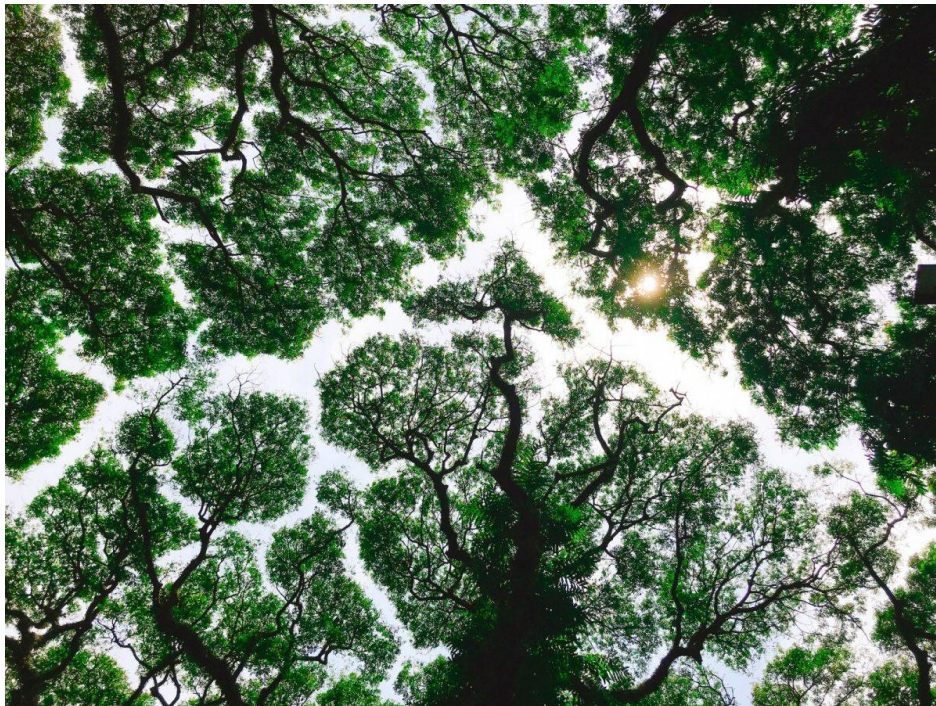


Why is the government afraid of implementing the Forest Rights Act?

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The Ministry of Tribal Affairs (MoTA), the nodal ministry for the Forest Rights Act 2006 (FRA), constituted a committee earlier this year to examine and recommend model guidelines for conservation, management and sustainable use of community forest resources (CFR) under FRA. The tenure of this committee has now been extended by two months, ending this December.

Headed by N.C Saxena, a former bureaucrat and member of the erstwhile Planning Commission, the committee has representatives of tribal affairs, environment and panchayat raj ministries, principal secretaries of tribal development from various states and members of some civil society organisations.

Community forest resources

CFR is the forestland that each habitation or pastoral community traditionally accesses for various purposes. They include reserved forests, protected forests and protected areas such as tiger reserves, national parks and Sanctuaries. The gram sabha is the statutory authority to demarcate and approve CFR areas. The sub-divisional committee examines this. The district-level committee approves it and issues the title to the gram sabha. The gram sabha are to protect, conserve, regenerate, regulate and manage CFR areas based on the forest type of the area, existing and intended use, and the socio-ecological needs of the communities.

According to the Union environment ministry, FRA “assigned rights to protect around 40 million hectares of community forest resources to village level democratic institutions. The fine-tuning of other forest-related legislations is needed with respect to the said Act”. About 56% of recorded forests are to be transferred to the gram sabha from the forest department as CFR.

In 2015 itself, MoTA issued legally enforceable CFR guidelines as directives. Accordingly, every gram sabha can freely make its own CFR management plan in whatever way it wants to, and even modify the forest department working plan to integrate it with their plan. Every village is to have CFRs. If there is no CFR, the district collector is to explain why there is no CFR for that village. These CFRs are to be recorded as such, as a separate category of forests, in the 'Records of Rights' and in the forest department records.

Trampling the law

But in the 12 years since FRA has become operational, MoTA and the state governments have no list of habitations where FRA has to be implemented and where CFR titles have been issued and their areas. Media reports on villages getting CFR titles are rare – most of them are about rights denied, claims kept pending or approved meagrely. And in this situation, MoTA still wants to provide yet another set of CFR management guidelines rather than ensuring that its 2015 directives have been followed. MoTA – which is in charge of all matters relating to forest rights – has effectively failed to do what it takes to implement the FRA.

The FRA has been implemented only in 20 states and one UT, out of 28 states and eight UTs. As of June 2020, 5.2 million ha has been titled under the FRA. Many overlap with each other, so the same piece of land is often titled under different rights. And even then this is just 13.13% of the estimated total of 40 million ha.

The Supreme Court asked states in February 2019 to evict the claimants whose claims had been rejected from forest lands in WP(C) 50 of 2008, which challenged the constitutional validity of the FRA. With eviction itself kept on hold, the state governments conceded that the FRA implementation is deeply flawed and pleaded for more time to review these claims, which run into lakhs. In this regard another dose of CFR guidelines for FRA seems like nothing but a cruel joke.

What needs to be done?

The state-level monitoring committees (SLMCs) of the FRA, headed by the chief secretaries, can very well list out and notify the eligible villages along with the extent of forest land accessed as the minimum CFR area. This is the only meaningful indicator to monitor the progress of FRA implementation. The 2001 Census report and 1999 'State of Forests' report show some 1.79 lakh villages, each with a number of hamlets, whose residents access up to 40 million ha of forests. But even though the FRA provides a separate form to report this data, the states have been unwilling to do so.

Where CFR titles are given, there have been allegations galore of arbitrary reduction of area or titles given with conditions not permissible in law. Why have the SLMCs not rectified and reported this to MoTA?

The biggest threat that a gram sabha could face is when their CFR areas are diverted under Forest Conservation Act 1980 (FCA) for non-forestry purposes or for tree-plantation to compensate forest loss due to this diversion. Some 2.53 lakh ha were diverted for non-forestry purposes and another 47,435 ha for compensatory afforestation between 2008 – when the FRA became operational – and 2019. Did these diversions comply with the FRA, as required by a 2009 environment ministry order and the amended FCA rules? Was FRA implementation completed and gram sabha consent obtained?

It's also unclear if the diverted forest lands were partly or fully part of CFRs, and if the rights-holders were compensated under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. Here, too, forest rights are to be acquired only with the consent of the rights-holders and are to be adequately compensated. We don't know why the MoTA

has not entrusted the state tribal welfare department with the task of monitoring FRA compliance provisions under the FCA and reported them to the ministry.

What prevents MoTA from introducing a legal aid scheme to gram sabha where violations have taken place? Isn't it incumbent on MoTA to review all central and state laws and point out which are the ones that violate FRA and what changes are to be made?

Another threat is 'voluntary relocations', particularly from tiger reserves. Critical tiger habitats are to be kept 'inviolable'. As on July 12, 2019, 14,441 families (25.17%) of 57,386 families in 50 tiger reserves have been relocated. The word 'inviolable' is misinterpreted to mean relocating the inhabitants instead of protection from being violated or harmed. Moreover, relocation is only when coexistence of any kind is not possible and that too only from critical wildlife habitats (CWHs) notified under FRA. The Union environment ministry issued CWH guidelines only in 2018. Were forest rights under FRA recognised for those relocated, settled and compensated besides the rehabilitation package as required by law? Is there any tiger reserve that fulfils the provisions of the Wildlife Protection Act 1972 under which these were notified? Why are the state tribal welfare department and MoTA not monitoring and reporting violations of forest rights?

FRA also provides for taking action against officials violating the FRA provisions, which is an offence. The gram sabha is to pass a resolution and issue it as a notice to the chief secretary to take action against the offender within 60 days. Has the state tribal department been assisting the gram sabhas to carry out these provisions? Are they monitoring these resolutions and reporting them to MoTA? If not, why not?

There is nothing preventing the MoTA from performing these duties – and doing so will only provide an enabling environment for proper FRA implementation.

Source: <https://science.thewire.in/environment/community-forest-resources-forest-rights-act-2006-ministry-of-tribal-affairs-implementation-gram-sabha/>