An uphill struggle to grow the Forest Rights Act

On December 18, 2006, the Rajya Sabha endorsed the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, enacted by the Lok Sabha. This Act, commonly known as the Forest Rights Act, or FRA, marks a watershed in India's socio-environmental legislation, as it attempts to put an end to the long-drawn conflict over supposed 'forest encroachments'. Simultaneously, it seeks to create a more democratic, bottom-up forest governance.

Unfortunately, the implementation of the FRA has been plagued by political opportunism, forester resistance and bureaucratic apathy, and the discourse around it by deliberate canards and misconceptions. Hence, 17 years after it was enacted, the FRA has barely begun to deliver on its promise of freeing forest-dwellers from historic injustices and democratising forest governance. To understand why this is so, we must first delve into what it sought to do and how.

Historic injustices
Prior to colonialism, local communities enjoyed customary rights over forests in their vicinity or even a large region. Even when kings or chieftains claimed (say) hunting rights in certain forests, local communities continued to enjoy all other forest benefits. The colonial takeover of India's forests, however, resulted in a massive disruption of these traditions. Based on the false idea of 'eminent domain' (that the ruler always owns all property), the 1878 (colonial) Indian Forest Act was passed and the takeover of India's forests began. The Imperial Forest Department was established to harvest and transform the forest to maximise timber and revenue, and was also tasked with protecting 'state' property against local communities, now deemed trespassers.

The injustices imposed by this colonial forest policy took many forms. First, now that forests were seen as primarily a timber resource, shifting cultivation was banned. Second, the so-called survey and settlement of agricultural lands was incomplete and biased in favour of the state. Third, simultaneously, to ensure labour for forestry operations, 'forest villages' were created, wherein forest land was leased for agriculture to (mostly Advasi) households in return for compulsory (virtually bonded) labour. Fourth, since forests were now state property, all access to forest produce was limited, temporary and chargeable, and always at the mercy of the forest bureaucracy that was armed with police powers. Any concessions to local livelihood needs were termed 'privileges' that could be modified or withdrawn at anytime. Fifth, even where access was permitted, the local community had no right to manage the forest, as the state logged valuable forests and made heavily used forest de facto open-access.

Unfortunately, matters only worsened post-Independence. In the hurry to assimilate princely States and zamindari estates into the Union, their forest areas were declared state property without proper inquiry into who was residing in them. Legitimate residents and cultivators became 'encroachers' overnight. Later, forest lands were leased out under the 'Grow More Food' campaign and other initiatives to meet the needs of a growing population, but were never 'regularised'. Communities displaced by dams were not given alternative lands, and ended up 'encroaching' forest land elsewhere. And, forest exploitation continued as in colonial times, but in the name of national interest.

The Wildlife (Protection) Act 1972 and the Forest (Conservation) Act 1980 (FCA), again conceived within the framework of eminent domain, became the sixth and seventh forms of injustice. Lakhs of communities were forcibly resettled when creating sanctuaries and national parks. And in 'diverting' forests for development projects, neither were the views or consent of local communities taken into consideration, nor, in spite of imposing hefty Net Present Value fees on the project, were the local communities compensated for the impact on their livelihoods.

The FRA is remarkable because it first of all acknowledges these historical (colonial) injustices and their continuation post-independence. Redress then takes three broad forms. The issue of so-called 'encroachments' is addressed through recognising individual forest rights (IFRs) to continue habitation and cultivation or other activities that existed before December 2005. Forest villages are to be converted into revenue villages after full rights recognition. The issue of access and control is addressed by recognising the rights of village communities to access and use forests and to own and sell minor forest produce, and, most importantly, to manage forests within their customary boundaries, including in sanctuaries and national parks. This is the most far-reaching provision in the FRA, as it ensures decentralised forest governance, linking management authority and responsibility to community rights.

Finally, the Act lays down a democratic procedure for identifying whether and where wildlife conservation may require curtailing or extinguishing community rights. Simultaneously, having community rights over a forest translates ipso facto into the community having a say in, if not veto over, any diversion of that forest and a right to compensation if diverted. This right was reaffirmed by the Supreme Court in the Niyamgiri case, and although the Forest Conservation Rules 2022 and FCA Amendment 2023 seek to bypass this right, States can still put in place such consent mechanisms.

Fathom the FRA's intent
As political regimes change and the memory of the struggle that led to the passage of this Act fades, calls for shutting down the FRA's implementation have emerged. Simultaneously, some States have talked of 'saturating' rights recognition in mission mode. However, as examples from Chhattisgarh show, mission mode implementation invariably plays into the hands of the Forest Department, leading to distorted rights recognition and reinstatement of technocratic control. Unless political leaders, bureaucrats and environmentalists all appreciate the spirit and the intent of the FRA, the historical injustices will remain unaddressed, forest governance will remain highly undemocratic, and the enormous potential for community-led forest conservation and sustainable livelihoods will remain unrealised.

The views expressed are personal.