

RGICS

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FOREST RIGHTS ACT

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Introduction

India's forests are home to millions of people, including many Scheduled Tribes, who live in or near the forest areas of the country. Forests provide sustenance in the form of minor forest produce, water, grazing ground and habitat for shifting cultivation.

As per an assessment in 2011 by Ministry of Environment & Forests, the forest and tree cover of the country is 78.29 million ha i.e. 23.81% of the total geographical area of the country. In terms of percentage of forest cover in relation to total geographical area, Mizoram tops with 90.68% followed by Lakshadweep with 84.56%.

The forest rights on ancestral lands and their habitat had not been adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in 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.

Therefore, it had become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions.

Over the last few decades, the government has framed several policies and enacted legislations to protect rights of forest dwellers. Following is the list of policies framed by the government to protect forests and rights of forest dwellers:

<u>Forest Policy</u>	<u>Objective/ Feature</u>
The Forest Act, 1865	Extended the British colonial claims over forests in India.
Indian Forest Act, 1878	Categorized forests into 3 types: reserved, protected and village forests.
Indian Forest Act, 1927	Replaced the 1878 Act. Embodied all major provisions of the earlier one and laid clear emphasis on the revenue-yielding aspect of forests.
National Forest Policy, 1952	Gave importance to Forest management, Correct use of forest land, Reserve forest policy, Increase in forest product
Wildlife (Protection) Act, 1972	Gave powers to state to create National Parks and Sanctuaries. It restricted the human activities in these areas and especially in National Parks and made a provision that people residing in the National Parks should be relocated
Forest Conservation Act, 1980	Underlined that no forest land would be diverted for the non-forest use.
National Forest Policy, 1988	It underlined that local communities should be given important role in the

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	forest management.
<i>Panchayat (Extension to Scheduled Areas) Act (or PESA) 1996</i>	Recognizes the customs and traditions of the STs of Schedule V areas, it gives them right to live their day to day life according to these customs, to manage their resources and to make decisions regarding issues of development.
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006	Recognizes forest dwellers right and makes conservation more accountable.

Enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, is a key piece of forest legislation passed on December, 18, 2006 to address the above issue. The Act, also called the 'Forest Rights Act', 'Tribal Rights Act' and 'Tribal Land Act' concerns the rights of the Forest Dwelling Communities to land and other resources denied to them over decades as a result of continuation of colonial forest laws in India.

The Act seeks to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded.

The Ministry of Tribal Affairs is the nodal agency for implementing the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Salient Features of the Act

- The occupation of forest land up to 4 hectares (Maximum) can be recognized.
- Rights are hereditary but not transferable.
- Persons primarily residing in and dependent on the forests or forest lands for *bona fide* livelihood needs shall be eligible.
- **Responsibility for protection of wildlife, forest and bio-diversity has been assigned to holders of forest rights, Gram Sabha and village level institutions in areas where they are holders of any forest right (Section 5 of the Act).**

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- The FRA provides for declaration of Critical Wildlife Habitats in National Parks and Sanctuaries that require to be managed as inviolate areas.

Major Forest Rights under the Act

- Right to hold and live in the forests for habitation or self-cultivation for livelihood.
- Right of ownership, access, use or dispose of Minor Forest Produce.
- Community rights of uses or entitlements, such as, fish and other products of water bodies or grazing etc.
- Any other traditional right customarily enjoyed by the forest dwellers.

Challenges in implementation

The development potential of FRA is immense but has been least exploited. The environment ministry's India Forestry Outlook study for 2020, published in 2009, estimates that 20% of the forestland under government control would be with people once the Act is fully implemented. This is more than 15 million ha forestland. As many as 31 million ha forestland is used by villages, estimates Forest Survey of India. Of the 19 states that have state action plans to implement FRA, none has taken up full scale convergence programme.

Most villagers claim that although they got titles way back in 2010, the convergence work hasn't begun. Their common complaint is that "Patta dekar bhool gaye hain (Government has forgotten us after issuing claim certificates).

Following are the major challenges in implementation:

1. **Titles Given, Not Recorded**

For the government, handing over land titles (title refers to the legal basis of ownership of property) is the easiest step in implementing FRA. The tough task is officially changing the land's regime. As per FRA, all forest villages, unrecorded settlements and old habitation must be converted to revenue villages. Notably, despite decades of efforts, India still does not have proper records of lands.

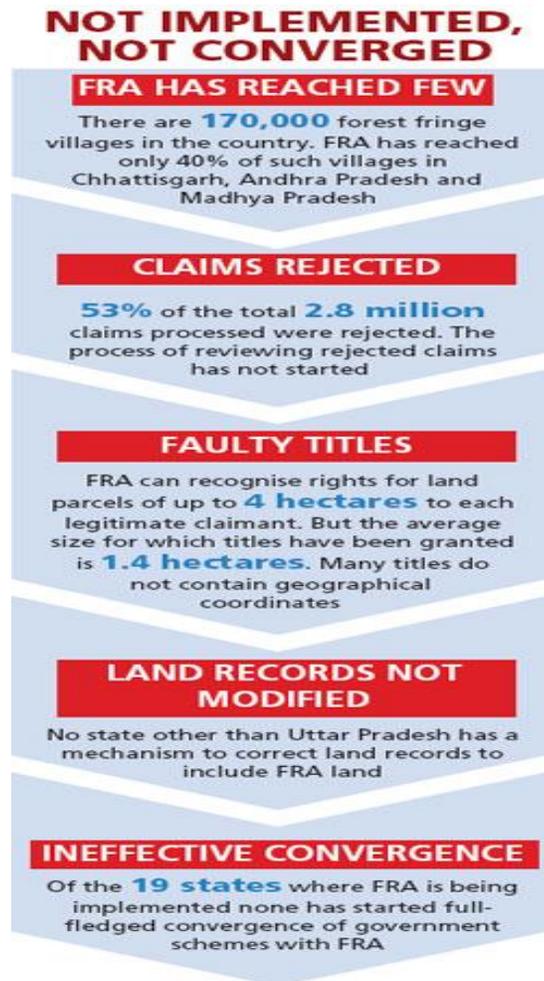
Activists have time and again demanded that new titles must be recorded in government's land records. Without this, title holders' ownership will not be recognized but no state has recorded fresh land titles in its revenue record and hardly any forest village has been converted to revenue village. **Until their titles not registered in revenue records, they cannot avail government schemes.**

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In many states, convergence work has not started because of the absence of government guidelines on the process of issuing revenue record documents.

In Madhya Pradesh and Odisha, revenue and forest departments are in conflict over the status of forestland. Dispute over land ownership between revenue and forest departments is a big hurdle in the implementation of FRA. Neither the state governments nor the Centre is clear about the process of recording the rights and status of land after handing over titles.

In 2011, when Madhya Pradesh raised doubts over the process of recording rights and the administration of FRA land post-settlement, MoTA said it was to be done as per the settlement rules of each state government and left it to them to decide it.



Source: Down to Earth

2. Rejection of Claims:

One of the major concerns plaguing the FRA is the rejection of high number of claims (claims to forest land, forest produce etc.) mostly on flimsy grounds. This has hampered the recognition of rights to the claimants in a big way.

The state level monitoring committees are responsible to assess whether the FRA's implementation is taking place as it should be. They devise the criteria and indicators for monitoring the rights recognition. After this, the tribal departments of the respective states develop qualitative indicators, and then the rural development and Forest Departments (FDs) do justice to the claimants. In many places, however, this process is being ignored, resulting in the denial of many claims of the poor at the initial stage itself.

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As per the Act, the Forest Departments have only a negligent role in the implementation process of the FRA. They are required merely to be present with the FRCs during the verification stage. Even this presence is not mandatory according to the rules, and will not imply on the decision of the FRC. However, **in total disregard to the Act, the FD is seen to be functioning as “veto” in denying rights to the people, and by rejecting their claims at the screening stage itself.**ⁱ

It has also been noticed that authorized officials make hasty enquiries and many a times none at all.

The misuse of Section 4(5) of the Act is another much-talked-about issue. It deals with eviction, and many times, is used against the claimants without proper investigation.

It is interesting to note that while the state governments claim that a high number of FRA claims have been processed, in reality; **state governments have rejected more than half of the 2.8 million title claims processed countrywide.**

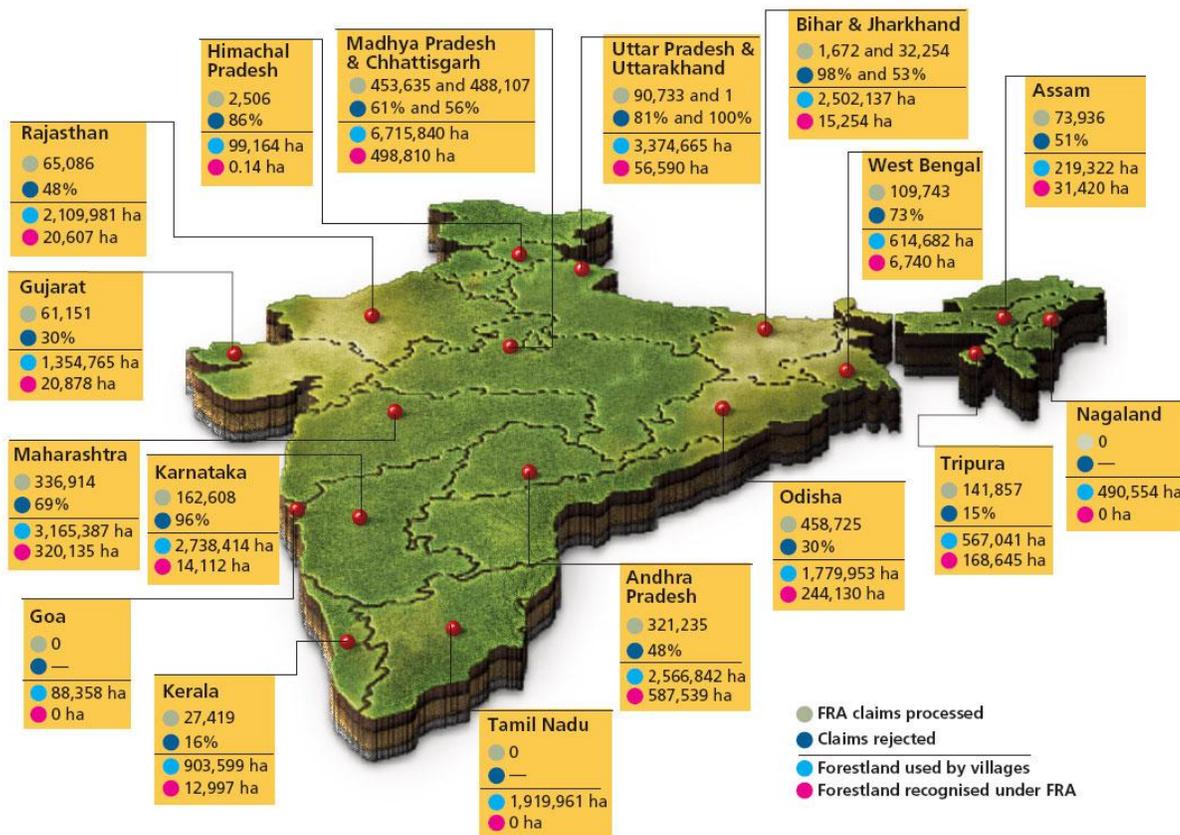
Of the 345,975 claims made at the gram sabha level in Maharashtra, only 109,458 were accepted. A whopping 233,689 were rejected. MoTA's status report on the implementation of FRA show most of the rejections were by sub-division and division level committees, which overruled gram sabha decisions. Further, in most cases, no reason is given for the rejections. Claimants are not given the opportunity to appeal against it.

Many beneficiaries have complained that they received titles for much less land than what they claimed. FRA provides recognition of land up to 4 ha to each legitimate claimant. But the average size for which titles have been granted is only 1.4 ha with the result that those who cultivate large farmlands now face the prospect of reduced income from agriculture.

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LAND PEOPLE USE BUT HAVE NO RIGHT OVER

More than 31 million hectares (ha) forestland is used by villages, estimates the Forest Survey of India. So far, 2 million ha forestland has been disbursed under the Forest Rights Act (FRA). However, the government rejected more than 50 per cent of the claims made under FRA



CHAITANYA CHANDAN / CSE

Source: State of Forests Report, 1999, MoTA

MoTA, which supervises FRA’s implementation, is grappling with this situation created by state governments. Analysis of action plans of 19 states shows that all the states set ambitious targets and deadlines to implement FRA. The rush in clearing claims has led to hurried and whimsical decisions.

Tribal affairs Minister recently commented that the situation, now, is such that there are more rejections than acceptance of claims and there is no state-level institution to effectively monitor FRA’s implementation. However, this faulty implementation of FRA had been pinpointed by the National Forest Rights Act Committee in January 2011, which had noted that institutions not constituted as per the law and faulty ways of processing claims are the major hurdles in FRA’s implementation.

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3. Lack of Political Will in FRA implementation

Ten states and union territories have not given a single land title so far. These are: Tamil Nadu, Uttarakhand, Arunachal Pradesh, Nagaland, Mizoram, Manipur, Meghalaya, Goa, Daman and Diu, Dadar and Nagar Haveli. The governments of these states have cited several reasons for this, but a closer look reveals government apathy and misinterpretation of the law rather than administrative roadblocks.

Responses for poor implementation:

TAMIL NADU

In April 2009, the Madras High Court gave the state government go-ahead for the implementation of the Forest Rights Act (FRA) in *V Sambasival v Ministry of Tribal Affairs (MoTA)* case. The order also stated that the court's permission should be sought before land titles are distributed. It took the state government two years to move the court for permission to distribute 2,312 titles. In April 2010, the court ordered the petitioners to verify if the claims were correct. Three years later, nothing has happened. N L Rajah, advocate for MoTA in the case, says petitioners have questioned the absence of gram sabha participation in the claims approval process. "Government is yet to formulate an answer to this submission," he says. "Restrictive orders similar to that of Tamil Nadu's were also issued in Andhra Pradesh and Odisha, but they were vacated long ago," says C R Bijoy of forest rights forum Campaign for Survival and Dignity. "Tamil Nadu government has not taken necessary steps to get the order vacated," he says.

THE NORTHEAST

There is general discomfort regarding FRA in the Northeast. Here, tribal clans have long controlled forestland and have customary rights over them. "In Arunachal Pradesh, Nagaland, Mizoram, Manipur and Meghalaya, demarcation between forestland and community land has been problematic despite the classification being 'unclassified state forest'," says Souparna Lahiri of All India Forum of Forest Movements. "People fear that once their land is classified as forest area, they will lose rights over them." Also, there is conflict of interests between the tribal clans and Bangladeshi immigrants, says Jiten Yumnam of Manipur-based non-profit Citizen's Concern for Dams and Development. "The Chakmas have been living in the forests of Arunachal Pradesh for 30-40 years. Tribal leaders fear if FRA is implemented, rights on their land may go to the settlers," he says. However, FRA is slowly gaining acceptance. "People are realising that FRA is a better tool to protect natural resources than the Forest Conservation Act of 1980, under which the forest department is not required to consult communities before diverting forestland for development purposes."

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UTTARAKHAND

Of all the excuses presented by the state governments, Uttarakhand's is flimsiest. MoTA's status report on FRA implementation shows the government carried out the process of constituting forest rights committees (FRCs) in the state. But the same report states constitution of FRCs was delayed. It cited model election code of conduct as the reason for the delay. The report does not even give the years when the work was held up and what happened in the remaining years. The state has processed only one claim till now, which too it rejected.

Odisha, which has given the country's highest number of land titles, has done much less than its potential. In January 2010, the state's Scheduled Cast and Scheduled Tribes welfare department stated that at least 0.74 million tribal families in the state should benefit from FRA. So far, only 0.32 million families have got titles.

4. Individual Rights over Community Rights:

One of the crucial provisions of FRA was the recognition of the value of community rights as par with individual rights. The Community rights were given legislative basis because these rights would provide secure livelihoods avenues to the forest dependent people through forest resources. But it has been found that people have failed to take advantage of this provision to the fullest.

According to Kothari (2011), from the estimates of a decade-old forest survey report, there should have been about 1, 70,000 community claims as forests were within the boundaries of so many villages. However, only 50,000 claims were recorded with the Ministry of Tribal Affairs.

Under-representation of women is also plaguing FRA implementation. With regard to representation of women in the FRCs, there appears to be complete overlooking of their share in most of the states, the usual story being inadequate or complete absence of women. Even the Government of India's 2010 report observed that the Gram Sabhas are being convened without their attendance. **All this is happening when the fact is now well-established that women (about 60- 70%) are the main contributors to the tribal economy through MFP collection and sale.**

5. FRA – a Mere Electoral Issue?

It has been strongly argued that the Central and state governments have electoral interests in FRA. The Act came into force in 2007, two years prior to general elections and countrywide, most titles were given between 2008 and 2010, the period when major forest-bearing states went to polls.

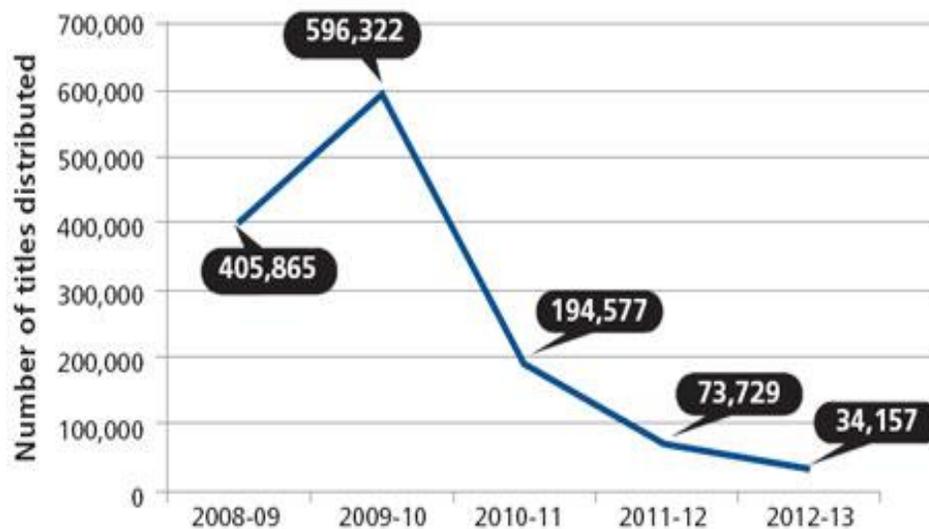
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Activists claim that FRA now is in a state of inertia. Most of the 1.3 million individual titles issued were processed by June 2011 but since then, only 0.1 million individual titles have been issued, raising the concern whether FRA is a mere electoral issue.

Following graph reflects how the number of titles issued is directly co-related to the year in which polls take place.

POLL TIME TO GIVE LAND TITLES

Number of titles shot up around general elections, in 2009-2010



Source: Down to Earth

Benefits to Accrue from FRA

At the time of enactment, it was anticipated that following benefits will accrue from FRA¹:

- It will result in recognition of forest rights of forest dwelling scheduled tribes and other traditional forest dwellers over the forest land under their occupation and their habitat for self-cultivation of the land for their livelihood.
- They will have access to, use or dispose of, minor forest produce.
- They will not face the threat of eviction or removal from forest land under their occupation.
- They will be entitled to the benefits of various schemes of the Government after vesting of the clear cut title of land in their favour.

¹ Press release, Ministry of Tribal Affairs. Accessible at http://www.fra.org.in/mota/PIB_2ndJanuary2008.pdf

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- Since the Gram Sabhas have been designated as the competent authority for initiating the process of determining the nature and extent of individual or community forest rights that may be given to the scheduled tribes and other traditional forest dwellers, this would empower the local communities in management of their natural resources in tune with the provisions of the PESA Act, 1996.
- The recognition and vesting of forest rights in the forest dwelling scheduled tribes and other traditional forest dwellers also includes the responsibility of protection, conservation and regeneration of wild life, forests and biodiversity.
- The Act envisages registration of the title of the forest land jointly in the name of both the spouses, where married, and in the case of single person headed households, in the name of the single head. This would also benefit the women dwelling in the forests.

Achievements so far

Activists claim that the entire FRA implementation process is undertaken mostly at places where civil society organizations are active, on the other hand where civil society groups are not active, people do not even know the provisions of the law.

They argue that in many states with high forest cover, the basic administrative step of forming village FRCs(Forest Rights Claims) has not started. In Madhya Pradesh, Chhattisgarh, Andhra Pradesh and Maharashtra, FRCs has not been constituted in close to 40 per cent of villages. Further, in villages where FRCs has been formed, gram sabhas have not convened.

The ground reality echoed across many villages across India is that villagers are still unaware of the forests rights legislation and the most common complaint being that nobody from the government informed them about the legislation.

Undoubtedly, FRA is a historic piece of legislation which *paved the way to undo the 'historic injustice' done to the tribals and other forest dwellers*².

Although, government records have painted a pretty picture as to how FRA has benefitted forest dwellers across the country, the real question is: have people reaped the benefits of FRA?

Till June this year, 1.3 million families across the country got legal rights over 1.7 million ha, an unprecedented achievement. Most of them got legal right over their land for the first time. In contrast, under the much hyped land reforms programme, the government distributed only 2.2 million ha to 5.64 million families in the past six decades. This can, in some way, be called contemporary India's largest land regime change - from the forest administration to the rightful owners of forestland.

² Preamble of the Forest Rights Act, 2006

Conclusion; Suggestions and Way Forward

Civil society activists argue that the renewed enthusiasm to implement FRA is because of the upcoming Lok Sabha elections and Assembly elections in the major forested states thereby echoing the concern that politics plays a major role in FRA's implementation. They argue that had there been political will and bureaucratic push, forestlands would not have been diverted for industries so easily.

Listed below are a few policy suggestions:

Issue: The biggest hurdle in implementation of FRA is the messy land records. The state cannot implement FRA effectively unless it settles boundary disputes with the revenue department.

Suggestion: Many NGOs have suggested that government should set deadlines for land measurements and revenue records after the title certificates are given. No record has been made even for claims issued as early as 2009.

It is important that every record is not only verified on ground but also reconciled with both forest and revenue records. There arose confusion over what would be the legal status of land recognised under FRA.

However, officials say that there are no legal requirements as such. The status of the land does not have to change from forest to revenue. What the states have to do is correct their forest and revenue records as and when the titles are given. The simplest thing is to add a new column in the revenue records to acknowledge FRA titles, the way it is done in Uttar Pradesh. Once this is done, an operational mechanism for convergence of various schemes can be successfully brought in. So far, Uttar Pradesh is the only state that has the mechanism to record rights.

Issue: Another hurdle is that for the FRA titles granted on forestland, funds for development schemes will be channelized through the forest department hence the activists fear that the forest department will still control decision making on FRA land.

Suggestion: Activists have time and again suggested that changes should be made at the policy level so that the funds are channelled directly through gram sabhas. To ensure this, MoTA will have to actively engage with the ministries of environment and forests, Panchayati raj and rural development to evolve a new institutional mechanism for convergence on FRA land.

In September 2012, MoTA amended the Act giving more authority to gram sabhas and curtailing the role of forest departments in the Act's implementation. The new rule mandates that after the titles are issued, maps of the forestland vested under FRA should be prepared and rights be incorporated in the revenue and the forest records within three months. Most states promised to review the rejected claims, recognise community forest

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rights, habitat rights of particularly vulnerable tribal groups, and rights of pastoralist communities under the Act in a time-bound manner however, not much has changed in the last one year.

Issue: The Act promises another bounty-access to government schemes. But 6 years after the Act was enforced, lives of the forest dwellers have not changed much. Not one state has initiated concrete steps to officially register the title holders in the state land records. Without this they remain what they used to be—officially non-existent.

Suggestion: Activists suggest that if FRA is converged with government schemes, as the Act provides, and worked properly upon for at least five years, the economic condition of tribals will change drastically. A rough calculation shows that each title holder should have access to 56 government schemes covering land development, subsidized homes and government's foodgrain procurement programme. This priority convergence with government programmes makes the right an effective livelihood programme.

Thus, it can be safely concluded that there is a long way to go before anything resembling land security becomes a reality in the country. Implementation of FRA in its full spirit requires which has been missing since the very enactment of the legislation.

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References:

- CSD (2010): “Summary Report on Implementation of the Forest Rights Act”, National/Current Situation, September, Council for Social Development
- EPW(2013): “Implementation of Forest Rights Act: Undoing Historical Unjustice” Madhusudhan Bandi
- Ibid
- GoI (2010): “Manthan”, report by National Committee on Forest Rights Act, a Joint Committee of Ministry of Environment and Forests and Ministry of Tribal Affairs, December, New Delhi.
- Venkateswaran, S (1994): “Managing Waste: Ecological, Economic and Social Dimensions”, *Economic & Political Weekly*, 29(45-46): 2907-11.
- *Kalpavriksh* (2008): *Tracking the Forest Rights Act*, Kalpavriksh, 29 July, No 3: 1-11.
- <http://www.ippg.org.uk/papers/dp45.pdf>
- <http://www.downtoearth.org.in/content/rights-without-benefits>