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## Some Insights into the Forests Rights Act (FRA)

by [Praveen Bhargav](#)

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A tribal settlement inside a tiger reserve



Ramki Sreenivasan

## Preamble

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) was enacted to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded.

*Praveen Bhargav, Managing Trustee, Wildlife First, opines that the FRA has several fundamental flaws, and takes you through four critical aspects that not only impact wildlife conservation, but also may not correct historical injustices to forest dwellers.*

There are two extreme points of view in the conservation debate. One is that all forests should be handed over to communities. The other suggests that no rights must be recognised in forests and all people must simply be moved out. Between these there is a more nuanced position, which is articulated in this article by the author. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – FRA – aims to correct ‘historical injustice’, which is admirable. However, the Act will adversely affect the country’s natural ecosystems and wild life.

## Forest degradation

The FRA provides grants of land to forest dwellers – in situ – to the extent of their present holding but not exceeding four hectares. Here lies the major problem with this legislation. Over the last three decades, habitat fragmentation has been identified as the single largest threat to biodiversity. With fragmentation, forest edges come more and more into contact with human activity resulting in degradation. The FRA has set the stage for another round of massive fragmentation. This will also lead to serious human–wildlife conflict.

## Exploited by land-grabbers

The last-minute addition of a nebulous category of people termed as Other Traditional Forest Dwellers will seriously affect the bona fide claims of tribal people. If the objective was to correct ‘historical injustice’ how can December 2005 be the new cut-off date identifying beneficiaries (from the earlier cut-off date of October 1980)? Weak procedures prescribed for identifying beneficiaries will be exploited to the hilt by powerful land-grabbers. As in the past, many tribal beneficiaries will be short-changed, while mining and logging companies could enter previously protected areas piggy-backing on land given to forest dwellers.

## **Better ways to correct the ‘historical injustice’ meted out to our forest dwellers**

We cannot negate the genuine needs of people marooned inside wildlife reserves. Compensation and livelihood opportunities outside reserves and important corridors through resettlement is a good option. The huge corpus of 11,000 crore rupees collected from compulsory levies imposed on mining and developmental projects can be devolved to States specifically for voluntary resettlement projects.

### **Elbow room for conservation**

Thankfully, the FRA provides for notifying critical wildlife habitats as inviolate areas. For this clause to serve any meaningful purpose, carefully reviewed identification of critical wildlife habitat must precede the process of recognition and vesting of rights. The FRA does not stop the implementation of voluntary, incentive-driven resettlement projects in critical wildlife habitats and that is about the only silver lining.

### **Additional points on the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

- The FRA is in addition to and not in derogation of the Wildlife (Protection) Amendment Act, 2006, the Forest (Conservation) Act, 1980 and other State Forest Acts. [from Section 13]

**Therefore the protective provisions contained in these Acts will continue to apply.**

- The FRA provides for recognition and vesting of rights only to Scheduled Tribes and Other Traditional Forest Dwellers who have been primarily residing and depending on forest land for three generations (one generation as defined in the FRA is 25 years) and were in actual occupation of forestland before the cut-off date 13 December 2005. [from Section 2(o), 4(3)]

**This Act does not provide any unrestricted legal right to any person (including a Scheduled Tribe or Other Traditional Forest Dweller) to enter a forest area now and start clearing and occupying forestland. The provisions of the Wildlife Act, Forest Act and other applicable laws may be invoked to remove such fresh illegal and ineligible encroachments.**

- The FRA proposes to provide legal rights to such persons (after a due verification process) only to the extent of land actually under occupation and not exceeding 4 hectares. [from Section 4(6)]

**This makes it very clear that everybody cannot claim 4 hectares (10 acres) of land. Only claims of those Scheduled Tribes and Other Traditional Forest Dwellers who had been primarily residing and depending on forest land for three generations shall be considered but would be restricted to the extent of actual occupation of forest land before the cut-off date of 13 December 2005, and in no case exceeding 4 hectares. The law does not allow anybody to expand the area under occupation as on 13 December 2005 and all such attempts would amount to fresh encroachments and can be dealt with under applicable wildlife/forest laws.**

- At no point does the FRA state that the new right over forestland or forest produce will come into effect immediately. All claims will have to be fully processed as per the detailed recognition and vesting procedure that the FRA Rules specify. Only after the district-level committee, comprising the DC, DCF and others, issues a certified copy of the record of forest rights and title will the claimant acquire a legal right over land and forest produce. [from Section 6 (6) and Rule 8 (h)]

**Nowhere in the FRA is it stated that all rights are granted with immediate effect. Anybody who**

**claims and assumes various rights over land and/or forest produce is liable to be dealt with under applicable wildlife and forest laws.**

- The FRA provides for declaration of Critical Wildlife Habitats in National Parks and Sanctuaries that require to be managed as inviolate areas. In such areas, the FRA provides for resettlement of villages and settlements. [from Section 2(b) and 4(2)]

**Voluntary resettlement of those willing to accept an alternative package offered by the government can therefore continue without any hindrance. Moreover, no law can curtail the right of any person to move of his or her own free will and settle in a different part of the taluk, district, state or country.**

- Article 19 of the Indian Constitution guarantees Fundamental Rights to every Indian citizen to reside and settle anywhere in the country. Article 13 (2) imposes a restriction on the State not to enact laws that are in derogation of the Fundamental Rights.

**These constitutional provisions empower every citizen to voluntarily resettle outside a Protected Area and this fundamental right cannot be infringed upon by any law (or any clause in the FRA or reports of committees) or by anybody including the Grama Sabha or Government or non-government agencies. By virtue of these provisions, even if one eligible family wants to voluntarily opt for the resettlement package offered by the Government of India and have given their consent in writing or recorded the same before the authorized officer, they cannot be stopped by a resolution of the Grama Sabha or merely due to the fact that ‘free or informed consent’ of the Grama Sabha has not been obtained.**

**Clause (e) of sub-section 2 of Section 4 is to be tempered by Article 19 and Article 13(2) of our Constitution. The clause cannot be invoked to prevent the voluntary resettlement of even one family in a situation where the majority resolution of the Grama Sabha does not provide consent to the proposed resettlement. Any action of the Grama Sabha or NGOs to coerce or influence the decision of even one person not to accept the resettlement package offered may amount to a serious infringement of the Fundamental Rights of the person who wants to resettle outside and as such may amount to a cognizable offence.**

- Range Forest Officers (representing a state agency) can file petitions before the SDLC if they are aggrieved by the resolutions of the Grama Sabha which has processed all claims including those of ineligible people without proper verification of voters list/ration card, etc as on the cut-off date. [from Rule 6 (g)]

**In many cases it is found that the Grama Sabha is mechanically processing claims even though practically every claim is precisely for the upper limit of 4 hectares. In such cases the RFO can file objections to the SDLC to prevent such mischievous and false claims from being processed.**

- [Section 5 of the FRA] only prescribes a duty upon forest rights holders to protect the habitat and for the Grama Sabha to ensure that its decisions to regulate access to community forest resources are being followed—any activity that is adversely affecting forest and biodiversity has to be stopped. This interpretation is further strengthened [in conjunction with sub-section 2 of Section 3] where it is clearly mandated that that the Central Government shall divert forest land only for specific development activities [listed in clause (a) to (m)]. Creative interpretations of the FRA are being made to the effect that prior recommendation of the Grama Sabha is necessary for all development projects. Clause (ii) of sub-section

(2) of Section 3 only mandates that a recommendation is necessary for ‘such development projects’ of the government as defined in clauses (a) to (m) of the said section, namely – schools, anganwadis, fair price shops etc and where the forestland to be diverted is less than one hectare and involves felling of not more than 75 trees.

### Additional Reading

- [The myth of harmonious coexistence](#)
- [Defragmenting nature](#)
- [Whose forest is it anyway?](#)

### About the author

[Read more Praveen Bhargav](#)

Praveen Bhargav is managing trustee of Wildlife First and was a member of the National Board for Wildlife (2007-10).

Tags: [Forest Rights Act](#), [The Scheduled Tribes and Other Traditional Forest Dwellers \(Recognition of Forest Rights\) Act](#)

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