



How did the Indian Forest Rights Act, 2006, emerge?

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ABSTRACT

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, (Forest Rights Act or just FRA hereafter), enacted by the Indian Parliament in 2006, did not emerge from unproblematic and consensual deliberations. Rather the struggle to pass the act, and to keep the key elements intact, was fraught with intense contestation. Central to the process of policy development in this case has been the use of collective pressure through an unusual coalition of interests spread across the states of India, which ultimately paved the road to the new institutional settlement. The case of the FRA throws light on the importance of 'protest' or 'campaign' politics in India, and the simultaneous importance of activists to form effective 'coalitions' involving individuals and groups in order to influence the course of legislation. While the preponderance of politics in matters of economic decision-making gets highlighted, the process underlying the legislation of the FRA also reveals the multi-actor and multi-layered (given the federal structure of the Indian polity) nature of the Indian State and the significant role of intra-state politics in promoting or thwarting pro-poor institutions.

1 INTRODUCTION

Any piece of legislation may be viewed as an institutional design through which its authors change the existing ground rules in pursuit of a particular goal or objective. In this sense, the recent legislation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, (Forest Rights Act or just FRA hereafter), enacted by the Indian Parliament in 2006 and coming into force with the publication of the Rules on December 31st 2007, represents an institutional intervention seeking to redress the 'historic injustice'¹ done to the tribals and forest dwellers in India through years of exploitation and oppression since colonial times.

However, the Act did not emerge from unproblematic and consensual deliberations. Rather the struggle to pass the act, and to keep the key elements intact, was fraught with intense contestation.

A study of the process that ultimately led to this piece of legislation may facilitate a more comprehensive understanding of how policies actually emerge, how certain decisions are implemented in practice and why some policy alternatives are pursued over others. Governments can possess powerful tools for setting and altering social, economic and technological arrangements (Gerston, 1997). How are they reformed and how does this affect marginalised groups?

This paper seeks to understand the emergence of the Act, and the processes through which it was negotiated into law. Central to the process of policy development in this case has been the use of collective pressure through an unusual coalition of interests, which ultimately paved the road to the new institutional settlement. There has been a preponderance of political disagreement and contestation over the FRA. This confirms the 'interest coalition' approach to policy analysis (see Sabatier ,1999). Section 2 of the paper indicates the main research questions and the methodology on which this paper is based. Section 3 deals with the issue of the vulnerability of the tribals – how poor do they remain even after six decades of Indian independence? Section 4 identifies the key actors engaging in the politics of the FRA and their respective standpoints. Section 5 takes a look at the nature of the negotiation process and the contestations through which the act finally emerged. Section 6 attempts an estimate of the FRA in terms of its promise as a pro-poor institutional reform. Finally, Section 7 underlines the significance of the FRA.

2 RESEARCH QUESTIONS AND METHODOLOGY

This paper addresses a basic question: how and why did the FRA emerge despite powerful opposition. In trying to do so, it begins by enquiring into the poverty that plagues tribal life even today. The related issues here are political mobilisation of the poor, and the responsiveness of the institutional arrangements and the policy process to pro-poor petition. Some of the key questions that this paper tries to answer include:

How did the demand for this institutional reform originate?

Who were the main agents involved in the politics of the FRA and what are the narratives for and against the legislation?

What was the nature of the negotiation process and contestations to get the act passed?

¹ Expression used in an affidavit submitted to the Supreme Court on behalf of the Ministry of Environment and Forests, Government of India, July 21, 2004.

What have been the 'triggering mechanisms' behind this legislation?
How effective is the FRA likely to be as a pro-poor institutional reform?

Methods

The paper is based on two main research approaches: First, an initial review of literature, both historical accounts of tribal life and current literature on the problems of the tribals have been researched. Media reports on the issue of FRA have also been consulted. Literature on theories of the policy-process has been studied: Stone (2002); Gerston (1997); Grindle (1991); Berry and Berry (1999); Sabatier (1999). A detailed insight into the policy process pertaining to ecology and ecological reform in India was obtained from Springate-Baginski & Blaikie (2007). The interest-coalition approach to policy analysis (Sabatier, 1999) has been found to be particularly relevant: an advocacy coalition is viewed as "a set of people from a variety of positions (elected and agency officials, interest group leaders) who share a particular belief system... and who show a non-trivial degree of coordinated activity over time" (p.267).

Second, a significant part of the paper is based on perceptions and opinions gathered through interactions with key individuals involved in the process of the Act's evolution. The key groups involved in the process of the enactment of the FRA were identified, and representatives from these segments, depending on availability, were consulted. These include officials in the Prime Minister's Office, Ministry of Environment and Forests, Ministry of Tribal Affairs, in New Delhi -who shared their views informally and with the understanding that their anonymity will be respected. Conservationists, social and human rights activists, environmentalists, politicians, academics and officials of the Forest department, Government of West Bengal were also consulted for their views on specific matters. Most of the interviews were carried out during May-June and August-September 2008. Ms. Madhu Sarin has been a helpful resource person, offering first-hand insights into the process that led to the emergence of the FRA.

3 THE CONTEXT OF THE LEGISLATION OF THE FRA: HOW VULNERABLE ARE THE TRIBALS AND OTHER FOREST DWELLERS OF INDIA?

Policies emerge from specific contexts. The larger context of this legislation is provided by history which records increasing denial of tribal rights and tribal development. Historical institutionalism is sensitive to historical legacies and to cultural considerations in shaping and sustaining institutions, and it assumes that human political interactions must be studied sequentially, as life is lived, rather than taking a snap shot account of those interactions at only one point in time, and in isolation from the rule structures (institutions) in which they occur (Leftwich, 2007). In fact, the history of tribes and other forest dwellers inhabiting this part of the South Asian continent, is a history of exploitation and extortion that has continued for ages, assuming particular intensity during the days of British colonial rule (see Chandra et al, 1988; Gadgil, 2008).

During the post-independence period, Scheduled Tribes (STs) were provided with certain constitutional safeguards including reservation in government jobs besides a separate administrative structure: under the Sixth Schedule of the constitution, the entire state has a different set of governance provisions provided that state is inhabited predominantly by STs; the Fifth Schedule is applicable at the district level, and provides for administration and control of Scheduled Areas (falling under Schedule V) and gives powers to the Governors to

make regulations for peace and good governance of the scheduled areas inhabited by the STs (see Ghosh, 2007; Dubey, 2009).

However, deprivation of the tribals and the problem of non-recognition of their rights to land and forest resources worsened after independence, when the unsurveyed community lands under the Princely States, zamindars and private owners were transferred to the Forest Department through blanket notifications declaring them 'deemed' reserved or protected forests. The march of independent India in the direction of industrialisation and progress spawned a new set of threats for the tribals and forest dwellers, who now became pawns ready to be sacrificed at the altar of 'development' and 'modernisation'. Ramnath (2008) observes that there are numerous cases where the usurpation of tribal lands are "overlooked by a largely non-tribal government that accepts tribal people's displacement as a condition for development". According to the 1991 Census, the Scheduled Tribes population of 67.8 million is 8.1 % of total population, and in fact the Scheduled Tribes constitute more than half of the people displaced by development projects.

Tribal peoples have also felt threatened and their lands have been usurped by the Indian state through its various laws for forest conservation. After independence, an influential conservation lobby ensured that the colonial legacy of a regimented forest service was vested with the task of protecting India's biological diversity. In the 1970s the Indian Parliament began to take an active interest in formulating policies and regulations to protect the environment. Serious concern over the tiger's decline in India necessitated that protection was resumed with renewed vigour (Madhusudan and ShankarRaman, 2003).

In 1976 provisions were inserted into the Constitution that imposed responsibilities on both the State and the citizens to protect the environment. There ensued a spate of notifications of national parks and sanctuaries seeking to protect and preserve India's wildlife and their habitat. The Department of Environment was established in India in 1980 for the purpose of ensuring a clean and healthy environment for the country. It was subsequently upgraded to become the Ministry of Environment and Forests² (MoEF) in 1985. While the cause of conservation was being spearheaded with increasing intensity, the tribal population had also increased perceptibly as also its concomitant dependence on forest land and forest produce. The traditional users of land were being increasingly restricted in their access to what had sustained them for centuries. Wildlife reserves which numbered 131 in 1975 rose to around 572 in 1999, covering about 156,000 sq. kms., or 4.7% of India's land area. A survey carried out in the mid 1980s estimated that some 69% of India's wildlife reserves were inhabited by local human communities, whose population was almost 4.5 million; a similar percentage of wildlife reserves were at least partly grazed by local livestock; and 57% were subjected to collection of non-timber forest products (NTFP) (Kothari, Pande, Singh and Variaya, 1989). These people were increasingly looked upon as 'encroachers'. A powerful lobby of conservationists ensured that the non-use value of species and their habitats in an area overrode considerations of their use values to local people (Rangarajan, 1996).

The ability of tribals to defend their rights and livelihoods has therefore been very weak, and recourse to protests, both peaceful and violent, constituted one of the few avenues through which to seek redress (Guha, 2007). Far from ensuring the autonomy of tribal communities over their forest land and resources, the decades of independence only

² MoEF is today the primary agency in the administrative structure of the government 'for planning, promotion, coordination and overseeing the implementation of environment and forestry programmes.' The ministry works towards conservation and survey of flora, fauna, forests and wildlife, prevention and control of pollution, afforestation and regeneration of degraded areas and protection of environment, in the framework of legislation.

seemed to unfold a sordid saga of systematic denial of tribal rights and access to the natural resources that had sustained them for generations. Colonialism perpetrated by the British rulers seemed to give way to a new kind of 'internal colonialism' which entailed the arbitrary take over of resources without the rule of law, state monopoly over resources and arbitrary takeover of lands and declaring them as forests.

Despite recognition of the problems of the tribals since colonial times, despite all the legislations and other policy and institutional interventions on the part of government in independent India towards tribal uplift, there has been doubtless deterioration in the living conditions and physical and food security of the tribal population and other forest dwellers in India. Perpetual poverty condition in India's tribal regions has been explained through structural factors like breaking down of the forest-based livelihood systems, social as well as political alienation, physical remoteness, and rural indebtedness (Hasnain, 2001: 161-220). The development process tried to mitigate these disadvantages through various kinds of state interventions in the form of provision of physical infrastructure, settlement of land rights, poverty alleviation programmes. But such interventions could not overcome the basic resource constraints faced by the poor because they were undertaken on a piecemeal basis, and were often crippled by corruption. Poverty continues to plague tribal life even today. This is corroborated by a number of studies.

In 1993-94 nearly 46.5 % of the scheduled tribes were estimated to live below poverty line, which is much larger than the 35.97 % for the rest of the society. More than 93 % of the tribal population live in rural areas as against 74 % of the total population, almost entirely dependent on agriculture for their livelihood, supplemented by collection and sale of non-timber forest produce. The percentage of cultivators has decreased from 68.18 in 1961 to 54.5 in 1991, with a corresponding increase in the proportion of agricultural labour (Munshi, 2007). The National Commission for Scheduled Castes and Scheduled Tribes, Government of India, in its Sixth Report (2001-02) pointed out that:

"...the tribals are living in remote, inaccessible conditions, suffering from hunger and malnutrition and starvation deaths, particularly among the children, in some of the tribal pockets and require better attention to provide food security, at least in vulnerable seasons... The condition of landless tribals is far worse as they are more vulnerable due to lack of employment and poverty. The problem of landowning tribals is also not much different because of the small size of the holdings. A large number of the tribals have to migrate to other areas/cities due to a lack of jobs in their own areas."

The poverty of the tribals renders them vulnerable. The same report of the National Commission for Scheduled Castes and Scheduled Tribes drew attention to the incidence of atrocities (murder, torture, rape and similar crimes) on STs. Such atrocities were highest in Madhya Pradesh (1756) during 1999 followed by Rajasthan (1221), Gujarat (367), Orissa (335), Andhra Pradesh (178), Maharashtra (171), and Tamilnadu (105). During 2000, Madhya Pradesh (1845) and Rajasthan (1130) have the highest incidence of crimes against STs. It is not that tribal economy has remained untouched by modern economic processes. Tribal markets have been linked with larger markets, and tribals not only produce for themselves but also for sale in these markets. Tribals are no longer confined to their native homes and occupations. The traditional tribal love for land is waning as land is no longer a lasting source of subsistence. The educated among them leave their land and forest-based occupations and seek new jobs even outside their immediate neighbourhoods. They have become spatially and occupationally mobile. But where education is limited, as in the case of the Bhils in Madhya Pradesh, no change has occurred in their occupational pattern (Shah, B.V., 2005).

In its Report, submitted to the Planning Commission in December 2003, the Institute of Social Sciences (ISS) observed:

"...In fact, in size and intensity, there has not been any appreciable reduction in poverty levels. They (tribals) just subsist, impoverished due to severe erosion of livelihood resource base -land, water, forest- with delayed and inadequate government assistance. Participatory decentralised democracy holds promise, it can work and yield results, but interference from vested interests must stop...The 'tribal disadvantage' is evident in education. Although the benefits of education are widely recognised, it is noteworthy that a higher percentage of illiterates were found in the surveyed sample units" (ISS, 2003).

Gang, Sen and Yun (2008) draw attention to the fact that:

" the incidence of poverty in Scheduled Caste (SC) And Scheduled Tribe(ST) households is much higher than among non-scheduled households."

Dubey (2009) observes:

" ...While most of the STs have remained outside the purview of rigid Hindu hierarchical social structure, in terms of the welfare indicators, they are on the average lower than even the SCs. Though scattered over the geographical of India, there are regions where STs have very high to moderate concentration. Their exclusion is a consequence of geographical isolation as these inhabit hills and forest areas that have been considered remote and not easily accessible."

The study by Dubey (2009) reports the existence of large disparities in mean consumption and poverty incidence between STs and other population groups across the districts of India. Incidence of poverty in excess of 50% among the districts with substantial ST population and located in investor-friendly states like Gujrat and Maharashtra, suggests non-participation of STs in current episode of economic growth. However, the small proportion of STs who have benefited during this period are located in the areas that have majority ST populations and enjoy various constitutional privileges including governance by virtue of their location in Schedule V and Schedule VI areas.³ The study thus reports that most of the districts where the disparity between STs and other backward castes is favouring STs, are located in the north-east of India. These are the smaller states that fall under Schedule VI, or the dominant tribal population among the districts makes them fall under Schedule V. Thus, as a population group, Scheduled Tribes are at the bottom on a range of development indicators including consumption and poverty (Dubey, 2009).

Forest-adjacent and forest dwelling rural populations therefore remain amongst the poorest of the poor in India in terms of most socio-economic indicators. It has been estimated that of about 300 million people(or 60 million households) living below the 'poverty line' in India, about 200 million of the people are partially or wholly dependent on forest resources for their livelihoods (Khare *et al.*, 2000). Roughly 275 million poor rural people in India – 27 percent of the total population depend on forest for at least part of their subsistence and cash livelihoods. Forest dependent groups in India contain both 'tribal' groups and non-tribal forest users. The 'Scheduled Tribes' recognised under the Constitution of India, constitute 8.3% of the nation's total population, over 84 million people according to the 2001 census. An estimated 84% of the tribal ethnic minorities live in forested areas, and are forest dwellers (World Bank, 2006). It is the plight of these marginalised sections that the authors of the FRA hope to improve.

³ One of the specific provisions of Schedule VI states is incidence of direct taxes where indigenous population is exempted from paying individual direct taxes.

4 THE KEY ACTORS IN THE POLITICS OF THE FRA AND THEIR STANDPOINTS

"Politics can be conceptualised as consisting of all the activities of cooperation, conflict and negotiation involved in decisions about the use, production and distribution of resources, whether these activities are formal or informal, public or private, or a mixture of all". (Leftwich, 2007)

The state is not a unitary actor. Although it may be commonplace to ascribe particular decisions or policies to states or governments, a state or government is composed of competing individuals, interest groups and bureaucracies, each with its distinct view and motivation on specific issues. Given the federal structure of the Indian polity, the number of actors involved, multiplies. Competition, coalition building and compromise are inevitable and ultimately a decision or policy is made which is then announced in the name of the government. Thus every legislation, every policy carries behind it a larger story about the contestations and lobbying carried out by various actors, governmental (like administrative departments) and non-governmental (like NGOs and interest groups), including the influence exerted by something as amorphous as public opinion. It is therefore important not to conceive of the state as a neutral administrative agency, nor simply in terms of its capacity for public governance. On the contrary, the state is a set of inter-related institutions and organisations, shaped and driven by political forces and processes (Leftwich, 2007). The policy process underlying the legislation of the FRA reveals the nature of the state as a multi-actor and multi-layered (given the federal structure of the Indian polity) entity and the primacy of intra-state politics in matters of reaching decisions on pro-poor institutional reform.

A pivotal role in the legislation of the FRA has been played by protagonists and organisations spearheading the cause of tribal uplift, like the Campaign for Survival and Dignity (CSD), who feel that the tribals and forest dwellers have undoubtedly been victims of a 'historic injustice'. They have been rendered homeless. Tribals and forest dwellers cannot be sacrificed at the altar of development.

Such organisations consider the FRA vital for three main reasons: (i) Tribal lands are forcibly taken away and handed over to private corporations in the name of public interest. Numerous MoUs involving land acquisition are being signed between state governments and mining and other industries, all in the name of 'development' and 'industrialisation'; (ii) Where community lands and resources are officially owned by the government, they are being handed over to private companies directly; (iii) Special Economic Zones in many areas are encroaching upon adivasi, community and forest lands denying tribal rights. As a result the adivasis and forest dwellers become everyone's cheap migrant labour. When required they can be easily displaced or expelled, since they have no legal protection. The FRA is thus seen as a necessary step towards securing their ultimate and professed aim of bringing a new democracy in the forests.

Human rights activists who are strongly in favour of the FRA draw attention to the tyrannical acts perpetrated by the coercive apparatus of the state: In Chattisgarh, for instance, the government has organised armed attacks in the name of the 'Salwa Judum campaign'- burning tribal dwellings, villages and perpetrating all kinds of atrocities and brutalities on the tribals in the name of fighting the Maoists. Disillusionment with the state government is also echoed by the NFFPFW (National Forum of Forest Peoples and Forest Workers) in West Bengal:

"Our activities are being branded by the government as 'Maoist activity' and we are the Maoists...*This is real-life Maoism!*"

The media has been a major element in the whole process leading to the FRA. Elite capture of the media in an attempt to frustrate the emergence of the act has been highlighted in the next section. In any case the media has been used to voice diverse viewpoints. The FRA has been dubbed as "archaic, extremist and unconstitutional" and has been opposed on the ground that tribals and their future generations cannot be torn apart from the mainstream and placed in an archaic world where the constitutional law does not operate (Barse, 2005). Government officials at the highest levels have commented that media reports have often displayed lack of awareness about problems of tribals and forest dwellers of India.

With regard to opinions on the FRA, the conservationists are clearly a divided house. There are those who feel that 'people cut off from any involvement have no stake in the health of publicly owned forests'; 'for local communities residing in forests for generations it is their natural right-they have a greater stake than others in the well being of their natural resources.' Some conservationists genuinely feel that the goals of conservation have much in common with the livelihood concerns of local communities, and therefore by working together through a symbiotic relationship, these common goals can be achieved. Such conservationists emphasise the organic linkage between community rights and conservation which has often been ignored by public debates. Some conservationists also allege that:

'opponents of the Act have debated too much about the individual ownership of forest lands as a result of which a vital aspect of the legislation-namely, the question of community ownership- has got thoroughly eclipsed.'

Kartik Shanker (2008) therefore argues that

'Protectionists who oppose the FRA are the same people who spend considerable time and money educating the public on conservation; yet they do not realise the counter productivity of opposing the legitimate interests of forest dwelling communities who have most to gain from environmental protection - their's is a sensitivity born of necessity. Protectionists are ignorant of the fact that such contradictory efforts will only turn millions of people against nature or conservation' (Shanker, 2008).

On the other hand there are those who feel that the goals of conservation are not compatible with transference of occupational rights over land to the tribals: The proponents of the FRA do not seem to know the reality of tribal life today. The beliefs that the tribals know all there is to know about nurturing nature, that they are interested in doing nothing else in life, and that only born tribals can practise traditional conservation are fallacious romanticism. The Korku-s and the Worli-s (in Maharashtra) revealed that the stress of survival, domination of forest and revenue departments in their lives and practices, have caused significant if not extensive loss of traditional knowledge. In any case if the government assesses tribals' knowledge as priceless, why does it not ask forest and revenue officials to imbibe it (Barse, 2005)? Such conservationists fear that giving occupational rights over land to the tribals might result in large scale tree felling, which will also affect India's wildlife and biodiversity adversely. They even fear that

'outsiders will capture land of forest dwellers and encroach on lands rich in mineral and natural wealth. '

In fact there seems to be a widespread fear among some conservationists that the land and mining mafia often use the tribals to encroach upon forest lands. Indeed, corporate land grabbing has been perceived as a major problem from both sides of the debate over the FRA (see Munshi, 2007).

There are others like Valmik Thapar who opine that while some tribes display a commitment to conservation, there are communities which indulge in practices that are at odds with

conservation. In their inability to seek alternative sources of income, tribals often act ignorantly and negligently. If the support of local communities is to be harnessed they must be trained and educated in management and conservation of forest resources. And in the words of Thapar, "such scientific training and education are equally important for forest officials who continue to function within the framework of an obsolete and feeble system of forest management." Valmik Thapar attributes the degradation of India's forests and decline of its wildlife to a largely apathetic bureaucracy and a complete lack of innovation, dynamism and initiative on part of the national and state governments. Even if government displays innovation and initiative, he suspects that the bureaucracy will not act with accountability and transparency, and will frustrate genuine efforts at conservation.

A key actor in the politics of the FRA is the forest bureaucracy. Dejection with the Forest bureaucracy seems to cut across various sections, irrespective of their disposition to the FRA. Tribal organisations brand the forest department as the country's biggest landlord and the forest guard as its 'local agent'-extracting bribes, engaging in physical and sexual assaults and harassing forest dwellers. Those seeking to alleviate the problems of the tribals and forest dwellers see in the FRA 'a promise of respite and redemption' of the tribals from the clutches of the forest department. Even conservationists and environmentalists opposed to the FRA feel that a lot of people benefit from the fantasy promoted by the forest authorities that India's forests are uninhabited wildernesses managed by the scientific wisdom of forest officials for the national good. Even certain top officials of the central government find the forest department guilty of a 'colonial hangover' with forest officials acting as guardians of forest lands and resources and generally functioning as a 'self-serving machinery'. This draws attention to unfortunate episodes like Sariska⁴.

Certain members of the forest bureaucracy have their reservations about the FRA: the interests of the tribals and forest dwellers cannot be secured if the wider ecological concerns are not addressed. Economic security can only come from ecological security. Disillusioned with the policies of the government, they see in the FRA an instance of the vacillation and contradictions of the government:

What does the government want? On the one hand, it is pledging commitment to global concerns like global warming and climate change, on the other hand it is creating situations (through such legislations as the FRA) when nature conservation and environmental protection may well take a backseat! Destruction of forests will levy a heavy toll on India's ecology. It is a policy of the Government of India, articulated through the National Afforestation and Eco Development Board, to work towards a 'Green Cover' for 33% of India's land area. How is this compatible with the grant of occupational rights over forest land? Government needs to prioritise. FRA seems like a populist legislation that may attain other objectives, but it is certainly not in the best interests of India's forests and wildlife.⁵

In this context, one recalls Valmik Thapar's observation that in India there seems to be no priority for the natural world. His opposition to the FRA is based on his conviction that 'Man and Tiger can never coexist'; the FRA weakens tiger conservation by allowing tribals to do agriculture inside national parks and sanctuaries. The FRA can serve other purposes but it surely doesn't address India's conservation needs.

⁴ A Tiger Reserve and a popular tourist destination close to Delhi, Sariska became a center of dispute with regard to the number of tigers since 2003. While officials kept claiming the presence of a sizeable number, tourists increasingly failed to sight any. Ultimately a CBI investigation reported that a sizeable number of tigers had been poached out, and that this could not have been done without official connivance.

⁵ View expressed by a senior Conservator of Forests, Govt. of West Bengal, interviewed September, 2008.

'National parks and sanctuaries must be left out of the ambit of populist legislation.' It is imperative that some forests and forest areas remain absolutely inviolate – protected by "rings of steel" - if some of India's endangered species are to be protected.

There are bureaucrats and officials who are sceptical about the effective implementation of the FRA in view of infrastructural inadequacies of the executive machinery:

'Does the government have a clear land use policy? Almost 19 to 20 % of India's land is 'forest land' under the Forest Department, but the Forest department has been allocated only one % of the annual budget outlay.'

'Does the government have the infrastructure to do justice to the claims that will be thrown up by the FRA? The Land and Land Reform department has no clear map of the areas in consideration. But such a map is almost indispensable as a basis for implementation of the FRA.'

There is also dearth of adequate and trained manpower for preparing a map with prominent landmarks, crucial for serving as a basis for conferring occupational rights as professed by the FRA.'

'How do we handle cases of political interference when it comes to transferring land titles to the tribals?'⁶

Thus, on the surface there seems to be a complex of participants in the politics of the FRA with diverse and cross-cutting positions. Those who are enthusiastic about the legislation do not necessarily welcome it on similar grounds, while those who are opposed to the Act do not always argue from the same perspective. Amongst those who laud the legislation as 'revolutionary', some remain unsure as to what the Act will ultimately deliver, once operationalised, in terms of tangible benefits to the tribals and forest dwellers of India. And of course, there are those who suspect that the legislation is an attempt to gain political mileage from a sizeable section of the electorate. Even so, from the standpoints of the key actors, two main opposing positions emerge: Pro-tribal rights (tribal organisations, human rights activists) and anti-tribal rights (forest bureaucracy, conservationists, land-grabbers). These stances have been summed up below.

The collective campaign by forest rights activists, various political parties, champions of human rights harped on the following arguments in favour of the act:

1. Democratic legal issue of rights which, because of deprivations, have led to conflict. Group demands articulated over the years and often manifesting in the form of agitational politics and social movements could no longer be ignored by the central and state governments. Such movements, like the Chipko, have also presented the State and general public with alternative strategies of resource use, resource conservation and social development. The widespread nature and impact of the agitation over the FRA as a result of coalescing of mass tribal organisations across the country has been highlighted in the next section.

2. Poverty alleviation: The abysmal and continuing poverty among tribals and forest dwellers in India has been highlighted in the earlier section. It has been felt that insecurity of tenure coupled with the fear of eviction are perhaps the biggest reasons why tribal communities feel emotionally as well as physically alienated from forests and forest lands.

⁶ Views expressed in an interactive session with members of the Forest Department, Government of West Bengal, June-2009.

3. Improved incentive to ensure conservation: It is perhaps erroneous to assume that conservation of the natural resources of the country will be possible through a strengthening of the colonial practice of forest governance. One cannot afford to ignore any longer the tremendous traditional knowledge and practices of many tribal communities and forest dwellers which were conservation oriented. One may in this context mention adivasi practices like digging the edible tubers of various species of 'dioscoreas', leaving behind the shallow pits that retain water during the dry season, providing moisture to the plants in the vicinity (Ramnath,2008). As Shah (2005) puts it:

"A citizen's rights-based framework of democratic forest governance, built on the integral relationship between rights and duties is the leitmotif of the FRA. By making conservation of the natural environment not merely a duty of the forest right holder, but also a right of communities protecting their forest resources according to their traditions, the Act seeks to transform the current state of alienation of the tribes and other forest dwellers. 'State forests' will thus make way for 'People's forests', preserved and protected by the right holding individuals and communities themselves through their democratic institutions as citizens of the forest."

Various development projects under the aegis of powerful vested interests have often forcibly occupied forest lands for various purposes resulting in alienation of forest dwellers from their homelands. In fact forests across the country have witnessed onslaught from industrial and commercial interests and agricultural expansion. Over 4.5 million hectares of forest were officially diverted from 1952 to 1980. Slowed down by enactments such as the Forest Conservation Act of 1980, the pace of forest diversion has once again increased in the wake of globalisation and pursuit of higher economic growth. Of the total 1.1 million hectares of forests officially diverted since 1980, about a third has been only in the past five years (Kothari, 2008). All this has precipitated increasing mass hostility and anguish. There is no doubt that land and resource degradation has been catastrophic for rural livelihoods.

The roots of opposition to the bill can be traced to various vested interests in forest lands and forest resources, including sections of the bureaucracy and the Forest Department, its cronies in the timber mafia, large industrial and business groups involved in forest-based corporate ventures like mining. The anti-FRA campaign was based on the following arguments:

1. Even without such legislation in place, it was widely feared that India's forest cover is dwindling; with such legislation the situation could worsen. The underlying fear is that conferring occupational rights on tribals will result in large scale felling of trees. Poor and vulnerable, the adivasis have on occasions indulged in illegal felling of trees at the behest of big business interests against whom the forest department is totally ineffective, given the political patronage enjoyed by most of them (Munshi,2007:58). It was apprehended that conferring such rights on the tribals and other forest dwellers would amount to giving away as much as 15% of India's forest cover.

2. National Parks and Wildlife Sanctuaries cannot be constituted in areas with traditional rights where the gram sabha is expected to be the governing authority. In other words, less and less areas can be designated as inviolate and the overall ambit of conservation will diminish, with 'critical wildlife habitats' serving as the only domains of conservation.

3. Conservationist fundamentalists in particular remain worried by the legislation because they feel it would sound the death knell for the tiger population and even the biodiversity of the country.

4. It was felt that such legislation would result in irrational distribution of forest lands to tribal families and communities. Within villages social tensions may arise if certain communities are not granted the status of a Scheduled Tribe or forest dweller, even if they are found to follow similar livelihood patterns and practices and exhibit similar dependence on forest lands and resources.

5. The Act provides for the ceiling of occupation of forest lands for purpose of recognition of forest rights to the area under actual occupation and in no case exceeding an area of four hectares. But this will be practically impossible to monitor in case of communities which practise shifting or jhum cultivation or pastoral communities that have a tendency to return seasonally to the same lands.

However, it seems insufficient to dismiss political lobbying against the FRA as propelled entirely by vested interests. Tribal rights organisations and social activists feel that the most powerful right under this Act is that the community can protect, regenerate, conserve or manage and sustainably use any community forest resource and is also empowered to protect trees, biodiversity, wildlife, water sources in any forest. The implication is that for the first time whatever the Forest department, or government or forest mafia may decide, a community can enforce its decisions and protect its rights and resources. The Bombay Natural History Society⁷ criticised this provision of the Act, alleging that this amounts to transferring control and management of the country's natural heritage to the gram sabha/individuals. Reacting to this, the CSD clarified that "...the law is very clear that this power in no way detracts or derogates from the powers of the existing authorities; it is a power in addition to that of the Forest Department. Indeed, this section is one of the most pro-conservation elements of the law, for it is communities who have fought most fiercely against practically every environmentally destructive project, against every open cast mine, dam, or polluting industrial estate."

Again, a significant feature of the revised Bill (and the Act), which resulted from the incorporation of a Joint Parliamentary Committee recommendation, was an expansion of the beneficiaries of the Act to include 'other traditional forest dwellers'. This was heavily opposed by wildlife conservationists who apprehended that non-tribal persons, who have occupied forest land, may take advantage of this vague definition to claim rights under the Act as 'other traditional forest dwellers' (see Bhullar, 2008).

Despite protracted opposition, the FRA was ultimately legislated by the Indian Parliament in 2006. How this was possible is discussed in the following section.

5 THE ACTUAL PROCESS THAT CULMINATED IN THE FRA

For most areas in India, especially the tribal areas, record of rights did not exist due to which the rights of the tribals could not be settled during the process of consolidation of forests in the country. Therefore the rural people, especially the tribals who have been living in the forests since time immemorial, were deprived of their traditional rights and livelihood and consequently, these tribals have become encroachers in the eyes of law.⁸

⁷ Since the Act was notified, a number of petitions have been filed by Bombay Natural History Society and a conglomerate of wildlife organisations-Wildlife First, Nature Conservation Society and Tiger Research and Conservation Trust-challenging the constitutional validity of the Act on the ground that 'land' is state subject and Parliament cannot distribute land.

⁸ See affidavit submitted to the Supreme Court on behalf of the Ministry of Environment and Forests, Government of India, July 21, 2004.

The drafting of the FRA actually emerged from the struggle for implementation of orders issued by the Ministry of Environment and Forests (MoEF) in 1990. Dr.B.D.Sharma, a highly respected civil servant, then Commissioner for Scheduled Tribes and Scheduled Castes (a constitutional authority), gave recommendations in 1990 based on his 1989 review of the conditions prevailing in tribal areas. This review focused on the lack of settlement of land and forest rights as the main cause of tribal unrest in those areas. The B.D.Sharma Recommendation offered a plan for reconciliation of the interests of the tribal community and forestry development, largely through the economic development of the tribals by involving the tribals in the management and utilisation of forest resources.

A Committee of Secretaries and the Cabinet approved these recommendations, based on which the MoEF, (three months after the Joint Forest Management notification) issued guidelines for regularisation of forest land rights and for resolving conflicts related to forest land. These recommendations aimed at four main issues:

1. To regularise the pre 1980 'encroachment' of forest land by giving land titles to the settlers.
2. Earlier settlement officers never ventured in remote areas and the STs and forest dwellers were flatly branded as 'encroachers'. Such disputes between the Forest Department and local inhabitants need to be settled along with all disputed claims over forest land arising out of faulty forest settlements.
3. The Revenue department under the authority of Government has often distributed land, although such distributed land has on paper remained 'forest land' under the Forest Department. All these leases or 'pattas' were deemed illegal. Dr.B.D.Sharma pointed out that such land had been distributed under government authority and so the government must set its own house in order rather than victimise the forest dwellers.
4. To convert old habitations or 'forest villages' into revenue villages.

These MoEF guidelines, which did not distinguish between tribal/non-tribal claimants, included compensatory afforestation requirements despite the SC/ST Commissioner's objections (which the FRA has now dispensed with). They also restricted eligibility to those able to prove pre-1980 occupation. However implementation of these orders was neglected. Two states issued directions for their implementation but in the absence of a systematic follow-up by the MoEF, and in view of the inability of the potential beneficiaries to demand implementation, the guidelines were all but forgotten, barring the guidelines for pre-1980 encroachments. The 1990 guidelines could not be implemented because there were no clear procedural guidelines for state governments.⁹ From 1990 onwards, public attention shifted to JFM which involved the Forest Departments creating *ad hoc* local committees, and non-enforceable bureaucratic agreements with them which involved no transfer of rights. The critical issue of securing formal rights escaped attention.

One witnesses in India, in recent times, judicial activism for the cause of environmental protection. Environmental laws in India are enforced not only by pollution control boards set up at federal and state levels, but also by the Supreme Court and High Courts of States through a process called 'public interest litigation' (PIL). Prasad (2004) notes: "The establishment of PIL is intended to safeguard the citizens against infringement of their rights. The procedural law may not strictly apply if a case is filed in the interests of the

⁹ The MoEF clarified in February, 2004 that although the Central government had in September 1990 requested State Governments to settle disputed claims, issue patta lease, etc. of the tribal population on the forest land, but so far no such proposal has been received. Proposals have been received only under the category of regularization of eligible encroachments only from a couple of states. This has deprived the tribals of natural justice as guidelines for regularization of encroachments are different from the guidelines for settling disputed settlement claims.

public at large. The adversarial effects of environmental pollution on the flora and fauna, and the prevalence of rational apathy among victims stressed the importance of PIL in order to get redressal through the liability system under the provisions of the constitution and within the scope of existing legislation(s). In addition, the provisions of the PIL such as negligible or no court fee, relaxation of the locus standi, and availability of legal aid, provides incentives to public-spirited individuals to approach the liability system against the tortfeasor to protect and promote the environment in the country" (p.268)

On 12th.December, 1996, the Supreme Court expanded the scope of the term 'forest'. Reinterpreting the Forest Conservation Act of 1980, the Supreme Court in the case of T.N.Godavarman Thirumulkpad Vs Union of India and Environment Awareness Forum, Jammu and Kashmir Vs State of Jammu and Kashmir, now included in its scope not only forests as mentioned in government records but all areas that are forests in the dictionary meaning of the term, irrespective of the nature of ownership and classification thereof. The Godavarman case, popularly known as the 'Forest Case', had far-reaching consequences:

1. No forest, National Park or Sanctuary can be de-reserved without the approval of the Supreme Court.
2. No non-forest activity is permitted in any National Park or Sanctuary even if prior approval under the Forest (Conservation) Act of 1980 has been obtained.
3. An interim order in 2000 prohibited the removal of any dead or decaying trees, grasses, driftwood etc. from any area comprising a National Park or Sanctuary. It was also directed that if any order to the contrary had been passed by any State government or other authorities, that order shall be stayed.
4. New authorities, committees and agencies have been set up such as the Central Empowered Committee (CEC) and the Compensatory Afforestation Management and Planning Agency.

From 1996 public interest litigation over forest use led to unprecedented action by the Supreme Court which issued sweeping directives to oversee enforcement of forest laws across India (Divan and Rosencranz, 2001). As a result of the Godavarman case all regularisations and conversion of forest villages were stayed, and it also precipitated a livelihood crisis for 3.5 to 4 million people who were denied removal of any forest produce from the protected areas. Sarin (2002) comments: "The irony of this judicial environmental activism has been a further centralisation of power over the country's forest lands in the hands of the same bureaucracy against whose mismanagement the original PIL was filed."

On 3rd May 2002, MoEF issued a letter to the governments of all states and union territories in India regarding removal of encroachments from forest land. The letter estimated the forest area under encroachment to be 1250000 hectares (in eight states) and asked the states to remove all encroachments which are ineligible for regularisation in a time bound manner by 30th September, 2002, explaining that such encroachments "...cause great harm to forest conservation (and)...are also seriously threatening the continuity of the Wild Life corridors between various National Parks and Sanctuaries."

The MoEF, by a notification dated 17th September, 2002, authorised the formation of a Central Empowered Committee (CEC) to exercise inter alia following powers: to monitor the implementation of the Honourable Court's orders and place reports of non-compliance before the court including in respect of encroachments, removals etc.. The CEC thus sought to direct the Forest Departments to evict all so-called 'encroachers' in a time-bound manner. The CEC was a 'high-powered' committee constituted entirely by wildlife conservationists who have traditionally prioritised wildlife over people, and officials of the MoEF with their strong inclination to enlarge the territory under the Forest Department's control; there was no representative of tribal people, the Ministry of Tribal Affairs or the Constitutional authority of the Commissioner, Scheduled Castes and Scheduled Tribes (see

Sarin, 2002). Such a body was necessitated by the Court's inability to handle technical aspects on its own. This lacuna of the court system is recorded by Prasad (2004).

Through a second letter dated October 30, 2002, the MoEF asked governments of all states and union territories in India to "...show progress on the eviction of illegal encroachments. The states may rehabilitate these encroachers on non-forest land as per their policies. However, states may consider 'in situ' economic rehabilitation by involving these ineligible encroachers in forestry activities through Joint Forest Management." (For details on JFM, see Springate-Baginski & Blaike, 2007)

Many millions of forest dwellers and forest adjacent populations became seen as illegal 'encroachers' to be evicted under this order. Evictions were attempted in many states leading to pauperisation, deaths and intense conflict. Ultimately evictions had to be stopped. This was largely because of widespread mass agitation which was gathering increasing momentum. But a complementary role was also played by independent corroboration of the injustice perpetrating tribal life, by Dr.B.D.Sharma (referred earlier) who got the then Commissioner of Scheduled Castes and Scheduled Tribes to write to the Prime Minister that his office has been completely bypassed by the MoEF, even on matters which were consequential to tribal welfare.

After the attempted evictions in 2002, the ensuing uproar radicalised and mobilised popular movements and a new common cause was recognised between forest dependent groups across the country. This resulted in the formation of a coalition in 2003 – Campaign for Survival and Dignity (CSD). The year 2003 thus inaugurated a spate of multi-pronged campaigning in favour of tribal interests. The CSD represented a loose federation of grassroots organisations and people's movements spread across the ten states where the issues were most widespread. The federation included: Bharat Jan Andolan, National Front for Tribal Self Rule, Shoshit Jan Andolan (Maharashtra); Adivasi Mahasabha (Gujarat); Adivasi Jangal Janjeevan Andolan (Dadra & Nagar Haveli); Jangal Jameen Jan Andolan (Rajasthan); Madhya Pradesh Van Adhikar Abhiyan (Madhya Pradesh); Jan Shakti Sanghatan, Peoples Alliance for Livelihood Rights, Chattisgarh Mukti Morcha (Chattisgarh); Orissa Jan Sangharsh Morcha, Campaign for Survival & Dignity-Orissa, Orissa Adivasi Manch, Orissa Jan Adhikar Morcha, (Orissa); Adivasi Aikya Vedike, Andhra Pradesh Vyavasaya Vrithidharula Union (Andhra Pradesh); Campaign for Survival and Dignity-Tamilnadu, (Tamilnadu) and Bharat Jan Andolan (Jharkhand).

Its representatives met periodically to review emerging issues and develop strategies of action, including organisation of demonstrations, marches, 'jail bharo' (or, courting arrest) campaigns, lobbying with local, state and central political leaders. There are numerous instances of tribal rebellion and protests recorded through history, but never before did such widespread discontent coalesce into an all-India agitation. The emergence of the CSD brings to light the importance of coalitions in both 'electoral' as well as in 'protest or campaign' politics. The CSD's initial demand was time bound implementation of the 1990 orders, although gradually this became converted into a demand for a new law due to the apprehension that the orders could remain unimplemented as in the past. However, organisations like the CSD remain conscious that 'Our rights will not be recognised unless we fight for them on the ground. The law is but a tool, not a solution in itself. The FRA emphasises legal recognition and recording of rights of adivasis, which is a necessary first step in bringing control over forests back to the people , but it is above all a tool of struggle.'

In February 2004, on the eve of the national elections, the BJP-led NDA (National Democratic Alliance) government got the MoEF to withdraw the 2002 orders. The MoEF

issued a circular (dated February 3, 2004) to all state governments asking them to expedite the process of clearing disputes regarding the occupation of land classified as 'forest' by tribal people and the conversion of 'forest villages' into 'revenue villages'. Through a second circular (dated February 5, 2004), the MoEF admitted that "...their (tribals') traditional rights could not be settled due to number of reasons, making them encroachers in the eyes of law" and also requested state governments to recognise the traditional rights of the tribal population on the forest lands and incorporate these rights into the relevant acts, rules and regulations prevalent in the concerned states by following the prescribed procedure. Simultaneously it also announced through the leading dailies that it was taking the 'revolutionary' step of granting forest rights to adivasis. However these moves apparently came to nothing as claims were not processed. But on February 23, 2004 the Supreme Court ordered a stay on the Central government's move to grant tribal rights on grounds of violating an earlier ruling by the Supreme Court that any regularisation of forest encroachment had to be cleared by the Court.

In May 2004, the Congress-led coalition - United Progressive Alliance (UPA) - came to power. The Common Minimum Programme, adopted by this coalition on June 10, 2004, included in its agenda tribal welfare with special reference to ownership rights of tribals over minor forest produce and enlisting the cooperation of these communities for protecting forests and for undertaking social afforestation.

2004 appears to have been a crucial year in the genesis of the FRA. Concerted action primarily under the national umbrella 'Campaign for Survival and Dignity' as well as through numerous other groups [e.g. National Forum of Forest People and Forest Workers (NFFPFW), Lok Sangharsh Morcha - Gujarat, Jan Sangharsh Morcha - MP and NAPM, - Maharashtra] and human rights and social activists, sought to draw attention to the cause of the tribals and forest dwellers. Infiltrations into the decision-making elite were attempted through lobbying with MPs, MLAs and State governments, letters were written to the PMO, meetings were sought and ultimately a dent was made at the highest levels of administration with the issue also reaching Parliament. Two rounds of meetings were held at the PMO involving representatives from all these segments and finally a high profile meeting took place with the Prime Minister, Cabinet Ministers, Ministers heading concerned departments, senior and top level bureaucrats where it was decided that the cause of the tribals ought to be addressed.

The MoEF, on July 21, 2004, submitted an affidavit to the Supreme Court, clarifying the intensions of the Central government behind the guidelines (issued by the MoEF earlier on February 5, 2004) for "regularisation of Rights of Tribals" and emphasising the need for "recognition that the historic injustice done to the tribal forest dwellers through non-recognition of their traditional rights must be finally rectified." On December 21, 2004 the MoEF issued a circular to governments of all states and union territories in India regarding discontinuance of eviction of tribals. It explained: "...State/UT governments were not able to distinguish between the encroachers, and the original tribals and other forest dwellers living on forest lands since time immemorial. The Central Government is convinced that the difficulty in distinguishing between genuine tribals/forest dwellers and ineligible encroachers by the State Governments/ Union Territory Administrations is the main cause of the problems of tribals... as an interim measure, they (State Governments/Union Territory Administrations) should not resort to eviction of tribal people and forest dwellers other than ineligible encroachers till the complete survey is done for the recognition of such people and their rights..."

There seemed to be a consensus in favour of a paradigmatic shift in the basic understanding and definition of the problem: From a concern with tribals branded as 'encroachers' the

issue metamorphosed into the more fundamental problem of non-recognition of rights. The problem of encroachments logically came to be viewed as the problem of non-recognition of tribal rights. The argument was that 'adivasis' are the 'first dwellers' and in that case it is a fallacy to view them as encroachers. If they do not have supporting papers to prove their occupation over forest lands, then it is not their problem; the responsibility lies squarely with the state to prove cases of encroachment. 'In the matter of forest lands, the state for the first time was not acting as the landlord, absolute and unaccountable'¹⁰! It was observed further that even the Forest Act of 1927 contained provisions for forest villages, so it is not that tribals and forest dwellers did not have rights earlier. Rather, one has to think in terms of 're-cognition' of rights, which were either ignored or denied so long. Previously rights enjoyed by tribals and forest dwellers in India were customary; but with the usurpation of the colonial formal legal system these rights ought to have been formalised; but they were not.

The CSD's initial demand was two-pronged: stoppage of evictions and implementation of 1990 orders. Since the 1990 guidelines could not be implemented thus far, primarily due to lack of clear procedural guidelines for state governments, mentioned earlier, the CSD drafted a new set of procedural guidelines. The apprehension however remained that the new guidelines again may not be implemented readily. Hence the idea emerged with protagonists and tribal rights organisations that what was needed was in fact, a new law recognising the rights of forest dependent tribals of India.

The Supreme Court has been handling cases related to encroachment for quite sometime and the MoEF had been fielding most of these cases. With the paradigm shift from the issue of encroachment to the issue of tribal rights, it was also felt that the nodal agency in matters of framing laws regarding rights of tribals should be the Ministry of Tribal Affairs (MoTA), rather than the Ministry of Environment and Forests (MoEF).

All this ultimately led the PMO to instruct the MoTA on 19th January 2005 to draft the Forest Rights bill. The procedural guidelines developed by the CSD for implementing the 1990 orders became converted into the first draft of the FRA with the major change that instead of the MoEF, the Ministry of Tribal Affairs should be the nodal agency for tabling and implementing the law. In the meantime protracted opposition against the proposed legislation sought to convince the highest echelons of the administration and even key members of the UPA government, of the alleged dangers involved in such legislation. There were representations by wildlife enthusiasts and conservationists about the perilous ecological consequences of such legislation.

"There were also attempts by the elite media to thwart the passage of the bill, more interested as it was in promoting elite tourism rather than the welfare of the tribals."¹¹

The administration, which was already convinced of the need for recognising tribal rights, viewed such protracted opposition as a manifestation of class bias. The MoEF even volunteered to draft the bill, but all pleas and petitions were steamrolled and the government went ahead with its decision. The concluding part of the Prime Minister's address to Chief Ministers of states, delivered at New Delhi on April 5, 2005, clarified the mood of the government:

"...We must realise that dissatisfaction and alienation (of the tribals) are a result of pent up grievances against economic and social deprivation. Therefore the

¹⁰ View expressed by senior bureaucrat at the PMO, September, 2008.

¹¹ Opinion expressed by a bureaucrat, May 2008

onus is on us to provide good, effective governance that provides a ray of hope to all and a stake in our collective future..."

One wonders what took independent India so long to think about the rights of the deprived tribals? The government and administration which gave its final nod in favour of this legislation feels that the rights of these vulnerable sections were ignored because so long they were not in the 'right regime'. In this context one can recall the long-standing alliance between bureaucrats and large farmers, or between the public bureaucracy (included among the proprietary classes) and the state elite in India which has constrained state action and stifled interest articulation of the marginalised sections of the population (see Bardhan, 1984). The bill was drafted by the Technical Support Group set up by the MoTA and constituted by representatives of the Ministries of Environment and Forests, Law and Legislative Affairs, Social Justice and Empowerment, Panchayat Raj, Rural Development and Tribal Affairs as well as representatives of civil society organisations and the CSD, environmental activists and tribal rights activists.

Institutions are never 'neutral'. They always distribute advantages to some and disadvantages to others (Leftwich, 2007). No wonder then that there were almost three years of heated debates and political lobbying between preparation of the first draft of the new law and its ultimate coming into force on January 1, 2008.

Initially, lobbying for the Act was done through contacts in the National Advisory Council (NAC) chaired by the UPA, with Mrs. Sonia Gandhi as the chairperson. In the early days of the Congress coalition the NAC was pushing for reform, and at the NAC's recommendation, the matter reached the Prime Minister who asked the Ministry of Tribal Affairs (MoTA) in January 2005 to draft the law. The Technical Support Group prepared the first draft of the FRA in just over two weeks in February 2005 as the Government wanted to table the bill in Parliament in the coming budget session. There were interventions in the MoTA alongside the MoEF and the PMO, by activists and environmental organisations, seeking clarifications on the bill and requesting that public discussions and consultations on the bill among various sections of the society be organised. Vehement opposition from the hard core 'fortress conservation' wildlife lobby, however delayed tabling of a by then much diluted version of the draft in Parliament until December 2005.

The politics of the FRA also witnessed an almost total capture of the 'media' by the Conservationists, who, as the tribal rights activists and Left parties accused, indulged in a virtual 'misinformation campaign' in order to sway public opinion to their advantage. The conservationists and particularly the 'Tigerwallas' also sought to influence Sonia Gandhi and Rahul Gandhi that the Act would stand in the way of protection of India's wildlife - which would mean undoing all that Indira Gandhi and Rajiv Gandhi had tried to achieve through such innovations as Project Tiger and Forest Conservation and Wildlife Acts. In fact it was largely at the instance of these segments that the bill came to accommodate and incorporate certain provisions pertaining to Critical Wildlife Habitat and preservation of India's biodiversity.

While the administration seemed aware of land and mining mafias (see Munshi, 2007) masquerading as wildlife enthusiasts, the fears of certain wildlife conservationists were not entirely misplaced. For even if tribal communities may have strengthened the cause of conservation through their indigenous techniques earlier, clearly the situation is very different at present - population pressures on forest land have increased, various species of flora and fauna have become endangered and so modifications to the original bill in the larger ecological interests of the country seemed important. At the same time, episodes like Sariska (mentioned earlier) have revealed that under the pretext of environmentalism and

conservation, forests have often been diverted for perpetuating vested interests- logging, mining, tiger parts trade etc. The welfare of tribals and forest dwellers lie at the core of the legislation but the government will have to tread the path in a cautious and balanced way, for the needs of development as also the wider ecological concerns cannot be ignored. As the Prime Minister put it: "We need an integrated approach that addresses both the challenges of maintaining peace and security for our people and providing livelihood security and promoting development..." (PBI, 2008).

A Joint Parliamentary Committee (JPC) of 30 MPs examined the bill over six months during 2006 and recommended other changes and improvements in the version tabled in Parliament. The present FRA is a considerably diluted version of the law recommended by the JPC. The first draft, for instance, was conceived only for the scheduled tribes. But later the non-tribals by way of 'other forest dwellers' were included on the ground that the process of scheduling tribes, since colonial times, had been faulty. Also, social activists apprehended that this exclusion would lead to societal conflict between people who have historically lived in a mutually beneficial relationship vis-à-vis the forests. It was, therefore, proposed that the distinction should be drawn between those who are in the forests for survival and livelihood reasons and those who are there for commercial purposes and profit making (Bhullar, 2008). Organisations like CSD therefore express their unhappiness with the bill that was ultimately passed, for this (the diluted version is not what they fought for. Nonetheless they feel that 'the Act at least gives them a fighting ground, and if the dilutions were not accepted they would have ended up throwing the baby with the bathwater.'¹²

Politicians often needed to be provided with information and analysis of an incomprehensively understood issue concerning these marginalised segments before feeling motivated to pursue it. In fact many political parties got an insight and exposure to the whole issue only in the course of the debates. This process ultimately led the Communist Party (Marxist) and other left parties taking up the issue both inside and outside the Parliament. From the beginning and even now¹³ the Left Parties claim credit for steering the course of legislation such as the FRA and the NREGA. Brinda Karat recalls: anti-tribal lobbies among the bureaucracy and conservationists wanted the notification of Rules (without which no Act can be implemented) to be delayed till tribals living in Critical Wildlife Habitats could be evicted. Disinformation campaigns wishing to sabotage the bill failed to see that the land involved in the whole issue of tribal rights is less than two % of the forest land. In any case all attempts at sabotage were offset by a combination of steps: all-party delegation to the Prime Minister, a walk-out on the issue by the CPI(M) in Parliament, numerous meetings and above all, tribal mobilisation (Karat, 2008).

However the FRA is not to be interpreted as an exclusively UPA (United Progressive Alliance) coalition policy, as prior to the UPA, the BJP-led coalition (National Democratic Alliance) had also recognised the need to appease the forest dwellers and secure their 'vote banks'. But even if the BJP-led government may not have avoided the issue, the idea did not receive much impetus during the BJP regime. (In fact, there was a joke in official circles that 'Mr. Atal Behari Vajpayee does not know who his minister is for Forests and Environment').

¹² View expressed by a CSD representative.

¹³ On the eve of the 15th Lok Sabha elections (2009) in India, the FRA made its way into a number of party manifestos, campaign rallies and speeches by electoral candidates (KEAG, 2008). The CPI(M) Lok Sabha Election Manifesto (2009), for instance, highlighted the crucial role of the Left in the enactment of the FRA. If elected, it also pledged to implement the FRA in full and even amend the Act to include a more reasonable definition of 'traditional' forest dwellers.

There were dissensions within political parties also. For instance, Tribal MPs within the Congress who were in favour of the Act found themselves pitted against the Maharaja-backed MPs who were spearheading the case of the conservationists and wild life lobby. The problem was that no political party could publicly oppose a sensitive issue like tribal rights.

The New Political Economy approach in analysing policy-making in the developing countries asserts that elected political leaders want to stay in power; they will maximise their chances of achieving this end by using policy resources to reward supporters or potential supporters. According to this view, policy outcomes can be systematically traced to the efforts of policy elites to buy political support and to establish and maintain supportive coalitions. This perspective corresponds to much that can be observed in developing countries where policy elites are central to policy-making (Grindle, 1991). Political stability and power tend to be major preoccupations of these political actors because, in many cases, they are vulnerable to the loss of political power. Ameliorating civil unrest in tribal areas definitely seems to have been a significant consideration in enacting the law, as the lack of recognition of forest rights has been a major factor in mobilising support for the Maoist movements across India's forested tribal regions.

With the benefit of hindsight one can attribute the genesis of the FRA to a constellation of factors:

1. Sensitivity to tribal problems found a cogent expression in a letter to the President of India by Dr.B.D.Sharma. That the tribal community was in the throes of turmoil was becoming evident. Continuous interventions at the highest levels of decision-making and administration through letters and petitions by organisations like the CSD proved instrumental to orienting the decision-making elite in favour of a paradigmatic shift towards a re-cognition of rights (tribals originally enjoyed customary rights, their rights were also cognised previously under the Forest Act of 1927). 'Adivasis', or 'first dwellers, were no longer to be seen as 'encroachers' but as claimants of rights which had long been ignored.
2. The use of collective pressure through an unusual coalition of interests spread across the states of India. Of particular importance is the kind of 'protest' or 'campaign' politics that converted the injustice perpetrated on tribals into a national issue, which could hardly be ignored by political parties, both national and regional.
3. The Government has also been sensitive to the spurt in naxalite activity in contemporary times. There is the conviction that 'naxalism is rooted in economic deprivation'. As the Prime Minister opined: "...It is not a coincidence that the areas affected by naxalite activity are also areas with a large representation of tribal communities. It was in recognition of this fact that that many such states or areas have been included in the Fifth Schedule of our Constitution..." (PIB, 2008).
4. The concern for human rights and commitment to international conventions like the ILO 169 of 1989 also seems to be a contributory factor. Article 14.1 of ILO 169 of 1989 stipulates, "the rights of ownership and possession of the people concerned over the lands which they traditionally occupy shall be recognised. In addition measures shall be taken in appropriate cases to safeguard the rights of the peoples concerned to use lands not exclusively occupied by them, but to which they traditionally had access for their sustenance and traditional activities."

The proclamation of the Forest Rights Act appears to be a timely intervention by the Indian government. It is believed by many that the Act will serve to reconcile two adversarial positions. It will integrate conservation with sustainable livelihoods, restore dignity into the lives of millions of tribal people and forest dwellers and put in place a new system of

governance of forests where the legitimate inmates of the forest will recognise their duty to protect the forest wealth of the nation (Prabhu, 2005). As the Preamble to the Act observes, this is "An Act to recognise and vest the forest rights and occupation in forestland in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded...

"resulting in historic injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem."

So, what were the triggering mechanisms behind the FRA? A public policy, as manifest in the FRA, stems from issues that trouble a segment or segments of society to the point of taking action. But for any such trouble or problem, confronting large numbers of individuals, to be transformed into a public policy issue, there ought to be some 'triggering mechanism/s' (Gerston, 1997:22-40). A triggering mechanism is a critical event (or a set of events) that converts a routine problem into a widely shared, negative public response. This public response, in turn, is the basis for the policy issue that ensues in the wake of the triggering mechanism. The value of a triggering mechanism as a catalyst for public policy stems from the interaction of three factors: Scope or the number of people affected by the triggering mechanism; Intensity, that is, if an event captures concern, particularly in the form of fear or anger, then public policy makers are likely to pay attention to the clamour before them; Time, that is, the length of time over which a critical event unfolds is crucial to the determination of a triggering mechanism as a catalyst for political activity.

In exploring the triggering mechanisms behind the FRA, one can identify a combination of scope, intensity and timing:

Scope: Number of exploited and 'insecure' tribals have increased perceptibly from colonial times through post-liberalisation India. It is estimated that between May, 2002 and August, 2004, 750,000 people were impoverished through evictions from 152,000 hectares of forest lands.

Intensity: Tribal agitations and radical movements were increasing and engaging public attention, particularly after 2000. The spurt in 'naxalite' activity also deserves attention. There was also the pivotal role of organisations like CSD forming a coalition of mass tribal organisations across the country, indicated earlier. CSD initiatives included public campaigns, dharnas, rallies with the participation of adivasis demanding early tabling of the Bill (August, 2005)

Timing: Increasing networking by the NGOs and Human Rights activists in favour of the legislation, the contributory role of the Left parties in and outside Parliament aided the passage to the bill. In fact stopping of evictions featured on the United Progressive Alliance (UPA) government's Common Minimum Programme-agreed upon by all the coalition partners.

Like a three dimensional reproduction from which one of the dimensions has been left out, no account of the story behind the emergence of the FRA will be complete if one fails to highlight the impact of any one of the factors - scope, intensity and timing - that culminated in this legislation.

6 THE FRA: A POPULIST GESTURE OR A POLITICAL TRIUMPH?

One wonders whether the FRA is at heart a populist gesture on part of the government. Some believe that it is basically a political move to cover up its failure on the development front and shift focus to its commitment to democracy and human rights. This is important in

an age of globalisation when India along with its pursuit of higher economic growth, must also display, both nationally and internationally, its concern for and commitment to the plight of the poor and marginalised segments of the population (see Ramnath, 2008). The sceptics further argue that visibly engaged in the path of development as India is today, contemplation and implementation of various 'development' projects for mining, dams, establishment of special economic zones etc. will be on the rise and that can only mean that there will be more cases of displacement leading to further expropriation and pauperisation of the non-elite rural people.

On the other hand, there are those who feel that the FRA is a commendable and rare case of politically marginalised groups like the forest-dwelling tribals and the forest-dependent poor, extracting a concession from the political elite. It could well be an indication that the politicised poor are becoming increasingly influential, that they are becoming more capable in terms of defending and extending their autonomous spaces within India's political economy. Their economic security or pauperisation in the days to come will depend in good measure upon their ability to safeguard and protect both their private and common property on which their livelihood depends. Rudolph and Rudolph (2008) thus comment: "Interest group representation in India is marked by pluralist rather than corporatist forms and processes... Demand groups are a form that interest representation can take in competitive, open democracies when political mobilisation of mass publics outstrips or overflows the formal institutions of the political process. They are an expression of movement and issue politics" (Rudolph and Rudolph, 2008). Such demand groups have been found to operate, not primarily in institutionally defined policy arenas, but rather with an inclination to symbolic and agitational politics. Through ad hoc and spontaneous tactics including public dramas such as padayatras, hartals, rasta- rokos (these are forms of anomic behaviour meaning - marches, strikes, road blocks respectively), such demand groups have been able to mobilise support in favour of their cause and interest, influence public opinion and wrangle concessions, advantages and gains. Atul Kohli (2001) comments that the fifty-year history of the sovereign Indian republic is replete with instances of power negotiations. Most significantly, within the framework of a centralised state, accommodation of group demands has repeatedly strengthened India's democracy (Kohli,2001).

In fact one has witnessed in India a spate of 'New Social Movements' which are important in terms of the void they fill where the state and other social and cultural institutions are unable or unwilling to act in the interest of their members. Social movements step in where institutions do not exist, or when they fail to serve, or violate and contradict, people's interests (Frank and Fuentes, 2002). One may thus view in the legislation of the FRA an indication of the maturing of Indian democracy from a centralised, elitist, even statist domain to a decentralised, participatory, mass-based plane.

The FRA as a case of empowerment of the tribals is reflected in the Prime Minister's address to the Governors of all Indian states in September, 2008:

"...Our Government has enacted the Scheduled Tribes and other traditional forest dwellers (Recognition of Forest Rights) Act, 2006, which is a path-breaking initiative empowering tribal families..." (PIB,2008).

Is the FRA therefore a case of pro-poor institutional reform?

Pro-poor institutional reform may well resemble scaffolding, of which the FRA is a plank. How fruitful it will be will also depend on how well integrated it is with other mechanisms and devices addressing the same cause. In that sense the FRA must be read together with

legislations like- Panchayat (Extension to Scheduled Areas) Act, 1996 or PESA¹⁴; and National Rural Employment Guarantee Act, 2005 or NREGA¹⁵.

A study on the poverty among tribals in south-west Madhya Pradesh reveals that despite significant changes in socio-economic and infrastructural development (over a span of ten years, from 1981 to 1991) pertaining to literacy, mortality, crops and markets, incidence of poverty remains significantly high with more than 60% of its people in poverty (Shah and Sah, 2003). All interventions were in the nature of intermittent remedies, but the basic discrimination faced by tribal communities was never sought to be corrected. The study concluded that the ultimate solution would lie in restructuring the macro policies pertaining to property rights and access to resources, sectoral priorities and social mobilisation-for bringing about substantial improvement in people's livelihood.

The FRA is indeed the result of a macro policy initiative on part of the present UPA government. It seems that it would be premature to dismiss the FRA merely as a populist gesture on part of the government. Even if it is, the contents of the FRA hold vital implications for the lives of the tribals and forest dwellers of India. At the same time it must be accepted that the Act by itself will not alleviate the poverty or improve the plight of the marginalised forest-dwelling people of India. It is certainly a landmark legislation that needs to be complemented by other informal institutions. Such informal institutions may make the formal institutions more effective or efficient and may fill gaps (Leftwich, 2007). All that the FRA seeks to achieve will materialise only if a host of other factors are in place: mechanisms ensuring better coordination between the Centre and the states in overseeing the implementation of the Act; mechanisms ensuring better coordination between the nodal ministry (MoTA) and other related ministries and departments; availability of reliable land records for providing a suitable basis for processing claims and vesting rights; acculturation of a re-oriented role by the forest bureaucracy from the top right down to the level of the forest guards; a regular system of public awareness and public engagement to make necessary interventions on the basis of a realistic reportage of ground realities; continuous third-party monitoring and appraisal. Or else, the entrenched vested interests that have exploited India's marginalised forest-dwelling communities and forest wealth so long, will continue to dig their roots deeper and put the otherwise promise-laden Act to dysfunctional consequences. The debate between optimism and pessimism seems interestingly poised.

7 CONCLUSION

The enactment of the FRA suggests that group demands articulated over the years and often finding expression in agitational politics cannot be ignored by the central and state governments in India. The case of the FRA highlights the importance of 'protest' or 'campaign' politics in India, and the simultaneous importance of activists to form effective 'coalitions' involving individuals and groups in order to influence the course of legislation. While the preponderance of politics in matters of economic decision-making gets

¹⁴ PESA: essentially an extension of the constitution for tribals and forest dwellers guaranteeing that in Schedule V areas, the gram sabha will have the power to manage community resources and must be consulted on land acquisition, resettlement etc.

¹⁵ NREGA: is a job guarantee scheme, providing a legal guarantee for one hundred days of employment in every financial year to adult members of any rural household willing to do public work-related unskilled manual work at the statutory minimum wage. This legislation seeks to soften the harsh edges of extreme poverty in rural districts across India.

highlighted, the process underlying the legislation of the FRA also reveals the multi-actor and multi-layered (given the federal structure of the Indian polity) nature of the Indian State and the significant role of intra-state politics in promoting or thwarting pro-poor institutions.

The significance of the FRA also lies in the fact that story of its emergence throws up a plethora of related issues that will, sooner or later, need to be addressed: the need for a clear environmental policy, a possible reform of the forest bureaucracy and so on. An important and related issue is the troublesome question of 'relocation'. The need for relocation may inevitably arise in certain situations - whether for purposes of accommodating critical wildlife habitats or needs of conservation, or for engineering physical infrastructural development like laying railway tracks or reaching electricity to remote areas. There seems to be an emerging idea that any issue of relocation must begin by addressing two anterior questions: whether relocation is at all required; and, whether there has been due consultation with those meant to be relocated. Yet another issue is the question of public engagement in policy making and legislation. The need has been voiced for more public discussion and participation in the finalisation of such a bill. It is felt in the case of the FRA that with more dialogue, especially with wildlife conservationists and communities, a stronger united front could be achieved to secure both tribal rights and conservation (Kothari & Pathak, 2005).

If 'politics' dominates the arena of policy making, it will be no less dominant in the domain of policy implementation; as in the case of the process which led to its enactment, effective implementation of the FRA will also require intelligent activism geared towards building focused and effective coalitions, both in the centre and across the states, that will initiate additional complementary institutional changes so as to curb attempts that are likely to frustrate the successful implementation of pro-poor institutional reform as embodied in the FRA.

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