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The Forest Rights Act and the Politics of Marginal Society*

Kamal Nayan Choubey

In the post-liberalization era two contradictory phenomena emerged in India's forest areas. While the process of privatization of resources increased[1] on the one hand, on the other hand, forest dwelling communities vehemently resisted this process. A large part of this resistance was related to a struggle for 'better' or 'progressive' laws. In the post-1990 era two such laws were enacted. One, the *Panchayat (Extension to Scheduled Areas) Act 1996* (PESA) and the other *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act) 2006* (or Forest Rights Act or FRA). These laws are commonly termed as 'progressive' laws because tribal groups waged long struggles and were able to get some rights over forests and its resources. In the post-liberalization era, there is an inclination in governments to hand over natural resources to corporate capital. This paper evaluates the making of FRA which gives local communities rights over forest land and its resources. Can we say that through this law, the State has found a tool to control forest areas or do we accept the claim of activists that this is a 'historic' law, which would undo all 'historic injustices'?

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* Revised version of the lecture delivered at the Nehru Memorial Museum and Library, 26 February 2013.

[1] State governments of Jharkhand, Odhisha and Chhatisgarh have signed hundreds of Memorandums of Understanding (MoUs) with private companies in the State for the extraction of natural resources. See Hebbar (2006); Navlakha (2008); Indian Social Action Forum (2009); CDRO (2011); (2012).

This paper focuses on the legislative processes of the making of FRA and the impact of people's movement on this. It also discusses the concept of 'marginal society' to understand the process.

There were three drafts and a final version of FRA. The first draft was released by Ministry of Tribal Affairs (MoTA) in April 2005 for public discussion. After intense public debate and pressure from grassroots tribal organizations the government introduced this bill in Parliament in December 2005 with minor changes. This was the second draft of the bill. However, since the bill was very contentious it was sent to a Joint Parliamentary Committee (JPC). The JPC submitted its recommendations in May 2006. It was the third draft of the bill. The JPC made drastic changes in the provisions of the draft bill. Finally the bill was passed by Parliament in December 2006. It was based on the JPC's draft, however the government made certain important changes in that draft and left out some of the key recommendations of the JPC. The interaction/contestation between the state and people's movement played an important role in shaping the form and content of the final Act.

Forest, Local Communities and the Law: In the mirror of History

Colonial rule made an unprecedented impact on Indian forests and communities living in and around these areas. While it is a fact that pre-colonial rulers also hunted and used timber and other forest products, it was during colonial rule that large scale exploitation of forest resources began. Predictably there is no unanimity among scholars about the impact of colonial rule on forests and forest dwelling communities. Colonial historians emphasized that British rule established 'rule of law' in India and saved India's forests from obliteration.[2] But various Indian thinkers have rejected this notion. According to them, the British changed laws on the basis of their interests and sometimes did it in a thoroughly reverse way.[3] In the 1980s, through exemplary research Ramchandra Guha and Madhav Gadgil tried to prove that

[2] Ribbentrop (1900).
[3] Guha (1963); Baxi (1992); Pathak (2002).

the British made forest policies to accomplish their imperial interests.[4] Later, Richard Grove argued that historians like Guha and Gadgil avoided the fact that before the 1850s, there were vibrant debates within colonial administration about ecology.[5] However, Grove made his argument on the basis of his research on pre-1850s debates within colonial administration whereas Guha and Gadgil focused on post-1850s developments and debates. It should be noted that there is agreement within historians, including Grove, that post-1850, the centre of British forest policy was its imperial interests.[6]

Indeed, one can easily identify the two layers in the colonial period. First, through census, the colonial state formally created a distinct category of 'tribes' and made specific laws for them, like The Scheduled District Act in 1874. By this law, tribal dominated areas were described as 'Scheduled Areas' and they were divided in 'excluded' and 'partially excluded' areas. The north-eastern part of India was included in 'excluded' areas and other tribal dominated districts of the country were categorized as 'partially excluded' areas.[7] To establish this kind of system, colonial rulers used the argument of 'tribal welfare'. In fact, this system helped them to establish control in these areas. Second, to enhance their imperial interests they tried to establish their monopoly over forests. For this purpose they used the principle of 'eminent domain'[8] and established a Forest Department in 1864. Subsequently, they enacted the Forest Act 1865 and to overcome the deficiencies of this Act they made Indian Forest Act 1878. In 1927 they made certain changes in the 1878 Forest Act and it came to be known as Forest Act of 1927. Out of its 84 clauses 81 were taken from the

[4] For example see, Ramchandra Guha (1983a); (1983b); (1989); Guha and Gadgil (1989).
[5] Grove (1995).
[6] Grove, Damodaran and Sangwan (1998).
[7] Bijoy (1999).
[8] In modern era, Hugo Grotius presented the idea of 'eminent domain'. It is basically related to the idea of sovereignty of the state, see Singh (1986): 21; Ramanathan (2008). It was used in the colonial laws like Forest Act of 1878, Forest Act of 1927 and Land Acquisition Act of 1894, see Saxena (2008).

1878 Forest Act. Through these Acts colonial rulers tried to establish their dominance over forests and its resources.[9]

There was a provision in the Forest Act of 1878 that the property rights of people living in and around forests would be recognized. However, it was necessary that those people who were claiming their rights, should present written proof to back their claim. If they were not able to give proof, forest officials declared them 'encroachers'. In various places, in the process of making new 'forests', rights of local people were not settled. Due to this reason they lost their rights over their land and became totally dependent on the whims of the forest officers. Through this Act the customary rights of local communities on forests and its resources became 'concessions', which were dependent on the local authority of the Forest Department (FD).[10]

In the beginning the British rulers exploited forests for timber to build ships for their Navy and later for railway sleepers. They increased the exploitation of forests to get more profit.[11] It was not entirely a one-sided process and tribals revolted against the arbitrary intrusion of colonial forces.[12] Due to such resistance the colonial masters made certain concessions and gave some rights to local communities.

Chhotanagpur Tenancy Act (CNTA) 1908 was an example of such an Act.[13] The basic purpose behind this CNTA was to pacify the Birsa Munda revolt. CNTA made a provision that land of tribals could not be transferred to non-tribals. In Bastar, after the 1910 revolt of tribals, the colonial government reduced the area of reserved forest.[14]

[9] Now, extensive research work is available on the background, debates and provision of these Acts. For some important works on this subject, see Guha (1983a): 1882–96; (1983b); Singh (1986); Gadgil and Guha (1992): 123–34; Sivaramakrishnan (1995); Rangarajan (1996); Pathak (2002).

[10] Singh (1986).

[11] Guha (1989); Gadgil and Guha (1992).

[12] For the study of some of these revolts, see Arnold (1982); Singh (1983a); (1983b); Guha (1989); Guha and Gadgil (1989); Gadgil and Guha (1992); Sundar (1997): 135–55.

[13] Sundar (2009a).

[14] Sundar (1997).

In post-independent India there were two parallel processes regarding forests and tribals. In Schedule VI of the Constitution, there are some special provisions for the selected areas of the north-eastern states. For other tribal dominated areas of the country, there are special provisions in Schedule V of the Constitution.[15] Government of independent India also started various programmes for the development of these areas. Since there is provision for Autonomous District Councils in Schedule VI areas, they have some autonomy on various local affairs.[16] However, the condition of Schedule V areas has not changed much. The state never endeavoured to implement its provisions seriously.[17] It should also be noted that the Indian Constitution has accepted the validity of Forest Act of 1927 and the right of 'eminent domain' of the state.[18] Another crucial point is that land reforms, implemented in the various parts of the country, were not implemented in the forest areas. According to Forest Policy of 1952, state should use the forests for national development. It was argued in the policy that no village could claim the ownership of natural resources on the basis of its location near that forest.[19]

Indeed, the problems of forest dwelling communities have increased after independence. Many new areas were declared as 'forest', but the rights of the people, who were living there from time immemorial, were not settled. Second, it led to the extension of the FD and its controlling power on the lives of local communities. Third, forests were hugely exploited in the name of 'national development'. The post-colonial Indian governments continued with the colonial policy of 'scientific forestry'. Through this policy, industry friendly trees were planted at the cost of mixed forests, which helped neither forests nor wildlife. After 1970 the Indian state made several laws [e.g. Wildlife (Protection) Act 1972; Forest Conservation Act 1980] to improve

[15] Savyasaachi (1998).
[16] Sharma (1998): 97.
[17] Sharma (2001); Sharma (1998: 97–8).
[18] Article 31A, Sub-section 2a(iii) recognized that colonial forest laws would be effective in Independent India. See the Constitution of India (2008): 20.
[19] Government of India (1952); Jha (1992): 29–73.

the conditions of forests and wildlife.[20] These laws increased the control of the state over the lives of forest dwelling communities.[21] The irony is that these laws have been used to restrict and control the activities of local communities, but other important obligations of the state were violated rampantly.[22]

However, from 1970s, particularly after the emergency, there was increased political consciousness among people. It happened due to the democratization processes and many struggles at the local level by people living in the forest. Various grassroots organizations emerged in these areas and started opposing the 'development' model imposed during the emergency. Chipko Andolan, started in 1973 and the Narmada Bachao Andolan of 1980s were prominent examples.[23] To describe these activities, Rajni Kothari has used the term 'non-party political process'. [24] Maoists also started their activities in forest areas around 1980s and spread across the forest belt. They played an important role in making communities more conscious of their rights over forest land and its resources.[25]

These factors made a clear impact on the forest policy of the Indian state and the 1988 Forest Policy reflected this.[26] It underlined that local communities should be given an important role in forest management. The government started the Joint Forest Management (JFM) programme in 1990, which was based on the basic philosophy of 1988 Forest Policy. The idea behind JFM was to increase the cooperation between the FD and local communities in forest management.[27] Yet, the FD was not ready to give its power to local

[20] Government of India (1972); Government of India (1980).
[21] For the extensive study of these aspects, See CSD (2004); Pathak (1994); Gadgil and Guha (1992).
[22] See, Kothari (2005); Krishnaswamy (2005).
[23] Extensive literature is available on these movements. For instance, see Shiva and Bandyopadhyay (1986); Guha (1989); Baviskar (1995).
[24] Kothari (1984).
[25] For the knowledge of initial activities of Maoists in forest areas see P. Shankar (1999); Navlakha (2012).
[26] See, Government of India (1988).
[27] Government of India (1990a).

communities and it used the JFM to divide village communities and used it as a tool to dominate these communities.[28] It is important to note that the Commissioner of Scheduled Castes and Scheduled Tribes, Dr. B.D. Sharma, in his 29th report (1987–1989) to the President of India, raised some critical issues about the land rights of forest dwelling communities and also proposed a framework for the resolution of these issues.[29] On the basis of this framework, Ministry of Environment and Forests (MoEF) issued a six-point circular on September 18, 1990.[30] Though these circulars did not mention the rights of forest communities over forest resources, it proposed a framework for the resolution of some of the land related problems of forest areas. But the government never tried to implement these circulars.[31]

In 1993, Parliament passed the 73rd and 74th constitutional amendments to give constitutional status to Panchayati Raj and Municipalities respectively. But it was mentioned in this amendment that Parliament would pass a separate law for Schedule V areas, which would be sensitive to the local conditions. Nonetheless, various state governments avoided this constitutional condition and imposed the 73rd and 74th amendments in these areas. Tribal people of Schedule V areas struggled for a separate law under the leadership of Bharat Jan Andolan and other local organizations. After a long struggle PESA was passed by the Parliament.[32] PESA has recognized a more progressive definition of the village. According to this definition, 'a village shall ordinarily consist of a habitation or a group of habitation or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs'.[33] It also provides for the Gram Sabha or the Panchayats at the appropriate level to be consulted before making the acquisition of the land in Scheduled Areas.[34]

[28] CSD (2004); Jeffery and Sundar (1999).
[29] Bharat Sarkar (1989).
[30] Government of India (1990b).
[31] Sarin (2005): 2132; also see Sarin and Springate-Baginski (2010).
[32] Government of India (1996); for the understanding of the background, debates and movements related to PESA, see Sharma (2005); Choubey (2013).
[33] Section 4(b), Government of India (1996): 1
[34] Section 4(i), Ibid: 2.

However, PESA, and particularly its progressive provisions, have never been properly implemented.[35] Yet PESA was an important achievement for grassroots organizations and was an example of awakening political consciousness in the tribal areas.

However, as far as forest dwellers were concerned, PESA is a limited law because it is only applicable in the Schedule V areas. So, there is no provision for non-STs forest dwellers and for those tribal people who are not part of Schedule V areas. Forest dwelling communities have been facing some serious problems related to their very existence and livelihood: first, since colonial period millions of people were compelled to live as 'encroachers' of forest land due to non-settlement of their rights on forest land;[36] second, from the colonial period there have been thousands of Forest Villages[37] where people have been living without minimal citizenship rights due to non-recognition of their forest land rights; third, tribal people, living in forest areas or in villages near forest areas had no legal rights over forest produces. They were totally dependent on the arbitrary actions of the FD officials.

Several state governments recognized the private property rights over 'encroached' forest land, but neither the state nor the centre tried to resolve this problem in a holistic manner. Forest dwelling communities faced regular harassment by forest officials due to their so called 'illegal' status and non-recognition of their rights. Regular evictions were a

[35] Sundar (2011b).

[36] On 16.08.2004 the Government informed the Lok Sabha that 13.43 lakh hectares of forest land was under (pre- and post-1980) 'encroachment' in the country. It also informed that the total area under pre-1980 eligible 'encroachment' regularized was 3.66 lakh hectares, see CSD (2004); however, during my fieldwork in Surguja District of Chhattisgarh, I found that generally local officials tried to hide the fact that there was 'encroachment' in their areas. For detail see Choubey (forthcoming) (2014), Chapter 4.

[37] Again there has been no exact data about Forest Villages. We can say that Taungya villages are a form of Forest Villages. According to the Government the total number of these kind of villages are approximately 2,500 to 3,000. See, Government of India (1990b); CSD (2004): 18; Sarin (2005).

permanent part of their lives. The environment conservation-sensitive orders of Supreme Court in the Godaverman case[38] also made their life miserable. All this led to increased political consciousness and emergence of many grassroots organizations. It augmented the demand for the recognition of forest rights of the tribals.

2
Forest Rights Bill: Debates in public domain and the movements for a 'Progressive' Law

This section examines the recent background of the Forest Rights Bill (FRB) and presents an outline and analysis of the first draft of the bill. The understanding of the first draft of the bill is crucial because later drafts and the final Act were based on this framework.

1. First Draft of the Bill: Background and structure

On 23 November 2001, Supreme Court of India passed an order in the Godaverman case that the Central Government would not 'regularize' any 'encroachment' on forest land without its permission. However, MoEF drew its own conclusion from this order and passed a circular on 3 May 2002 asking all states to evict forest 'encroachers' within five months. Following this the FD destroyed the homes and crops of millions of tribals by using brutal force as they had no written proof to show that they were not 'encroachers' of forest land. Elephants were used to destroy the homes of tribals in Assam and Maharashtra. MoEF admitted in Parliament on 16 August 2004 that between May 2002 and August 2004 evictions were carried out in 1.52 lakh hectares of forest land.[39] However, it led to vehement protests by various tribal organizations across the country.[40]

[38] In 1995, an ex-estate owner of Gudalur, Tamil Nadu filed a Public Interest Litigation (PIL) in the Supreme Court because he was distressed by the illicit felling of timber from forests nurtured by his family for generations. Subsequently, in response to petitions from all over the country, the Court extended the scope of the petition and passed several significant orders during the course of hearing. See CSD (2004): 4; also see Thayyil (2009).
[39] Sarin (2005): 2132; (2010): 115; CSD (2004): 4–10.
[40] Sarin (2005); Digvijay Singh (2005).

In February 2004, just before the parliamentary elections, MoEF released two new circulars titled 'Regularization of the Rights of Tribals on the Forest Land' which extended the date of regularization of 'encroachment' by tribals to December 1993 (instead of October 1980 under FCA). The other circular was 'Stepping up of process of conversion of forest villages into revenue villages'. Both the circulars were promptly stayed by Supreme Court.[41] However, in the 2004 general election all major political parties promised in their election manifesto that they would give tribal people right over forest land and its resources.[42]

After elections, United Progressive Alliance (UPA) formed its government with the external support of Left front. UPA Government's Common Minimum Programme (CMP) clearly stated that evictions would be stopped.[43] On 19th January 2005, the Prime Minister directed the Ministry of Tribal Affairs (MoTA) to prepare a bill to recognize the forest rights of forest-dwelling Scheduled Tribes (STs). This was the result of the long struggle of tribal groups and the desire of Congress and its allies to re-establish political sway over tribals.[44] The increasing influence of Maoists in forest areas also compelled the government to make a law to guarantee the rights of forest dwelling communities over forest land and its resources.[45]

The bill was drafted by a Technical Support Group (TSG) constituted by activists and bureaucrats. Apart from the representatives of MoEF, Ministry of Law, Social Justice and Empowerment, Panchayati Raj and MoTA were also part of TSG. In April 2005 the MoTA released the first draft of the bill for public discussion. The title of this first draft was 'Scheduled Tribes (Recognition of Forest Rights) Bill 2005.' The bill stated that it wanted to undo the historical injustice by recognizing and vesting the forest rights and occupation of forest

[41] See, Sarin (2005): 2132**;** Prabhu (2005): 14–19.
[42] See, Bharatiya Janata Party (2004); Indian National Congress (2004).
[43] Digvijay Singh (2005); Sravanan (2009).
[44] Rangarajan (2005): 4888.
[45] See, Sarin (2005); Sundar (2011); Roma and Rajnish (2009); Navlakha (2012).

land to forest dwelling STs who have been residing there for generations.[46]

There were six chapters in the first draft of the bill. The salient features were : First, the right to hold and live in the forest land under individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of forest dwelling STs; second, rights such as Nistar, by whatever name called, and used in former princely states, zamindari or intermediary regimes; third, right to use or dispose of minor forest produce; fourth, other rights of use or entitlements such as grazing (both settled and transhumant) and traditional seasonal human resource access of nomadic or pastoralist communities; fifth, right of habitation for primitive tribal groups and pre-agricultural communities; sixth, rights in or over disputed lands under any nomenclature in any state where claims are disputed; seventh, rights for conversion of *pattas* or leases or grants issued by any local authority or any State government on forest lands to titles; eighth, rights of conversion of forest villages into revenue villages; ninth, rights of settlement of old habitation and unsurveyed villages, whether notified or not; tenth, right to access to biodiversity and community right to intellectual property and traditional knowledge related to forest biodiversity and cultural diversity; eleventh, right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving; twelfth, rights which are recognized under any state law or laws of any Autonomous District Councils (ADCs) or Autonomous State Councils (ASCs) or which are accepted as rights of tribals under any traditional or customary law of any State; thirteenth, any other traditional right customarily enjoyed by the forest dwelling STs which are not mentioned in this Bill, but excluding the rights of hunting.[47]

Chapter 3 of the bill described the recognition of rights in forest dwelling STs. It clarified various aspects related to their rights (and obligations). First, it made clear that the central government would

[46] Government of India (2005a): 11–12.
[47] See, Section 3 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), Ibid: 4–5.

recognize the rights of forest dwelling STs where they have been Scheduled. So, if a person from ST category is living in a state where his community is not scheduled as ST, then he would not be able to get the rights under this bill. Second, the bill also proposed 25th October 1980 as the cut-off date for the recognition of forest rights. Third, the land rights would be hereditary and not alienable or transferable. Fourth, no person would be evicted or removed from the forest land under his occupation till the recognition and verification process was complete. Fifth, no forest dwelling ST nuclear family would get more than 2.5 hectares of land and the title of the land would be jointly registered in the name of the male member and his spouse.[48]

There were also many provisions for the conservation of ecology. Right holders could exercise their rights over forest land only for bonafide livelihood purposes and not for exclusive commercial purposes.[49] They had the responsibility of protection, conservation and regeneration of forests.[50] It also proposed that the holder of any forest rights under this Act would ensure the protection of wildlife, forest and biodiversity in the area.[51] It gave Gram Sabhas the right to impose Rs 1,000 fine for cutting or harming wild life. If a person repeated his offence then he would forfeit his forest rights for a certain period.[52] It also proposed that the provision of this Act would be in addition to and not in derogation of the provisions of any other existing law.[53]

Chapter 4 of the bill described the procedure of vesting forest rights to forest-dwelling STs. No other law ever described this process.[54] The bill maintained that Gram Sabha would decide the ownership of land and other rights and accept the definition of the village given in the clause (b) section 4 of the PESA.[55] This definition gave more power

[48] See, Section 4 (1), (2), (3), (4), (5), (6), Ibid: 5–6.
[49] Section 2(a), 4(6) (i), Ibid: 2 and 5.
[50] Section 4(6) (ii)], Ibid: 5.
[51] For detail see, Section 5(a), (b), (c), (d), (e), Ibid: 5.
[52] Section 8, Ibid: 8.
[53] Section 15, Ibid: 8.
[54] See Kothari (2005): 65.
[55] Section 2(a), Government of India (2005a): 2; the definition is mentioned earlier in this paper.

to local communities because even a hamlet could assert itself as a village. It also proposed that Gram Sabhas would start the process of recognition of rights and decide about it.

According to the bill the MoTA would be the nodal agency for the implementation of this Act.[56] Indeed the bill made the process of settlement of rights clear and ensured that the process be open to public scrutiny. Earlier, the FD arbitrarily used its power to decide these matters. In this sense the bill was a sign of a positive change.[57]

It is clear that the proposals of the bill were radical and challenged the arbitrary powers of the FD. However, as soon as MoTA released this for public debate, various individuals and groups argued in favour and opposition of it. It created an environment of a fierce public debate.

2. Forest Rights Bill (FRB) and Public Debate

FRB led to a furious debate between tribal rights supporters and wildlife conservationists. Here we must make a distinction between those conservationists, who completely rejected this bill (ultra-conservationists) and those who had no problem with the basic philosophy of the bill, but on the basis of scientific studies they urged to take the question of wildlife conservation more seriously (scientific conservationists). In the first section are people like Valmik Thapar and many wildlife conservationists' organizations. In the second group are Ullas Karanth, M.D. Madhusudan and Ashish Kothari. Apart from these conservationists, there were environmentalists like Chandi Prasad Bhatt and Vandana Shiva, who supported the bill and rejected the arguments presented by conservationists. Various grassroots tribal organizations, activists and academicians argued in favour of the bill. However, the supporters of the bill also outlined certain limitations and negative aspects and proposed crucial amendments. This sub-section presents the basic arguments given by both sides.

It was argued by ultra-conservationists that the bill would give every nuclear tribal family 2.5 hectares of land which would lead to

[56] Section 13, Ibid: 7.
[57] Kothari (2005): 65; Sundar (2005): 32.

the distribution of 60–70 per cent forest land to these families.[58] MoEF argued that the distribution of natural resources would not lead to the development of tribal communities and government should implement developmental projects for the people instead.[59]

The ultra-conservationists rejected this basic argument proposed in the 'Statement of Objects and Reasons' of the bill that 'forest dwelling tribal and forests are inseparable. One cannot survive without the other'. They argued that this was a 'romantic myth' and dangerous for wildlife conservation.[60] Scientific conservationists, like M.D. Madhusudan also warned against this kind of generalization. He presented the example of Arunachal Pradesh, where local communities developed dense forests but one could not find wildlife in that area.[61]

Scientific conservationists like Ullas Karanth and Praveen Bhargav underlined on the basis of more recent work of ecology that increase in human intervention would endanger wildlife because it would lead to the 'fragmentation of habitat', a danger for biodiversity and wildlife conservation.[62]

It was argued that some communities did not exploit the forest but the reason behind this might be the absence of legal rights over forests and if they would get legal rights they would also exploit its resources.[63]

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[58] Thapar (2005a) (2005b); also see Majoomdaar (2005a); (2005b).

[59] For the elaboration of this point see Majoomdaar (2005a); (2005b); Thapar (2005a); (2005b); Rathore (2005); Goenka (2005).

[60] For example see Majoomdaar (2005a); Jayakrishnan (2005): 23; Goenka (2005): 35; It is also pertinent to note that in March 2005 Wildlife Institute of India revealed in its report that there were no tigers in Sariska Tiger Reserve. Many conservationists used this incident to show the negative aspects of human intervention.

[61] Madhusudan (2005): 4893–5; Biswajit Mohanty, Goverdhan Rathore, Bittu Sahgal et al. also expressed their fear that giving power to local communities would create existential problem for wildlife. See Mohanty (2005); Rathore (2005); Sahgal et al. (2005).

[62] Bhargav and Karanth (2005): 60–1; also see, Madhusudan (2005): 4894–5.

[63] For instance see, Jayakrishnan (2005): 23.

Conservationists criticized it for giving more power to Gram Sabhas in these villages. They argued that villagers were not experts and Gram Sabhas might not take these issues seriously.[64] Some commentators claimed that in most parts of the country, Gram Sabhas were ineffective and totally dependent on Panchayats and government officials.[65]

Conservationists argued that the proposed bill did not have sufficient provisions to tackle the misuse of rights like felling trees and mismanagement of forest resources.[66] Some expressed the fear that 'vote bank' populist politics could lead to further extension of the cut-off date of 24th October 1980, mentioned in the bill.[67]

Others said that the bill was a wrong solution for the problems of tribals. Instead the state should focus on industrial development rather than give people land rights.[68]

It is clear that critics of the bill—conservationists and other commentators—rejected it as dangerous for forests, wildlife and STs. However, there was a counterpoint.

Supporters rejected the argument that the bill would distribute 60–70 per cent forest land to STs. According to them, the bill mentioned the regularization of the ownership of STs only on forest lands, which was already identified as 'encroached' land, which was not more than 2 per cent of total forest land.[69]

Instead they said it was a positive step because it proposed to give forest dwelling STs rights over minor forest products, a source of their livelihood.[70] They said it was a Western idea that there could not

[64] Madhusudan (2005).
[65] Burman (2005): 5514–15.
[66] Madhusudan (2005).
[67] For instance see, Jayakrishnan (2005): 28.
[68] For instance see, Tavleen Singh (2005); Malvika Singh (2005); Barse (2005).
[69] For some important articles which underlined this fact, see, Sundar (2005), Bhatia (2005): 4890–3; Prabhu (2005): 26; Shah (2005a), (2005b); Ghosh (2005): 119; Munshi (2005): 4406–7.
[70] Sarin (2005): 31–6; Sundar (2005); Ghosh (2005): 118.

be a symbiotic relationship between tribals and wildlife. In India, tribals and wildlife had been living together from time immemorial. They also argued that tribals had played an important role in conservation.[71] Environmentalists like Vandana Shiva and Anupam Mishra said that local communities should be given the right to manage their forest resources.[72]

Fourth, as the bill made a provision to give more power to the Gram Sabhas in management of resources and settlement of claims for land rights, it would clip the powers of the FD and lead to democratization.[73]

There were sufficient provisions for the conservation of wildlife and biodiversity of the forest. Pradeep Prabhu claimed that the enjoyment of a right by forest right holder for livelihood would be an exercise of the contractual relationship with the forest. Flouting these rights would lead to the rescinding the contract and loss of forest rights.[74]

They (supporters of the bill) rejected the argument that the bill was a 'populist' measure and claimed that in a democracy pressure from masses had its own importance.[75]

It should be noted when the debate on the first draft of the bill was in the public domain Tiger Task Force (TTF) constituted by the Prime Minister, presented its report in August 2005. This underlined that there were approximately 1,500 villages within these tiger reserves, but out of these villages only 250 were in 'core area' of the forest. It recommended that these villages should be relocated through voluntary

[71] For example, see Sundar (2005); Prabhu (2004); (2005); Kothari (2005).
[72] Shiva (2005); views of Anumpam Mishra are based on a personal interaction with him, date: 27.05.2005, Gandhi Peace Foundation, Delhi.
[73] See, Gopalkrishnan (2005); Munshi (2005); Sundar (2005); Prabhu (2005).
[74] Prabhu (2005): 16.
[75] Rangarajan (2005): 4888; it is important to note that Rangarajan supported the bill but he urged that the arguments of conservationists, based on profound scientific study, should be taken seriously.

resettlement planning and at least 37,000 square km areas should be free of human habitation. It accepted that in other areas of the Reserves, people and animals can co-exist.[76] The TTF report presented a new framework for wildlife conservation and made an important contribution to the debate on FRB.

Tribal organizations and its supporters mobilized people in favour of the bill and simultaneously proposed certain amendments to make the legislation 'progressive'.

3. Movement for the Forest Rights Act and Suggestions to make it more 'Progressive'

From many years, tribal organizations were mobilizing forest dwelling communities for their rights over forest land and its resources. The making of Forest Rights Bill was the result of that agitation. After the release of the bill by MoTA, grassroots tribal organizations started mobilizing people in favour of the legislation. First, supporters of the bill (organizations, activists, academicians and others) tried to counter the stiff resistance from conservationists; second, they focused on the various limitations of the bill and attempted to suggest amendments. Third, through mobilization of tribals they pressurized the government to bring the bill to Parliament quickly. The FRA movement took different forms at different levels and several organizations spearheaded it. First, after the 2002 incidents, Campaign for Survival and Dignity (CSD or Campaign) emerged as the national front of different state-based organizations for steering the struggle for the rights of forest dwelling people.[77]

[76] See Government of India (2005b).

[77] Interview of Shankar Gopalkrishnan (Campaign for Survival and Dignity), Date 22.08.2006, Place: Jantar Mantar, Delhi; also see CSD (2006a); however no organization from the North-Eastern states was part of CSD, but many organizations waged their struggle for forest rights in these areas, particularly in Assam. National Forum for Forest People and Forest Workers (NFFPFW) tried to co-ordinate with such organizations. Personal interaction with Ashok Choudhary, (Senior Activist, NFFPFW) Date 12.05.2011, Place: Delhi.

Second, various organizations worked independently. Ekta Parishad played an important role in mobilizing tribals and making them aware of the importance of FRA in Chhatisgarh and Madhya Pradesh. National Forum for Forest People and Forest Workers (NFFPFW) has been campaigning for tribal forest rights from its inception. It is an umbrella organization of various grassroots groups. Sometimes it worked with CSD but also campaigned independently. Punarvas Sangharsh Samiti (PSS) mobilized forest dwellers in Maharashtra and Gujarat. These groups also organized meetings at village levels. This author has attended many such meetings in Kanker and Surguja districts of Chhatisgarh. He found tribal women participating in large numbers and supporting the proposal of 'joint patta'. Activists informed tribals regarding the positive aspects of the bill and they decided to organize dharnas, and demonstrations at the block and district level. This was followed by letters to lawmakers both in the state and the centre as well as to the Prime Minister. Margdasha Seva Sanstahn (MSS) organized village level meetings in Surguja district of Chhatisgarh and motivated people to send postcard letters to PM and MPs of that area in support of the bill.

The mobilizations by tribal organizations compelled political parties to take a stand in support of the bill. In Surguja, when small non-party organizations started mobilization for the proposed bill, the local leaders of the mainstream parliamentary parties like Congress and BJP claimed that the bill was part of their agenda. Some political parties, like Gondwana Ganatantra Party (GGP), actively campaigned for the Bill. However, in various state capitals and in Delhi, non-party groups like CSD organized conventions and rallies and invited the representatives of different political parties to clarify their views. It should also be noted that on the one hand tribal organizations were mobilizing forest dwelling people for the bill, on the other hand, the FD officials demolished the houses of 'encroachers of forest land' in the various parts of the country. CSD organized 'Jail Bharo Andolan' (fill the prison movement) in 10 states.[78] These kind of strategies created immense

[78] CSD organized 'Jail Bharo Andolan' (Fill the Prison Movement) in following states: Tamil Nadu, Odisha, Jharkhand, Andhra Pradesh, Maharashtra, Gujarat, West Bengal, Madhya Pradesh, Rajasthan and Chhatisgarh. See CSD (2005a); (2005b).

pressure on mainstream political parties and expanded the political support for the bill.[79]

Through continuous and rigorous debates within the movement, various amendments were proposed. First, It was argued that in social science the concept of STs was a contested concept and even the government did not have the exact numbers of forest dwelling STs.[80] All organizations, activists and intellectuals who were supporting the bill, emphasized that non-STs forest dwelling communities should also be included in the bill.[81]

Second, tribal organizations argued that as thousands of families were displaced from their homes after 1980, there should be reconsideration on the 'cut-off date', which was 4th Oct 1980.[82] Conservationists who agreed with the basic philosophy of the bill, suggested that 1980 should be fixed as permanent 'cut-off date', which was not to be extended in the future.[83]

Third, there should be more clarity about the institutional structure of the bill and its relationship with other laws. According to Section 15 of the proposed bill, 'the law is only in addition to other laws'. So, supporters of the bill argued that state agencies could use colonial laws to subvert the aims of the proposed bill.[84]

Fourth, the bill was unclear about the jurisdiction of village community, which should be clearly defined as the village customary boundaries.[85]

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[79] We must remember that this strategy was followed throughout the whole process of the enactment of FRA. Tribal organizations tried to make tribal people aware about the positive aspects of the Bill at the village, block and district level. They also organized several *dharnas* and conferences in the capitals of many states and in Delhi. Through their movement they tried to make the support base for the Bill broader.

[80] See Sen and Lalhrietpui (2006).

[81] Bhatia, Sundar and Xaxa (2005): 4566.

[82] Ibid.

[83] Kothari (2005): 62.

[84] Krishnaswami (2005): 4901.

[85] Ibid.

Fifth, the Gram Sabha should be accepted as a primary institution in the settlement of rights and this process should be democratic and impartial.[86]

Sixth, the authority of the Gram Sabhas to regulate and manage common resources including penalizing violations of community decisions on conservation should be strengthened.[87]

Seventh, local communities have to be empowered to say 'no' to imposed development projects and exploitation of local resources.[88]

Eighth, one clause should be added in the bill to ensure that states do not curtail the rights of tribals by the diversion of forest lands for non-forest purposes.[89]

Ninth, the bill had not defined 'nuclear family' and it was not clear what would be the situation of single women or widows. There should be more clarity about the land rights of women in the Bill.[90]

Tenth, there should be reconsideration of the provision that only 2.5 hectare land would be regularized for every nuclear family.[91] However, due to vociferous criticisms of the bill by conservationists many activists did not stress on this demand.

Tribal organizations demanded the inclusion of non-STs communities in the bill, extension of cut-off date and giving more powers to the Gram Sabha in the settlement of rights and conservation of local resources. However, other suggestions were also important because they emerged from dialogues and serious discussions among tribal organizations, academicians, environmental activists and those conservationists who agreed with the basic philosophy of the bill.

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[86] Krishnaswamy (2005): 4899.
[87] Bhatia, Sundar and Xaxa (2005): 4566.
[88] Kothari (2005): 62.
[89] Prasad (2005): 28.
[90] Bhatia (2005): 4892.
[91] Krishnaswamy (2005): 4900.

All important national parties promised this in their election manifestos in 2004. Left parties actively supported this bill from its inception and also supported amendments in the bill suggested by tribal organizations. In the Congress and Bharatiya Janata Party (BJP), most of the important leaders supported the bill. Yet both the parties (especially in Congress) there was a strong 'wildlife lobby', which was against the bill—most of them leaders from former princely states. Jyotiraditya Scindia and Karan Singh led this lobby and formed a Tiger and Wilderness Forum.[92]

The Government did not introduce the bill in the monsoon session of the Parliament because there was confusion regarding its impact on wildlife. Tribal Affairs Minister of the UPA government, P.R. Kyndiah introduced the bill in the winter session of the Lok Sabha on 13th December 2005. The *Scheduled Tribes (Recognition of Forest Rights) Bill 2005* was almost similar to the draft released for public discussion by MoTA but some crucial changes were made.

The concept of 'core area' was included. Core areas were defined as such areas of National Parks and Sanctuaries required to be kept inviolate for the purpose of wildlife conservation. MoEF at the Centre would announce these through notification.[93] It was clarified that rights vested in this bill would be given to the forest dwelling STs, living in core areas on the provisional basis. However, if these people would not re-locate within five years with due compensation, then their rights would be permanent.[94] Second, it made the wildlife conservation provisions more stringent.[95]

It is clear that it partially tried to address the opposition of the conservationists. However, the suggestions of tribal organizations,

[92] However, Mahesh Rangarajan rightly indicated the irony of these wildlife supporters. He wrote, most princes were avid big game hunters themselves. For instance, Madhav Maharaj of the Gwalior, whose descendants are active in the two largest political parties personally shot dead as many as 700 tigers. Rangarajan (2005): 4888.

[93] Section 2(b), Government of India (2005c): 2.

[94] Section 4(1)] Ibid: 4.

[95] For example see Section 3(l); Section 5 (d), Ibid: 3 and 5.

activists etc. were not included in the bill. Since the bill was controversial and there were contradictory views on it, the government chose a safe passage. Tribal Affairs Minister first introduced it in Lok Sabha (13 December 2005) and then in Rajya Sabha (21 December 2005). In both the Houses, the minister proposed to give it to a Joint Parliamentary Committee (JPC) for analysis of different views related to the provisions of the Bill and both the Houses accepted this proposal.[96]

3
Second Stage: Recommendations of JPC and struggle for Forest Rights Act

This stage of the making of FRA was crucial because the JPC deliberated on all contested issues related to the Bill.

1. Joint Parliamentary Committee (JPC) and its Recommendations

There were 30 members in the JPC and all major parliamentary political parties had representation in it. Out of 30 members, 20 of them were from Lok Sabha and 10 from Rajya Sabha.[97] Senior Congress leader and a member of Lok Sabha, Kishore Chandra Dev was the president of the Committee. The JPC invited comments and recommendations from all concerned parties and organizations.[98] CSD, NFFPFW and other tribal organizations submitted their suggestions to the JPC. In their memorandums they included all the above mentioned demands relating to the modifications in the Bill. Conservationists also submitted their memorandums and raised several issues related to wildlife conservation.

JPC submitted its consensus report on 23rd May 2006, i.e., every member of the Committee agreed with the recommendations of the report. It recommended a range of modifications in the proposed Bill.

[96] Report of the JPC (2006): 5.
[97] Ibid: iii.
[98] Ibid: vi.

Some of the crucial recommendations of the Committee were as follows:

First, in the Bill presented in the Parliament the 'cut-off date' for the recognition of rights was 24th October 1980. However, the JPC recommended that it should be 13th December 2005, the date when the bill was introduced in the Parliament.[99]

Second, non-Scheduled Tribes, 'traditional forest dwellers', should be included in the bill. It included those communities in this category who had been traditionally living in or adjacent to forests for at least three generations.[100] Now, the term 'Other Traditional Forest Dwellers' (OTFD) was added in all necessary clauses of the bill. Due to this provision the title of the bill was also changed to *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill 2006*.[101]

Third, the JPC excluded the concept of core areas from the bill because the idea was very fuzzy. Instead of core areas, it recommended to include the concept 'Critical Wildlife Habitat' (CWH) in the Section 2(b) of the Bill.[102] According to its recommendations, 'CWH means such areas of National Parks and Sanctuaries where it has been clearly established, case by case, on the basis of scientific and objective criteria that such areas are required to be kept as inviolate for the purpose of wildlife conservation …'.[103] However, it also recommended that the process of recognition and vesting of rights as specified should be completed in all the areas under consideration. Fourth, in the second draft of the Bill, PESA's definition of villages were adopted only for Schedule V areas and Gram Sabhas had power to start the process of recognition of forest rights. However, according to that draft SDLC or DLC had power to reject its recommendations. The JPC recommended that the PESA's definition of village should be

[99] Ibid: xvi–xvii.
[100] See, Section 2(o) (i), (ii), (iii), (iv), (v), Report of JPC (2006): 2.
[101] Ibid: 3.
[102] Ibid: x, xvi–xvii.
[103] Section 2(b), Ibid: 2.

adopted for the whole country[104] and Gram Sabha should be 'primary authority' in the settlement of rights.[105]

Fifth, the JPC described the functions of and procedures to be followed by Gram Sabha and other committees with more clarity.[106] It laid down the detailed criteria which should be accepted as evidence in support of the claim to a right under this Act.[107]

Sixth, Section 5 of the bill outlined the obligations of the right holders of the forest rights to protect forest, wildlife, biodiversity etc. The JPC felt that this obligation should be entrusted with the Gram Sabhas and village level institutions. It added four new Sub-Sections in Section 5. According to these provisions the Gram Sabha and village level institutions in areas, where there were holders of any forest rights under this Act, were empowered to protect the wildlife, forest and biodiversity.[108] The JPC also recommended that no forest land would be acquired or so diverted that might adversely affect the rights recognized under this Act without the prior intimation to and prior consent of the Gram Sabha and the affected persons without paying adequate and equal compensation on the principle of 'cultivable land for land' and proper rehabilitation. It also clarified that in areas where the Sixth Schedule of the Constitution is applicable, provisions of Sixth Schedule regarding land acquisition would prevail over the provisions of this Act.[109]

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[104] Ibid: 11; Section 2(p): 3.

[105] See, Section 6 (1), (2), (3), (4), (5), (6), (7), Ibid: 9.

[106] See, Section 6 (11), Ibid: 11.

[107] See, Section 6(12) (a), (b), (c), (d), (e), (f), (g), (h), Ibid: 11.

[108] For details about these provisions see, Section 5(1), (a), (b), (c), (d), (e), Ibid: 8.

[109] See, Section 5(2), (3), (4), (5), Ibid: 8. It is important to note that in Samatha Judgement (1997) Supreme Court made it clear that the State Government could not give forest land to private companies on lease because it would be a clear violation of Forest Conservation Act 1980. It was a historic judgement because it cancelled the Government's decision to give forest land to private companies. However, Central and State Governments have been trying to bypass this judgement. See Krishnakumar (2004).

Seventh, the JPC added a new provision that any ineligible and primarily forest-dependent encroacher would be offered rehabilitation through employment in afforestation or in other forest-based activities.[110]

Eighth, JPC tried to make the rights given in Section 3 more comprehensible. It changed Section 3 of the original Bill as Section 3(1) and added three new Sub-sections, 3(2), 3(3), 3(4) and 3(5) in the Bill. It enlarged the meaning of community rights.[111] It proposed to give right to in situ rehabilitation including alternative land in cases where the STs and OTFDs have been illegally evicted or displaced from forest land without receiving their entitlement to rehabilitation.[112]

Ninth, in the bill there was provision that every nuclear family would get the recognition of maximum 2.5 hectares of land, the JPC did not give any limitation.[113]

Tenth, the JPC added one new clause that in the case of a household headed by a single person and in the absence of a direct heir, the hereditary right would be passed on to the next of kin. Also, it increased the role of women.[114] It made compulsory that one third non-official members of various committees would be women.

Eleventh, the JPC had given the right to forest dwelling STs and OTFDs to use the 'community forest resource' in all types of forests. This term was not used in the bill.[115]

Twelfth, the JPC wanted Shifting Cultivation to be recognized.[116]

Thirteenth, unlike the bill presented in Parliament, the JPC recommended that the provisions of any other law for the time being

[110] Section 8, Ibid: 12.
[111] See, Section 3(1) (b), Ibid: 4.; also see, Section 3 (1) (a), (b), (c), (d), (e), (f) (g), (h), (i) (j), (k), Ibid: 4–5.
[112] Section 3(1) (m), Ibid: 5.
[113] Section 4(6), Ibid: 7.
[114] Section 4(4): 7.
[115] Section 2(a): 4–5.
[116] Section 4(8), Ibid: 8.

in force or any decree, judgment, award or order of any court were in contravention to the provisions of this Act, the provisions of this Act would prevail.[117]

Fourteenth, the JPC also made some general recommendations: first, after its enactment the Act might be placed in the Ninth Schedule to the Constitution with a view to ensuring smooth and speedy implementation of the provisions of this law. Second, to ensure the prices of the forest products a 'Price Commission' should be established. Third, before any land acquisition, prior informed consent should be taken from concerned people and these people should be given adequate compensation according to market prices and a proper resettlement package should be offered to them.[118]

The report of JPC accepted the major demands of tribal organizations. OTFDs were included in the bill, the 'cut-off date' of the bill was changed from 24th October 1980 to 13th December 2005; It had not put any maximum limit of the land ceiling. It increased the role of Gram Sabha, gave some crucial responsibilities to the government and more power to local communities against imposed development model, land acquisition and displacement. The JPC had representation of all important political parties and its report was a consensus report. It immensely increased the legitimacy of the Bill. However, it had not recommended the abolition of the supremacy of 1927 Forest Act and it did not define the terms like 'biodiversity' and 'sustainable use' of resources.

It is a significant fact that the JPC included the idea of 'Critical Wildlife Habitat' (CWH), but it did not satisfy the demand of many conservationists who wanted to exclude Protected Areas (PAs) from the purview of the Bill. In one sense recommendations of JPC and concerns of ultra-conservationists (i.e., those who opposed the basic philosophy of this bill) represent different worldviews. Recommendations of the JPC had shown faith in local communities; however, the crux of the argument of most of the ultra-conservationists

[117] Section 15, Ibid: 9.
[118] Ibid xxiv–xxv.

was that the intervention of local communities would cause grave danger to the wildlife. Those conservationists, who had sympathy for the basic aims of the bill, also expressed their fear regarding certain recommendations of the JPC. For instance, Ashish Kothari expressed the view that increase in 'cut-off date' and absence of any maximum amount of land would lead to the domination of land mafia.[119] Meanwhile, after the submission of the JPC report, the First National Forest Commission, constituted in February 2003 and headed by Justice V. N. Kirpal also presented its report and criticized the bill and the recommendations of the JPC.[120]

It was not easy for the government to accept the recommendations of the JPC. One obvious reason was the opposition of conservationists, and the other reason was the radical recommendations of the JPC. The acceptance of these recommendations would imply that the state would give much of its powers to the Gram Sabha and local communities. So, government did not clarify its stand on the JPC report. I wish to argue that the conservation of wildlife was not a serious issue for the government because it diverted many lakhs of hectares forest land into common land for non-forest use and gave them to private companies. For instance, in 2004 MoEF accepted in the Parliament that 9.8 lakh hectare forest lands have been diverted for 11, 282 'development projects' since 1980.[121]

2. Movement for the Enactment of the Bill

When JPC submitted its report, the budget session of the Parliament was in progress. However, the government did not try to bring the bill in Parliament with the recommendations of the JPC. Gradually tribal organizations realized that the government did not want to push these recommendations. So, they, particularly CSD and NFFPFW, tried to mobilize support at three levels: first, they mobilized people at the village level and organized meetings, dharnas, demonstrations at blocks and district headquarters of tribal dominated areas. The purpose was

[119] Kothari (2006).
[120] Ananthkrishna (2006); Government of India (2006).
[121] Krishnaswamy (2005): 4899–900.

to make people aware of the JPC report and put pressure on the government not to delay the bill. They also repeated this at the state level.They invited many state level leaders of different political parties to express their views. For instance, CSD, Orissa Jungal Munch, Ekta Parishad, Orissa Nari Samaj and Orissa Jan Sangarsh Morcha organized a meeting in Bhubneshwar on 10th August 2006, which was attended by 600 representatives of various tribal organizations; Legislators and leaders of several political parties and academics also participated in this meeting.[122] On 23rd August, 2004, Jan Sangarsh Morcha organized a huge demonstration of tribals. On 6th November 2006, Ekta Parishad organized a massive rally and meeting in which thousands of tribals participated. It was also addressed by the leader of Gondwana Gantantra Party, Dileep Singh Bhuria.[123] In all these meetings the basic demand was the earliest enactment of the bill with the recommendations of the JPC.

At the national level, under the banner of CSD many organizations organized a dharna at the Jantar Mantar, Delhi, from 22nd August to 26th August 2006. The dharna organized by the CSD was well attended and more than 1,000 tribal activists from Rajasthan, Gujarat, Chhatisgarh, Orissa, Jharkhand, Madhya Pradesh participated. Representatives of various political parties and civil society organizations took part. Leaders such as V.P Singh (former Prime Minister), Brinda Karat (CPM), A.B. Bardhan (CPI), Ajit Jogi (Congress), Joel Oram (BJP) and the representative of Jamat-e-Islami came and unequivocally demanded the enactment of the bill with the recommendations of JPC.[124]

During the dharna tribal activists of different states criticized the FD through their folk songs and slogans. For instance, the lines of one song were *jo zameen la jote boye, wo zameen ke malik hoye, jo zameen le nangar chalai, wo zameen ke malik hoi* (cultivator of the

[122] See, CSD et al. (2007).

[123] These kind of demonstrations were organized in tribal dominated areas and I have mentioned only few such demonstrations. For detail see Choubey (forthcoming) (2014): Chapter 3, pp. 116–18.

[124] See, CSD (2006c); CSD (2006b).

land is the owner of the land). One famous slogan was, *zameen apne aap ki, nahi kisi ke baap ki, jungal apne aap ka, nahi kisi ke baap ka* (land is not any body's paternal property; we are the owners of the land). These slogans expressed the assertion of rights over land by local communities. However, no representative of the government came to the dharna, but the support of different political parties and organizations immensely increased the legitimacy of the bill. It was decided that in the next session of the Parliament (winter session) thousands of tribals would come to the roads of Delhi with 'do or die' slogan.[125]

The winter session of the Parliament began on 29th November 2006. CSD organized a massive 'Sansad Gherao Maharally' on this day in which almost 15,000 tribal people participated. Protests were also held in Mumbai, Bhubneshwar, Ranchi, Chennai for the bill to be passed during the winter session. On 30th November, Gondwana Gantantra Party organized a rally in Delhi and on 4th December thousands of women participated in Sansad March under the banner of Lok Sangharsh Morcha. In states with a substantial tribal population various organizations demonstrated. Though at the national level NFFPFW worked with CSD it also independently organized protests in parts of Uttarakhand, West Bengal and Uttar Pradesh.[126]

The Government tabled this bill with JPC recommendations in the Parliament. On 7th December 2006 the Cabinet gave its consent to the bill. On 15th December it was tabled in the Lok Sabha and passed on the same day. Rajya Sabha passed it on 17th December. The President signed on this Act on 29th December 2006.[127]

Indeed, this second stage for the struggle of Forest Rights Act was very crucial. There was support for the bill in the politicial establishment. This solidarity was apparent in the recommendations made by the JPC.

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[125] Ibid.

[126] This information was shared by Roma, Senior Activist of NFFPFW in personal interaction.

[127] See, Prasad (2007): 4; it was published in the Gazette of India on 2nd July 2007. So, in next part of the paper 'Government of India (2007)' will be used for the reference of this Act.

The movement of tribal organizations also increased the support base for the bill. It compelled various political parties to clarify their stand and prepared a platform to discuss several aspects of the bill. Though the Act was more 'progressive' and better than the bill introduced in the Lok Sabha in December 2005, it did not accept all recommendations of the JPC.

4
Act Passed by the Parliament: Limitations on the 'Revolutionary Potentials' and struggle for the Notification

The previous section underlined the fact that the final Act passed by the Parliament did not include all recommendations of the JPC. Indeed, it is very important to understand the differences between the recommendations of the JPC and the Act. Through this one can understand the contradiction/contestation between the democratic demands and the role of the State. Another important aspect is notification of the Act, which is the primary step for the implementation of any act passed by the Parliament. However, it took approximately one year to notify this Act, which was a proof of the contested nature of this Act.

1. JPC recommendations and FRA: Sabotaging the 'revolutionary' potential?

Tribal organizations welcomed *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006* or *Forest Rights Act* (FRA) as a positive step. Largely, this Act was within the framework of the JPC report, but some sections or some words of some sections were changed or excluded, which enormously reduced the 'revolutionary potential' of this Act. Some of these changes were following:

First, JPC defined OTFDs as those forest dwelling communities who were not part of STs, but dependent on forest land from the last three generations. However, FRA specifically clarified that one generation would be equal to 25 years.[128] It means that OTFDs have

[128] Section 2(o), Government of India (2007): 3.

to prove that they have been living at the same place from 75 years before 13th December 2005. It would be very difficult for them to prove this and it would exclude those non-ST communities, who were displaced within this period as a result of various development projects.[129]

Second, the JPC report underlined in the definitions of forest dwelling STs or OTFDs that they should 'primarily reside in' or live in 'close proximity of forest'. However, the Act dropped the latter term. Consequently, tribal organizations expressed the fear that it would merely include those communities, who were residing in forest land and those who had forest lands but resided outside the forest, their claims could be rejected officially.[130]

Third, the Act reduced the powers of the Gram Sabha. According to the JPC report, all villages should be defined according to PESA. Nevertheless, the Act accepted this definition only for Schedule V areas and for other places the Gram Sabha was defined on the basis of revenue villages.[131] In JPC recommendations the Gram Sabha had power over SDLC and though DLC had final power to approve its decisions; it had more autonomy in that structure. But this power was curtailed in the Act. Now SDLC or DLC have no obligation to send their observations about the recommendations of the Gram Sabha.[132]

Fourth, the JPC had dropped the provision of the bill that a maximum of 2.5 hectares of land would be regularized for a nuclear family. It had not fixed any such land ceiling. However, the Act again put a maximum ceiling of land but increased the per nuclear family upper limit from 2.5 hectares to 4 hectares.[133]

Fifth, the Act removed the Sub-section 3(2), 3(3) and 3(5) of the JPC recommendations, which made the provisions for certain responsibilities of the Government towards local communities.[134]

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[129] CSD (2006f).
[130] Prasad (2007): 9; CSD (2006f).
[131] Section 2(p), Government of India (2007a): 3.
[132] See, Section 6(1), (2), (3), Ibid: 6.
[133] See, Section 4(6), Ibid: 8.
[134] See, Report of JPC (2006): 5; I have discussed these recommendations in detail in the previous section of the paper.

Sixth, the JPC recommended in sub-section 3(1)(i) that there should be community rights over all produce and benefits such as timber and minerals. This provision was dropped from the final Act.[135]

Seventh, the JPC clearly mentioned the right to shifting cultivation in Section 4(8) of its report, but this Section was not included in the Act.

Eighth, the Act dropped sections 5(1) (e), 5(2), 5(3), 5(4) and 5(5) of the JPC report. These were important provisions which proposed to give more rights to the local communities and Gram Sabhas and certain responsibilites to the government.[136]

Ninth, the Act included the concept of Critical Wildlife Habitat (CWH) as suggested in the JPC report. However JPC underlined that consent of right-holders would be necessary for the creation of CWH and independent ecological scientists and social scientists should also be made part of this process and the decision of the creation of CWH should be taken after consultation with them. But these provisions were dropped from the Act.[137]

Tenth, the JPC recommended that the provisions of the Act would prevail over all other laws,[138] but the Act dropped this recommendation. Section 13 of the Act has mentioned that 'this Act shall be in addition to and not in derogation of the provisions of any other law for time being in force'.[139] Obviously, there would always be a danger that this Act would be overlooked at the cost of Forest Act of 1927 or any other previous laws related to forest areas.[140]

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[135] See, Sub-section 3(1)(i), Report of JPC 2006: Sub-section 3(1)(i); Government of India 2007: 3.
[136] These provisions were discussed in detail in the previous section of this paper. Also see, Section 5(2), (3), (4), (5), Report of JPC (2006): 8.
[137] See, Prasad (2007): 10; Also see, Section 4(2) (c), Report of JPC, 2006: 32–3; and Section 4(2)(c), Government of India, (2007a): 5.
[138] Section 15, Report of JPC (2006): 9.
[139] Section 13, Government of India (2007a): 8.
[140] CSD (2006e): 1–2.

Eleventh, the JPC had prepared a list of those evidences which could be used by the Gram Sabha to decide about the claims of the forest dwelling STs and OTFDs.[141] However, this provision was excluded from the Act.

Twelfth, the JPC had made a general recommendation that the bill after its enactment might be placed in the Ninth Schedule of the Constitution, a 'Price Commission' should be established to ensure the prices of the forest products and more power and autonomy should be given to local communities in the process of land acquisition. But these recommendations were not included in the Act.

Tribal organizations and Left parties criticized the changes made in the JPC recommendations. But the Tribal Affairs Minister promised that confusions related to these provisions would be clarified during the making of rules for the Act.[142] However, these changes created dissatisfaction within several organizations. For instance, senior activist of NFFPFW Ashok Choudhary argued that collective movement had not strongly opposed these changes in the JPC report because some groups had a sense of satisfaction with the enactment of the bill by the Parliament.[143] Obviously, there were some reservations with the Act but they claimed the enactment of the Act was a 'historical victory' for the forest dwelling communities.[144] Political parties, like CPM and Congress claimed it as their own achievement.[145] Conservationists criticized FRA and termed it as a dangerous law for forest and wildlife. Their basic criticism was it was harmful for forests and wildlife and would encourage encroachment of forest land. They were also against the extension of 'cut-off date' which would impose immense pressure on forests; and second, the right to development in Protected Areas

[141] Section 6 (12), Report of JPC (2006): 11.
[142] Prasad (2007): 10.
[143] Interview with Ashok Choudhary, Senior Activist, NFFPFW, Date: 23.6.2011.
[144] Ashok Choudhary himself expressed this view. Also See, CSD (2006e), (2006f).
[145] In their 2009 General Election Manifesto, both the parties underlined the enactment of this Act as their major achievement. See, Choubey (forthcoming) (2014): chapter 5, pp. 248–314.

(PAs) would negatively impact the conservation and it would be harmful for biodiversity.[146]

In the midst of all these debates and criticisms the government formed a committee to make the rules of the FRA. But it did not notify the Act.

2. Rules of the FRA and Struggle for its Notification

On 19th February 2007, a committee of 19 members was formed under the chairmanship of former bureaucrat S.R. Shankaran. The officials of MoTA, MoEF and Ministry of Panchayati Raj (MoPR) were part of this committee. The draft of the rules made by this Committee was submitted to the MoTA on 19th June 2007 and these rules were published in Gazette on 25 June 2007. Apart from other things, the rules made certain crucial aspects of the FRA more explicit.[147] However, since this was in the framework of the Act passed by the Parliament, it could not address any major criticism given by the tribal organizations or conservationists. Most tribal organizations demanded that the recommendations of the JPC should be included in the FRA and they also demanded the earliest notification of the Act.[148] They decided to intensify their movement for the notification of the Act.[149] However, conservationists consistently opposed this Act and argued that once the rights of the people would be recognized in the national parks and sanctuaries they would not be ready to relocate somewhere else. Due to their opposition the prime minister constituted a Sub-Committee to study the impact of the FRA on wildlife. Famous conservationists Valmik Thapar and Mahendra Vyas were members of this Committee, which emphasized the need to save national parks and sanctuaries from the impacts of this Act.[150] All this delayed the notification of the FRA. However, it was also difficult for the government to avoid the pressures from the supporters of the FRA, i.e., both tribal

[146] Kalpvriksh (2007); Kothari (2011): 14–18.
[147] See, Choubey (forthcoming) (2014): Chapter 3, pp. 116–80.
[148] CSD (2006g): 1–3.
[149] CSD (2007).
[150] Jain (2007): 1.

organizations and political parties, particularly Left parties. So, ultimately after one year of the enactment of the FRA, it was notified on 1st January 2008. Tribal organizations expressed their happiness on the notification of the FRA, but it was a great challenge for them to ensure the proper implementation of the Act.

5
Forest Rights Act and the Role of Marginal Society

Now the most pertinent question is how to understand the making of an Act like FRA in post-liberalization India and how can one describe the role of tribal organizations and impact of their constant movement to make a 'pro-tribal' law?

1. Making of a 'Progressive Law': An analysis of diverse understandings

It has been mentioned in the previous section that various grassroots organizations, including CSD and NFFPFW criticized the Act because it excluded various recommendations of the JPC. However, they also termed the Act a 'historical achievement'.[151] Scholars and activists like Nandini Sundar, Madhu Sarin and Oliver Springate-Baginski and Shankar Gopalkrishnan, Indranil Bose etc. argued that the enactment of this Act was a proof that people's movement had power to influence the legislative processes.[152] Some other scholars also termed it as 'pro-poor institutional reforms'.[153] However, none of these scholars, except Shankar Gopalkrishnan, analysed the process of making of FRA. They have presented a straightforward argument and not tried to evaluate the actual process of law making . Even Shankar is not evaluating the changes at every stage.[154] For instance, he is not describing the

[151] Though activists were not happy with the changes made in the JPC report, yet in the meetings and personal interaction activists of CSD or NFFPFW underlined that enactment of FRA was a historical achievement. Also see CSD (2006g); (2007); Choudhary, Roma and Rajnish (2009).
[152] Sundar (2011a): 184; Sarin and Oliver Springate-Baginski (2010); Sarin (2010); Bose (2010); Gopalkrishnan (2010).
[153] Reddy et al. (2011); Bhullar (2008).
[154] Gopalkrishnan (2010).

relationship between NGOs and tribal movements. From his description it seems that both of them were always in different blocks. He failed to underline the fact that some of the conservationists supported the basic philosophy of the Bill, though they criticized it on the basis of some nuanced scientific understanding of the habitat of wildlife.

On the other hand there are scholars, who criticized FRA as a result of vote bank politics, or a tool to increase the control of state in these areas and making them prone to capitalist/corporate exploitation.[155] For instance, Velluthyam Sravanan termed it as a 'politically motivated' legislation. He also underlined various drawbacks of the laws and felt that it would neither be beneficial for forest dwelling groups nor enhance the conservation.[156] On the other hand, Savyasaachi argued that 'it undermines the foundational position of forests, prepares them to become a playground for profits and minimally serves the interests of the marginalized tribal and forest dwellers…by destroying the foundational position of forests, this Act turns forests into ecological service provider for capitalism'.[157] Scholars like Madhu Ramnath, Ritambhara Hebbar, Shrisha Naidu also argued on the same line. They termed this Act as a 'populist' measure of Indian state and through this law the Indian state has enhanced its neo-liberal agenda. They emphasized that this law gives property rights to forest dwellers and this system of property would make forest areas more legible and it would be easier for corporate houses to use the land and resources of these areas.[158]

However, the author feels that these writers avoided the political consciousness and struggle of tribal people. For them adivasis are silent and inactive groups, devoid of any political agency, ready to be used by state, market and capital. They failed to see the struggle of tribal groups for this kind of law, various stages of the making of the

[155] Here I am not discussing the views of those conservationists and other critics of the Act, whose views were discussed in the second section of the paper.
[156] Sravanan (2009).
[157] Savyasaachi (2011): 55; also see Savyasaachi (2010).
[158] Hebbar (2006); Ramnath (2008); Naidu (2011).

law and changes that occurred due to constant movement and pressure from these groups. Sravanan tried to give some description of the groups related to making of this Act. However, there are many problems in his classification of different groups. For instance, it seems from this classification that 'tribal and forest dwelling groups' and 'other forest dwelling groups' struggled for their rights as members of two different groups. The reality was that tribal organizations represented both the groups and the demand for the inclusion of OTFDs in the Bill emerged from the debates within the movement. His classification does not give information about the difference of opinion among conservationists or the existence of any strong and constant movement for the enactment of FRA. Also, all these scholars, including Savyasaachi, did not analyse the community rights given by this Act, which gives crucial powers to local communities. Analysis of these scholars do not provide any framework to understand the movement of grassroots organizations for an act in the post-liberalization era.

The suspicions expressed by these scholars are not totally baseless. However, I want to argue that like those activists/scholars, who presented their argument in the favour of the Act, arguments of the detractors of the bill are also very straightforward. Both kinds of scholars have not analysed the different stages of law making and the role played by various groups. They are also unable to give any conceptual understanding to evaluate the making of this law and its various limitations. In the next sub-section I will first try to locate the struggle for law in a theoretical framework and then propose the conception of marginal society to understand the struggle for FRA.

2. Law, FRA and Role of Marginal Society

Laws affect every aspect of our life, whether we like it or not, we have to face several laws in our day-to-day life. Many thinkers believe that law is a curtain to hide the social inequality and exploitation. Various Marxist thinkers analysed law on this line and criticized it.[159] Following Foucault,[160] many scholars have shown that surveying and mapping of

[159] Poluntaz (1978).
[160] Foucault (1991).

national territories and the counting and classification of population have been key technologies of power, producing 'state simplifications'[161] that render social life 'legible' and more amenable to rational control. Subaltern thinkers also criticized law as a medium to control the masses. Ranajit Guha termed law as 'state's emissary' only in this sense.[162] It has also been a vital understanding that legal discourse, through which rights are sought to be institutionalized, is marked by the movement towards certainty and exactitude. Since law must take a general form, it is at odds with the uniqueness of individuals or groups.[163] There are thinkers who argue that 'Lawfare' or the use of law as a technology of control is symptomatic of the politics of a neo-liberal world.[164]

Now, on the other hand, it is being recognized that laws are inseparably related to our lives. Various thinkers also accept that laws have capacities to empower masses. This view is not held just by liberal thinkers. For example, Marxist scholar Nancy Fraser has also emphasized that laws can be bettered through evaluation and critique.[165] In India various long time activists studied law to be able to fight better for their constituencies.[166] There are several studies influenced by the ideas of Foucault now focused on the question of the effects of technologies of state power in everyday life and the contested nature of 'governmentality'. This literature highlights the porousness of the boundary between state and society and the penetration of the social into the state and vice versa, and the need to study the 'everyday state'.[167] It emphasized that bureaucratic procedures create and sustain state power, but it may also provide a means of resistance—this is one of the key areas where we can examine the interpretation of state and society at the 'margin'[168] or the 'politics of governed'.[169]

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[161] Scott (1998).
[162] Guha (1987); Baxi (1992): 247–64.
[163] Menon (2004): 26–7.
[164] Comaroff and Comaroff (2006).
[165] Fraser (1999): 86–7 cited in Menon (2004): 34–5.
[166] Sundar (2009b): 3.
[167] Fuller and Benei (2000); Sharma and Gupta (2006).
[168] Das and Poole (2004); Upadhya (2009).
[169] Chatterjee (2004); (2010).

The author argues that FRA can be seen as a result of the politics of marginalized forest dwellers communities. He is not arguing that law generally, and FRA particularly, is free from controlling or regulating role. FRA shows that marginal groups can also struggle for a law that may lead to their betterment. To understand this phenomenon the conception of 'marginal society' may be proposed. This accepts the distinction between civil society and political society as proposed by Partha Chatterjee. However, this author proposes some basic and substantive changes in the conception of political society.

To describe the functioning of post-colonial democracies Chatterjee differentiates between civil society and political society. He retains the old idea of 'civil society as bourgeois society, in the sense used by Hegel and Marx'. In the Indian context in terms of formal structure of the state as given by the constitution and the laws, all of society is civil society; everyone is a citizen with equal rights and therefore to be regarded as a member of civil society. Chatterjee believes that things are not working in this manner. 'Most of the inhabitants of India are only tenuously, and even ambiguously and contextually, right-bearing citizens in the sense imagined by the constitution.' To describe the politics of these groups Chatterjee uses the term political society.[170] Most of the time their activities for livelihood needs becomes illegal. The political society groups place their claims on government and the state accepts their demands according to its own calculations and treats these groups as populations and give them some ad hoc 'concessions'.[171] Chatterjee believes that in post-liberalization era the corporate capital's 'dominance without hegemony' exists in India; however, due to the deepening of democracy the political society groups are able to get some concessions from the state.[172]

It is important to note that in his later writings Chatterjee makes it clear that we can not apply the conception of political society in the context of those tribals who are dependent on forest products, rather than agriculture.[173]

[170] Chatterjee (2004): 39–40.
[171] Ibid.
[172] Chatterjee (2012): 337; also see, Chatterjee (2004); (2011).
[173] Chatterjee (2008a): 61.

To understand the functioning of post-colonial democracies, particularly India the distinction between civil society and political society is vital. The author also accepts Chatterjee's analysis about the dominance of corporate capital without hegemony. However, in his later writings he defined the working of political society in a very limited manner, where political society is limited to the bargaining of some ad hoc benefits from the state. One can not understand the politics of forest dwelling/dependent communities from this conception.

To describe the politics and movements of these groups, the author uses the term 'marginal society'. Unlike Chatterjee, he argues that most of the forest dwelling people are dependent on both agriculture and forest products. Also, there are examples where people who are not doing agricultural works, mobilizing themselves for their rights. (indicated in conclusion). Following are the basic features of a marginal society.

First, like political society, various activities of marginal society can also be termed by the state as illegal. For instance, they have been living as so called 'encroachers' in forest. The FD, as a representative organ of state in these areas, has power to declare their activities 'illegal'.

Second, in making of a marginal society, i.e., in making forest dependent or forest dwelling communities politically aware, certain people or organizations who played an important role, can easily be placed in the category of civil society. For example, in most of the organizations working in forest areas the leadership belongs to non-tribal educated activists. In the last two decades the number of tribals at the level of leadership have also increased. We can easily place both tribal and non-tribal activists in the category of middle class and civil society. For example, activists from this class have been playing a crucial role in organizations like CSD and NFFPFW, by mobilizing tribals for FRA. In various such areas Maoists have also played an important role in making people politically aware and active. Within Maoist leadership there is dominance of 'external' people, who can be termed as a member of the middle class and civil society due to their socio-economic and educational background. However, Maoists

view the struggle for law, or through law in negative light. Therefore it can be argued that though they have played a crucial role in making forest dwellers politically conscious, they can be omitted from marginal society, because an essential feature of marginal society is awareness of law and a tendency to struggle for better laws or assume law as a significant tool for struggle.

Third, due to arbitrary use of law by the FD and due to activities of grassroot organizations the members of marginal society become more aware about the misuse of law and the potentials of good laws. It is not that every member of this society has become an expert of law or legal issues. However, they are now more conscious regarding the role of law in their lives. This author would want to call it a kind of 'legalism from below'.[174] Due to this, the tendency to demand better laws and to oppose disadvantageous laws increased in these societies. The enactment of FRA also shows this tendency. During his fieldwork it was found that tribal people, both men and women, in various areas had understanding about some basic features of this law.

Fourth, the state always has this fear that members of marginal society will become part of those who are beyond 'governmentality'. Because of this fear the state gives due importance to their demands. For example, in the enactment of FRA the fear of increase in the Maoists influence played an important role. It is a well known fact that the influence of Maoists has increased in forest areas of central India in the last two decades. Maoists, as a group, can be seen as beyond 'governmentality'. One of the most important intentions of the state behind FRA was to increase its legitimacy within forest dwelling communities.[175]

[174] I have taken this term from Julia Eckert, who has shown in her study of the slum dwellers of the urban India that marginalized, poor and illiterate people have learnt to use laws for their benefit. See Eckert (2006).

[175] It should be noted that it was emphasized by many scholars/officials/activists that the reason behind the expansion of the Maoists was the forest-dwelling tribal people who did not have any secure source of livelihood. It was suggested in one government report that to curb the influence of Naxalites, tribal people must be given rights over forest land and its resources. See Government of India (2008).

Fifth, marginal society placed its claims on 'governmentality' and the state assumed the strategy of bargaining on their demands, i.e., state accepts their demands on the basis of their mobilization. In other words, through its mobilization marginal society compels state to accept its demands. If its mobilization is not too strong then the state can avoid its demands. We can easily see this in the case of FRA. Lots of progressive demands of tribal organizations were accepted by the state due to their consistent struggle. However, the state avoided/ declined some crucial demands of the movement. The obvious reason was less mobilization for those demands. For instance, as is mentioned earlier, NFFPFW criticized CSD for not mobilizing against the 75 years clause for OTFDs. They argued that due to less resistance from movement the state became successful in imposing its own agenda.

Sixth, it is also important to note that the members of marginal society do not demand some ad hoc concessions. They demand some concrete change in law or through law. Above all they live with their own notion of good life in which their surroundings also have a place of importance. So, they want to ensure the security of their surroundings. It is unlike political society, which largely bargains for some ad hoc concessions.

The seventh important feature of marginal society is that it places its claims on government, not for ad hoc benefits, but for better law, and then uses that law against the imposition of 'governmentality'. There are various examples where forest dwelling communities are using FRA as a tool of their struggle against the FD, corporate capital and state imposed development.[176] So, it has to be emphasized that due to the democratic activities of people's organization and the Maoists and their day-to-day experience of law, forest dwelling communities have become more aware about their rights and role of law. This legalism from below inspired them to demand for laws like Forest Rights Act.

[176] There are many examples where local communities are struggling against imposed and corporate interest serving development projects with the help of laws like PESA and FRA. Anti-POSCO struggle is a very famous example of this phenomenon. For elaboration of this point See Choubey (forthcoming) (2014): Chapter 5, pp. 248–314.

However, it is evident that this law is not fully according to the demands of the movement. The state successfully imposed various limitations on the law because the mobilization of the movement was not enough to compel the state to accept all its demands. It also shows that marginal society has not emerged in all forest areas. It emerged only in those areas where grassroots organizations or activists worked with local communities.

6
Conclusion

Forest Rights Act is a 'progressive' law because it recognizes the rights of forest dwelling STs and OTFDs and gives them rights over forest lands and its resources. There is a clear framework in the Act to resolve many colonial problems (for example, forest villages). It gives equal rights to women and in the form of CWH presents a framework to resolve the deep contestation between tribal rights and wildlife conservation. However, there are some inherent dangers in this law. For instance, the provision the OTFDs have to prove that they are living at the same place from the last 75 years. There is a danger that the FD can use this provision to evict OTFDs from forest land.

After the enactment of this Act, its proper implementation has been the biggest challenge for many tribal organizations. Various studies show that individual rights under FRA were implemented successfully in various areas though the implementation rate is not fully satisfactory. However the community property rights are almost totally neglected by the government. Indeed, the FD has created a lot of obstacles in the implementation of this Act. The state has also initiated measures like 'Salwa Judum' and 'Operation Green Hunt' to curb tribal resistance against state-imposed 'development'.[177] It may be that thought that through these measures the state is working as an agent of corporate capital. In this scenario some scholars argue that struggle for this law was totally futile. However, the author believes that the struggle for

[177] To understand Salwa Judum and Operation Green Hunt, see PUDR et al. (2006); Sundar (2006); Navlakha (2012); CDRO (2012).

this law was the result of forest dwellers' understanding of their rights and their realization of the importance of good laws. At various places people have used this law for their struggle (for example, anti-POSCO struggle) and at some places compelled multinational companies to stop their projects (for example Niyamagiri). There are various examples where forest dwelling communities are struggling for the implementation of this law and fighting for community rights over forest resources. It has created a strong sense of rights among women in these areas. Formation of Women Forest Rights Action Committee is an example. Obviously, enactment of this law was the result of the emergence and enhancement of 'legalism from below'.[178]

[178] For detail study of these aspects see Choubey (forthcoming) (2014): Chapter 5, pp. 262–328.

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