



# A Critical Review of Governance Mechanisms under the Forest Rights Act 2006.

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## **ABSTRACT:**

The Forest Rights Act (FRA), officially known as the Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, was a significant legislation passed during the first United Progressive Alliance (UPA) government in India. This landmark act aimed to rectify the historical injustices faced by tribal populations and forest-dwellers who had long been denied their traditional rights due to the conversion of their dwelling places into government-controlled forest areas. Even after India gained independence, this practice persisted, resulting in the tribal people becoming encroachers on their own ancestral lands.

The enactment of the Forest Rights Act was a response to the demands of tribal organizations, social activists, and scholars who advocated for justice and empowerment of the marginalized communities. It aimed to provide a fair deal for the tribal population by recognizing and safeguarding their traditional rights over the forest areas they had inhabited for generations.

However, to assess the true impact of the Act, it is essential to conduct a systematic study and analysis of its implementation at the ground level. This includes examining the governance structure established around the Forest Rights Act, 2006, the legal and administrative challenges faced during its execution, and other relevant aspects.

## **1.INTRODUCTION:**

This article seeks to delve into the governance framework established by the FRA, as outlined in the Act and the accompanying rules. It also explores the roles and responsibilities of the authorities at various levels, shedding light on the key problems encountered during the implementation process. The examination of the Act's implementation in the state of Himachal Pradesh provides valuable insights into the practical challenges faced in translating the Act's intentions into reality.

## 2. THE GOVERNANCE STRUCTURE:

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA), is a significant Central legislation that was passed by the Indian Parliament in December 2006. To comprehend the implementation framework, it is crucial to identify the different stakeholders involved at various levels.

### 2.1 At Central level:

The implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA), involves several stakeholders at different levels. At the Central Government level, the Ministry of Tribal Affairs (MoTA) serves as the nodal agency responsible for overseeing the Act's implementation. The Central Government holds the authority for making rules related to the Act, as opposed to the state governments. Additionally, in 2012, the Ministry of Tribal Affairs issued comprehensive guidelines to ensure effective compliance with the Act, and many of these guidelines were later incorporated into the amended Rules of 2012.

Furthermore, in 2018, the Ministry of Environment, Forests & Climate Change (MoEF&CC) published guidelines for the notification of Critical Wildlife Habitat within National Parks and Sanctuaries, in accordance with the provisions of this act. The Ministry of Tribal Affairs has also issued various directions and clarifications on several aspects of the Act, including implementation, rejected claims, protected areas, minor forest produce, community resource rights, conversion of forest villages, and other related issues.

According to Section 12 of the FRA, all authorities mentioned in the Act, such as the Sub-Divisional Level Committee (SDLC), District Level Committee (DLC), and nodal agencies, are subject to the directions issued by the Central Government. This provision aims to bridge implementation gaps and ensure uniformity in the implementation process across all states. It is noteworthy that another Central Act, the Panchayats (Extension to the Scheduled Areas) Act (PESA) 1996, aligns with the Forest Rights Act, 2006 and their provisions are meant to be harmoniously constructed together. Section 13 of the Forest Rights Act, 2006 explicitly supports the continuation of pre-existing community rights of non-Scheduled Tribes (STs) or ineligible Other Traditional Forest Dwellers (OTFDs) in Fifth Schedule areas governed by PESA.

### 2.2 At State and district levels:

The implementation of the Forest Rights Act, 2006 involves the active participation of state governments, which have the authority to issue executive orders and notifications to departments and committees involved in the implementation process. It is the responsibility of state governments to establish three committees: the State Level Monitoring Committee, the District Level Committee (DLC), and the Sub-Divisional Level Committee (SDLC).

The State Level Monitoring Committee is composed of high-ranking officials, including the Chief Secretary, secretaries of the Revenue, Tribal, Social Welfare, Forests, and Panchayat Raj departments, the Principal Chief Conservator of Forests, members of the Tribes Advisory Council or three Scheduled Tribe (ST) members recommended by the State Government in the Council's absence, and the Commissioner of Tribal Welfare. The State Level Monitoring Committee acts as a monitoring agency to oversee the vesting of Forest Rights in the state. It also possesses the authority to take action against any authority that violates the provisions of the Act.

The District Level Committee comprises the District Collector, Divisional Forest Officer, or Deputy Conservator of Forests, three members of the District Panchayat nominated by the District Panchayat, and an officer of the Tribal Welfare/Tribal Affairs department responsible for the district. In municipal areas that do not fall under Schedule Six of the Constitution, three members of the District Panchayat are substituted with three members from Town Panchayats/Municipal Councils/Municipal Corporations nominated by the municipalities in the district. The District Level Committee serves as the final authority to approve claims related to forest rights.

The Sub-Divisional Level Committee is headed by a Sub-Divisional Officer, a Forest Officer in charge of the sub-division, three members of the block/tehsil level Panchayat nominated by the District Panchayat, and an officer of the Tribal Welfare/Tribal Affairs department responsible for the sub-division. In municipal areas not falling under Schedule Six of the Constitution, the three members of Panchayati Raj institutions are replaced with three members nominated by municipalities in the sub-division. The Sub-Divisional Level Committee serves as the first appellate authority and is responsible for overseeing Gram Sabhas concerning the Act's implementation.

### **2.3 At Village level:**

According to the Act, the authority to initiate the process of vesting forest rights on the beneficiaries lies with the Gram Sabhas. To assist the Gram Sabhas in this process, a Forest Rights Committee is elected from the Gram Sabhas, consisting of a minimum of 10 and a maximum of 15 members.

In areas with low-density populations, the Act allows for the adoption of the definition of 'village' as provided under the 'Panchayats (Extension to the Scheduled Areas) Act, 1996' (PESA). This permits the formation of a Gram Sabha for a single habitation, a group of habitations, a hamlet, or a group of hamlets. Consequently, a cluster of villages can come together to form a Gram Sabha and subsequently establish a Forest Rights Committee.

Once the Community Forest Rights are granted to the community, the Gram Sabha becomes the central authority responsible for making decisions concerning the conservation and protection of forests. The Gram Sabha must form necessary committees to work collaboratively with the Forest Department, integrating their conservation and management plans with the micro plans, working plans, or management plans of the Forest Department. These committees possess the authority to make any necessary modifications to the Forest Department's plans as deemed fit.

It is explicitly stated in the frequently asked questions published by the Ministry of Tribal Affairs that no other committee mentioned in any other law can take over the power vested with the Committee under Rule 4(1)(e). This reinforces the Gram Sabha's significant role and authority in forest rights and conservation matters under the Act.

### **3. THE PROCESS OF CLAIMING FOREST RIGHTS:**

The process of claiming forest rights begins with the Gram Sabha, which calls for the submission of claims and authorizes the Forest Rights Committee to receive them. The Forest Rights Committee then conducts on-site visits, physically verifying the claims and collecting supporting evidence. Based on their findings, the Forest Rights Committee prepares a map, clearly marking the claimed area, and records its observations and recommendations, which are then submitted to the Gram Sabha.

Subsequently, the Gram Sabha passes a resolution, forwarding it to the Sub-Divisional Level Committee. The Sub-Divisional Level Committee collates all the maps and resolutions received from various Gram Sabhas and verifies the authenticity of the claims by carefully examining the evidence and documents provided. It is responsible for preparing the draft record of proposed forest rights at the block/tehsil level, which is then sent to the District Level Committee for final approval.

The District Level Committee serves as the ultimate authority to approve the claims and record of forest rights prepared by the Sub-Divisional Level Committee. In case any resolution or recommendation is deemed incomplete, the Sub-Divisional Level Committee or District Level Committee may remand it back to the respective Gram Sabha for reconsideration. Once the claims are approved, the District Level Committee issues directives for recording the rights in the appropriate government records and ensures their publication.

Additionally, the District Level Committee provides certified copies of the record of claims and titles to the claimants as well as to the respective Gram Sabhas, ensuring transparency and accountability throughout the process.

#### **3.1 Remedies:**

The Sub-Divisional Level Committee functions as the first appellate authority, responsible for resolving disputes between Gram Sabhas and handling petitions filed against resolutions passed by Gram Sabhas. If any party is dissatisfied with the Sub-Divisional Level Committee's decision, they can further appeal to the District Level Committee.

In matters related to the contravention of the Act by any authority, the law courts hold jurisdiction. However, before resorting to the courts, it is essential that the State Level Monitoring Committee takes action against the concerned authority. Sections 7 and 8 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, indicate that the High Court and Supreme Court can be approached under Article 226 and 32, respectively, to seek necessary writs (such as Mandamus) that direct a public official or government department to take specific actions.

It is worth noting that the Constitutional validity of the Act is currently under scrutiny in the Supreme Court of India.

### **3.2 Role of National Green Tribunal:**

Established in 2010 through the National Green Tribunal Act 2010 (NGT Act), the National Green Tribunal was formed with the primary purpose of providing expeditious resolution for environmental issues arising from the implementation of laws listed in Schedule 1 of the Act. While the Forest Rights Act, 2006 is not among the legislations listed in Schedule 1, the NGT may still address Forest Rights Act, 2006 related cases falling within its jurisdiction.

Currently, the NGT deals with Forest Rights Act, 2006 related matters, particularly those pertaining to forest clearances under the Forest Conservation Act. However, as there is a legal gap concerning the Forest Rights Act's implementation, the National Green Tribunal might potentially assume additional powers to address such issues in the future. Despite not being explicitly listed in Schedule 1, the National Green Tribunal could play a crucial role in ensuring the effective implementation of the Forest Rights Act, 2006 in cases that fall within its purview.

### **3.3 Constitutional Provisions Related to Governance Mechanism Under Forest Rights Act, 2006:**

The Constitution of India contains provisions concerning the administration and control of Scheduled Areas and Scheduled Tribes. Part C of the Fifth Schedule empowers the President to declare Scheduled Areas by order. However, the Constitution does not specify explicit criteria for such declarations. In the past, the Dhebar Commission (1960-61) had outlined criteria for declaring an area as a Scheduled Area, including a tribal population of not less than 50% of the total population, reasonable size, and economic backwardness. Recently, the criteria were revised to incorporate viable administrative entities like districts, blocks, or taluks.

Once an area is included in the Fifth Schedule, special provisions apply to that region, including the establishment of the Tribes Advisory Council to advise on tribal welfare matters referred by the Governor. The Governor can also issue notifications declaring that certain Central or State Acts shall or shall not apply to a Scheduled Area, with specified exceptions and modifications, even with retrospective effects.

These provisions hold great legal significance in safeguarding tribal rights. For example, in Maharashtra, the Governor utilized the mentioned provision to issue a notification creating the Divisional Level Committee to address the rejection of numerous applications related to the Forest Rights Act, 2006 by the District Level Committee. This step rectified the issue that had been adversely affecting tribals in the Scheduled Areas of the state.

In contrast, Himachal Pradesh faces significant challenges for tribal people in realizing their legitimate rights due to certain factors. The example from Maharashtra demonstrates the significance of utilizing existing provisions

for better implementation of the FRA, addressing any shortcomings without necessarily creating new ones. This approach serves as a crucial lesson for achieving more effective implementation and protection of tribal rights.

#### **4. IMPLEMENTATION OF FOREST RIGHTS ACT, 2006: A REALITY CHECK**

The Forest Rights Act, 2006 aims for a bottom-up approach, empowering the Gram Sabha and establishing Forest Rights Committees to facilitate the vesting of rights. However, field experiences present a different reality.

In practice, the convening of Gram Sabhas was often initiated by the Tribal Promoter/Tribal Extension Officer rather than the Gram Panchayat. While the Act envisioned FRC members to be elected by the Gram Sabha, respondents mentioned that members were chosen by the Gram Sabha itself. Many Forest Rights Committees covered two or three hamlets, with some having female representation. However, most members joined the committee without a clear understanding of their roles or the Act's processes. Multiple committees, such as Vana Samrakshana Samiti (VSS) and Integrated Child Development Services (ICDS), overlapped with Forest Rights Committee members, leading to confusion and lack of awareness.

Despite the Forest Rights Committee's envisioned role in the process, members often lacked knowledge of their duties and procedures. Many sought assistances from social workers or community members to fill their claim forms. In some cases, the Tribal Promoter/Tribal Extension Officer supported the Individual Forest Rights' claims. This lack of awareness extended to the beneficiaries, as many were unaware under which Act/scheme their land was vested.

The Forest Rights Committee is supposed to assist the Gram Sabha in receiving and verifying claims, but in reality, Forest Rights Committees in many areas became inactive after IFR receipt. Claims related to Community Forest Rights were scarcely addressed, even though spaces for burial or forest-related activities were informally designated. The absence of formal titles for these activities undermined the envisioned conservation regime.

Sub-Divisional Level Committee and District Level Committee, which hold significance in the Act, were not well known to the tribal communities. The Tribal Department was the most familiar authority in the process. Community Forest Rights titles faced delays and challenges, leading to provisional pattas and hindered conservation efforts.

Overall, the Forest rights Committee's role was limited in securing rights under the FRA, and the participatory approach intended by the Act was overshadowed by a paternalistic implementation by the Tribal Department. The haste to meet deadlines further emphasized the focus on Individual Forest Rights, undermining other empowering provisions in the Act.

#### **4.1. The Issues Of Gender Discrimination Are Not Addressed:**

While the Forest Rights Act, 2006 seeks to restore "historical justice," it also includes provisions for gender justice. However, state agencies often fail to understand these provisions due to deep-rooted patriarchal biases within their structures. The presence of the Forest Department has obstructed the Act's implementation as it fears losing control over forest territories and their resources. To restrict communities from claiming their rights, the Forest Department has resorted to coercive measures such as trench digging and fencing in various regions like Telangana, Rajasthan, and Gujarat.

This resistance poses a significant challenge, especially for women from forest-dwelling communities, as they are now considered encroachers instead of potential title holders, as the Act intends. Consequently, women face restrictions in accessing forest produce like grass, herbs, dry fuelwood, and uncultivated foods. They are also deprived of the benefits derived from value practices in forest regions, such as scatter agriculture, particularly in Rajasthan and Chhattisgarh.

Moreover, the violence against women resulting from this situation has taken alarming forms. Women are charged with obstructing government functionaries from performing their duties while complaints of sexual harassment against the Forest Departments are often disregarded, as seen in cases reported in Gujarat and the Uttarakhand.

The Act's goal of gender justice and empowering women in forest communities faces significant challenges due to structural biases and resistance from the Forest Department. Addressing these issues is crucial to ensure that women receive their rightful recognition as title holders and gain equitable access to forest resources and livelihood opportunities. By breaking down patriarchal barriers and fostering an inclusive approach, the Forest Rights Act, 2006 can truly deliver on its promise of justice and empowerment for all forest dwellers, regardless of gender.

#### **4.2. Need For Both Political and Social Commitments:**

The effective implementation of the Act requires a convergence of both political and social commitments. However, challenges arise from the mentality of some individuals within the Forest Department who perceive forest dwellers as encroachers, leading to disrespectful treatment and hindering the Act's implementation. Moreover, the lack of coordination between different departments further complicates matters. Each department interprets the Act based on its own mandate, resulting in conflicts between the forest department, revenue department, and local stakeholders, particularly concerning boundaries.

A major contributing factor to these challenges is the absence of a systematic effort to disseminate information about the Act and its provisions to forest rights communities and gram sabha members. Additionally, there is a lack of support to build the capacity of these communities in dealing with the Forest Rights Act. Without adequate

awareness and empowerment, the potential benefits of the Act remain untapped, leaving forest dwellers marginalized and unable to exercise their rightful entitlements.

To overcome these barriers, there is a pressing need for collaborative efforts among various departments and stakeholders. Creating awareness about the Act's provisions, promoting respectful engagement with forest dwellers, and providing capacity-building support to communities are essential steps in ensuring the Act's successful implementation. By fostering a spirit of cooperation and inclusivity, we can pave the way for the realization of the Act's objectives and bring about transformative change for forest dwellers' rights and well-being.

In my perspective, the bottlenecks to effective implementation of the Act can be attributed to both structural and operational challenges. As highlighted earlier, feudal and patriarchal attitudes within the forest and revenue department bureaucracies have been evident in my research, hindering progress. Additionally, operational issues have also played a significant role, leading to communities remaining outside the ambit of the Forest Rights Act, 2006.

One major operational challenge is the lack of sufficient outreach mechanisms by the Tribal Affairs Department and other relevant state departments responsible for implementation. This has resulted in many communities being unaware of their rights and entitlements under the Act, thereby restricting their access to its benefits.

Furthermore, the provisions for Other Traditional Forest Dwellers and Particularly Vulnerable Tribal Groups have not been adequately understood or implemented. Instead of facilitating their access and entitlement, these provisions have often been misused as a means of denial, further marginalizing these vulnerable groups.

Moreover, traditional mindsets that fail to recognize women as title holders or decision makers have added complexities to the operational constraints faced by women in claiming their rights under the Act. This gender bias has restricted women's empowerment and participation in decision-making processes, hindering the Act's goal of gender justice and equal representation.

Addressing these structural and operational challenges is crucial to ensure the effective and equitable implementation of the Act. Promoting awareness about the Act, sensitizing bureaucratic agencies to shed their patriarchal attitudes, and establishing robust outreach mechanisms are essential steps in overcoming these bottlenecks. By fostering a more inclusive and supportive environment, we can pave the way for the Act's transformative impact and empower all forest dwellers to exercise their rightful entitlements under the law.

#### **4.3. Lack Of Support of Authorities for Implementation:**

The implementation of the Forest Rights Act, 2006 has been hampered by several shortcomings at both the central and state levels. The Ministry of Tribal Affairs and state tribal welfare departments, serving as the nodal agencies, have lacked the necessary capacity and support from the respective governments to effectively handle the implementation of the Act.



Furthermore, the authorities established at the district and sub-district levels, namely the District Level Committees and Sub-Divisional Level Committees, have inadequately assisted Gram Sabhas and Forest Rights Committees in the crucial tasks of claim making, verification, and mapping of forest rights. This has resulted in more than half of the claims either being rejected or remaining pending, causing significant delays and dissatisfaction among forest rights holders.

Moreover, the claims of Other Traditional Forest Dwellers, including Scheduled Castes and other forest-dependent communities, have predominantly faced rejection, indicating a lack of recognition and support for their rights.

Important provisions of the FRA, such as vesting governance and management rights in Gram Sabhas and forest rights holders as per sections 3(1)(i) and 5, have not been fully implemented, with only Maharashtra and Odisha demonstrating significant progress in this regard.

Additionally, the rights of Particularly Vulnerable Tribal Groups, including nomadic and pastoral communities, have been overlooked during the implementation process. Similarly, provisions for converting forest and unsurveyed villages into revenue villages and recognizing the rights of Scheduled Tribes and Other Traditional Forest Dwellers displaced by state interventions have not been adequately addressed.

The implementation of the Forest Rights Act, 2006 has been further complicated by conflicting enactments, policies, and programs implemented by both central and state governments. This has created a complex and challenging landscape for forest rights holders, leading to confusion and hindered progress in the recognition and safeguarding of their rights.

Addressing these issues necessitates a comprehensive and coordinated approach by the central and state governments, with a focus on building the capacity of nodal agencies, ensuring effective functioning of District Level Committees and Sub-Divisional Level Committees, and incorporating the rights of all forest-dependent communities, particularly vulnerable groups, and displaced populations. Only through such efforts can the true spirit of the Forest Rights Act be realized and justice be served to the forest dwellers who have long suffered historical injustices.

**5. CONCLUSION:** In conclusion, the implementation of the Forest Rights Act, 2006 in Himachal Pradesh suffers from significant deficiencies that may undermine its original purpose. One critical issue is the lack of awareness among both beneficiaries and officials about the Act, rights, and procedures, leading to confusion and hindered progress. Additionally, the burden of multiple schemes and responsibilities on the state nodal agency, which is also the welfare department for Scheduled Tribe and Scheduled Caste communities, poses practical challenges and dilutes the effective implementation of the Act.

These shortcomings raise important questions about the true essence of the Forest Rights Act's implementation. Is the Act being reduced to a mere recognition of habitat and agricultural rights, disregarding its broader objectives? Could there be an underlying intention to validate concerns raised by conservationists? By not allowing tribals to fully enjoy the Act's benefits, the historical injustices they have faced remain unaddressed.

While Himachal Pradesh has achieved relative success in implementing the Forest Rights Act, 2006 compared to other states, it calls for a re-evaluation of the indicators used to measure its impact. These issues may point to deeper problems in policy design, possibly stemming from a lack of understanding of the context and original objectives.

Addressing these challenges is crucial to ensure the FRA's true potential is realized, empowering tribal communities and rectifying long-standing injustices in their rightful habitat and livelihoods. A comprehensive review and renewed commitment to effective implementation can pave the way for transformative change and social justice in Himachal Pradesh.

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