states that the STs and OTFDs have the right to hold and live in the forest land under the individual or common occupation for habitation or for self cultivation for livelihood by members of a forest dwelling Scheduled Tribe or other traditional forest dwellers. Any diversion of forest lands controlled or used by communities under this section would be subjected to their consent. However, it is observed and seen many times that even through the Act of MoEF, whereby it issues notifications where consent for few developmental projects can be waived off, makes complete disregard of FRA. Although MoTA do take corrective measures and point out the irregularities committed by MoEF or any other authority, still in reality, in the name of development, their actions are overlooked or bypassed. As per 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, 2013) by the MoTA, 32, 56,367 claims have been filed and 13, 08, 626 titles have been distributed. A total of 28, 27, 582 claims have been disposed of (86.83%). Disposed does not mean that titles are granted.

Essentially, more than 85% claims were rejected, which shows that the situation for claiming titles until they are granted or rejected or disposed is grim. Many states like Chhattisgarh, therefore claim that they have a spotless track record of settling claims on paper. The Saxena Committee in its report stated many difficulties in the proper implementation of FRA. The report included the following:

1. Many applicants faced problems in filling the claim form. For example, most applications do not mention the area under occupation because of poor translation of Form-A from English to Hindi prescribed under rule 6 (1) of FRA. The name of the wife is left out in many cases, although Sec. 4 (4) of the Act prescribes that the title should be in the joint name of the spouses in case the applicant is married. Cases of claims in national park were not dealt with as per the procedure mentioned in FRA Rules and Act, so it makes the rejection in such cases as illegal.

2. Wrongful rejections of claim are also happening that generally happens due to lack of proper enquiries made by the officials. The hasty enquiries and inadequate response received by the senior officials led to rejection of much of the claims. Most of the rejections that were at village level were because of applications that were based solely on the reports that were submitted by the village patwaris or the forest guards these reports hadn't been officially scrutinised by higher level officials. The claimants themselves weren't given reasonable time to prove neither their claims nor the tribal welfare department took any interest in doing cross checks for the work done at the village levels. They did not take any initiative in hiring outside agencies to oversee the work that was being done in this regards and this led to not only wrongful rejections but some wrongful acceptances too.

3. The vigilance committee of elected officials set up by the state government is inactive. Similarly, the tribal welfare department, despite being the nodal department, has failed in providing leadership to the programme, resulting in a low profile implementation campaign and low awareness of the Act. The departments' role is to develop qualitative indicators, call public meetings, hold public consultations, put pressure on the revenue and forest departments at the district level to do justice to the forest dwellers, and improve communication between officials and the people. Instead it merely collects statistical information and forwards it to the higher levels.

4. The state government admits that almost no action has been taken under Secs. 3 (1) (b to m), which pertain to community rights. On the other hand, several applications for community rights have been accepted under Sec. 3 (2), although this Sec. is not about community rights.

5. Many deserving claimants were unable to file claims within the stipulated time frames. They were under the impression that the last date was over and the FRC and the village panchayats had stop accepting claims.

6. We have seen above in this chapter how there is conflict and overlapping in the various machineries of the government and we will again discuss more about this in detail in Chapter V. It is established that there is a lack of balance and cooperation and coordination between various departments

of the government, be it in MoEF or MoTA. Incidentally, a lot of departments are interrelated with each other between the two ministries, like ones related to tribal, forest, revenue and local self-government departments (Panchayats, Gram Sabha, etc. as specified in PESA). A lot of provisions in FRA and other forest related acts like IFA, WLPA, FCA, etc. are similar but each department interprets and applies those provisions differently and in their own way. The problem in the end is faced by such section of the society, namely the schedule tribe forest dwellers, for whom understanding and following such complex legal system becomes an impossible task to undertake. This then results in poor implementation of FRA.

7. The provisions in FRA have provided a right to the claimants for an appeal in cases where their claims are rejected. However, the claimants only file an application for appeal within sixty days from the date of passing of the resolution, and not from the date of communication. At many instances, claimants are either not informed in writing when their claims are rejected, or the information reach them too late so that the time to file an appeal had passed away. Many times, the area where these forest dwellers reside are in such remote places that no information can reach them easily and at other times, there are only woman adults in a family, for whom it becomes difficult to commute to the area where the decision of their claim is put on the notice board or either they are illiterate to actually comprehend the legalities. It is suggested that there should be a process or a procedure whereby the results of the claim are delivered to the claimants as soon as they are decided and that the appellate deadline should start from the day the claimant gets the communication of the decision with a note of relevant reasons for rejections.

FRA 2012 Amendment Rules

The FRA was amended in the year 2012 once again to address the procedural errors that had been made while implementing the forest rights rules in 2008. The Ministry of Tribal Affairs enacted the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 with the sole motive of reversing the historical injustice done to the tribals and forest dwellers. In an historic event under the act 12, 68, 766 tribals were recognised and title deeds for eligible candidates were given till 31st July 2012. However this was just the tip of the iceberg as a number of applicants were rejected that ranged in numbers of more than fifty percent of the total applicants. There were a number of complainants who claimed that they were forcefully evicted from their traditional lands and further denied their rights. These complaints were eventually sent to their respective union territories and state for necessary action. This was in consideration with the law being implemented in a stately fashion. A number of factors were brought to the notice of the ministry in regards to the implementation of the act that led it to believe that the spirit of the law was being with held and the rights of the forest dwellers were being curbed, even for the eligible forest dwellers. It was brought to notice that the rights to minor forest produce, grazing areas, water bodies, habitats of Particularly Vulnerable Tribal Groups, pastoralists' routes remains very low. The rate of applicants to collect these was rejected in high number.

The ministry took the pains of implementing the act and took steps that were strong in nature. It came up with guidelines for both states and union territories for the facilitation of implementation of the act. These guidelines were in relation to recognition of rights, evidence requirements, rights to minor forest produce, etc. that were previously denied due to evidence rejections. The guidelines also protected the forest dwellers against eviction from forest lands, relocation and creating awareness and grievance redressal for the forest dwellers. So that the new amendments can be easily implemented, the ministry brought about reforms to the Forest Rights Rules of 2008 that were in relation to the forest tribes and the schedule tribes. The ministry in order to bring more clarity to the act took the help of the UNDP by collaborating with it in streamlining the finer nuances of the act. The role of the UNDP was to provide regional consultation on how to better implement the FRA region wise. This helped in bringing together all the segments of the society. The issues of major focus were:

- Why such changes were required and what was the background of the act;
- A better understanding of the act specially the amendments that had been made to the act;
- The wider outlook on the implementation of the act from a national view with critical observations;
- An outlook on the progress at state levels and the reasons for bottlenecks in state related issues on the implementation of the act;
- Gram Sabha meetings at the village level to be held in all places;
- A simpler process for recognising the rights of both individuals and communities;
- Conditions those are applicable for the forest dwellers;
- Forest villages shall be converted into revenue villages;
- Joint Forest Management committees and van suraksha samitis shall look after the community forest resources;
- Land titles shall be recognised and their legality checked;
- Collection of information of cases under section 3(1) (b) to (m) separately from Section 3(2);
- Restrictions on what is considered as evidence under FRA Rule 13;
- Effectiveness of state level monitoring committees;
- The Regional Consultations provided by the UNDP also helped in providing a platform to share the status of implementation of the Act;
- The act was misunderstood leading to its misinterpretation specially those that fell under the forest laws related to FRA;
- The FRA was misunderstood and misinterpreted as a welfare legislation to distribute land to the landless. It was used to curb the forest dwellers rather than recognizing their rights;
- There was a fear that since forest land was allocated to the forest dwellers, eventually all the forest land will be cut down leaving no forests;
- The states of Mizoram and Nagaland this was particularly difficult to implement with its unclassified forests and forest communities. Their rights were already recognized under various state laws. There was insufficient training of the local authorities that fell under the FRA. This also included exclusion of non-Scheduled Areas and Protected Areas from the application of the Act;

- Imposition of cut-off dates for filing of claims contrary to the provisions in the law;
- Inadequate financial and administrative support to implement the law;
- Forest Rights Committees and Sub-Divisional and District Level Committees were incorrectly constituted;
- Gram Sabha and/or Forest Rights Committees by Sub-Divisional and District Level Committees or their members were by-passed;
- Interference in the recognition of rights process;
- There was misinterpretation of the FRA rules;
- Only Scheduled Tribes (STs) are eligible for rights under the Act;
- Absence of ST community certificates and difficulty in obtaining them;
- Insistence on occupation of land for three generation (75 years) prior to the cutoff date of 13 December 2005 for non-ST other traditional forest dwellers;
- Insistence on residence in forest land to make claims;
- Insistence on particular types of evidence;
- Insistence on official documentary evidences over other evidences;
- Rejection of evidence other than official documentary evidences;

Although the guidelines for the issuance of titles in case of individual rights and community rights have been clearly stated, the actual process of creation of these records faced problems due to the following reasons:

- There was no communication in regards to rejection of a claim and therefore there was no way for the claimant to appeal against the verdict.
- There were additional conditions that needed to be fulfilled and it was difficult for the claimant to fulfil those.
- There was a lack of clarity as to how these records were to be maintained and what status in the forest department record was there after recognition had been made.

Recommendations from the Regional Consultations³

The expert panel during all the Regional Consultations made sure that clarity was given to various provisions of the act. Few of the major recommendations that were made by experts were as follows:

1. FRA must be implemented in both letter and spirit with passion and commitment.
2. FRA is meant to give a legal face to already existing arrangements and has no intent to cause damage to the forest areas.
3. FRA should be dealt in conjunction with Panchayat (Extension to Scheduled Areas) Act 1996 where applicable.
4. As per (Rule 4.1(e)), the rights of the forest dwellers will have primary focus on community Forest Resource (CFR)

³ Regional Consultations: The Ministry of Tribal Affairs organized a series of nation-wide Regional Workshops under the MoTA-UNDP Joint Activity Plan from Sep - Nov 2012, whereby representatives of Tribal Welfare Department, Forest Department, Revenue Department, Panchayati Raj department and representatives from the civil society organizations participated to develop a common understanding of FRA and its scope and objectives.

rights and Community rights; these need to be taken on a priority basis and every Gram Sabha will have its CFR area marked with its management committee that shall be elected by the local villagers.

5. The states shall play the role in making the FRA stronger so it is properly implemented and the rights of the holders safe guarded.
6. All forest villages will be converted to revenue villages so that the revenue generated shall be used for further development of the villages the places where the rights have been claimed, protection of the forests, wildlife and other biodiversity the right to do so shall lie with the right holders of the Gram Sabha committee.
7. The occupants need to be recognized under the FRA even though they are relocated and all ineligible claimants cannot be evicted as their rights are protected under different acts and laws.
8. Gram Sabha at the village/ hamlet or habitations level is the key authority in implementation of the law and therefore empowerment of the Gram Sabha is of utmost importance. Responsibility for successful implementation of FRA lies with the channelizing of the revenue and the forest and tribal departments are the nodal agencies in its key implementation.

Main features of the amendment proposed

A national meeting on Forest Rights Act was held by the MoTA with the sole objective of discussing the recommendations made for the regional consultations. The amendments made after these discussions mainly focused on:

1. It was decided in this meeting that the number of quorum of the Gram Sabha shall be reduced from 2/3rd to ½ of the members so that the number of claimants to the forest rights shall be at least fifty percent of the claimants. The resolution to pass any claims shall be held in the presence of these claimants so there was a majority present between those voting for these rights.
2. The decisions for rejection or modification shall be communicated to the claimants and reasonable time shall be given to the claimant in case he decided to file a petition against the decision.
3. A procedure shall be laid down for the identification of the village forests and similar laws shall be made for bringing them in to the main stream.
4. The claims that shall fall under the category of non rejection shall be accompanied by two forms of evidence as specified in Rule 13, the reasons for rejection shall be given in writing and technology such as satellite imagery shall be used in the treatment of the same.
5. The Scheduled Tribes in the Forest Rights Committee shall be represented by 2/3 rd rather than 1/3 as was presently being represented.
6. The transit permits shall be modified in case of transportation of the minor forest produce and shall be done only by Committee constituted by Gram Sabha or a person authorized by the Gram Sabha. The royalties and other MFP related revenue shall be collected by these committees.

The Ministry after making these amendments for the implementation of the Forest Rights Act of 2006 notified the concerned authorities. The idea was to recognise the rights of

the forest dwellers and there is a sustainable development through localisation of the laws rather than centralised governance. This would enable the forests dwellers to have a better understanding of the local environment without the fear of being apprehended.

Some other features of FRA 2012 Amendment Rules

1. The Gram Sabha committee shall work jointly on plans with the forest department as and where they are of significance and have a common goal.
2. Forest dwellers have the right to carry MFP by any means of transport.
3. No committee or individual official at the panchayat, block or forest range level except the forest rights committee will be able to receive, decide or reject the forest rights claims.
4. A committee constituted by the Gram Sabha will issue transit passes for transporting minor forest produce.
5. The committee constituted under the Gram Sabha will be responsible for formation of forest conservation plans and the welfare of the forest dwellers whose rights have been recognised.
6. The State level monitoring committee shall report the progress on the implementation of the act and shall provide details to the communities that are involved.
7. Additional conditions for rejection than those which were there in the draft rules. This will ensure that the rights claims are not rejected illegitimately by the authorities without the verification process that was absent beforehand.
8. The Gram Sabha will approve all decisions of the committee that are related to the issuance of permits and use the income for the betterment of the forests and use it wisely for forest management plans. All the villages shall recognise the rights of the forest dwellers and in relation to protection, regeneration and management of the forests in a sustainable manner. In cases where it is not followed the reason shall be recorded by the district-level committee formed to look into the FRA claims.

It looks quite promising that FRA shall be soon fully and completely implemented without facing its usual obstructions. The first step is already taken to assess damage. Now appropriate measures need to be taken to control damages and to take appropriate measures. Most of the problem will automatically be resolved when contradictions/overlapping of FRA related laws will be eradicated. However, the spirit of FRA should always be kept in mind while applying FRA and when positive approach is taken then only FRA will be successful in eradicating historical injustice from the lives of the forest dwellers.

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