

Down To Earth



Regional Media Briefing Workshop

# THE FIGHT OVER A RIGHT

How forest communities are using the Community Forest Resource Rights (CFRR) provision in the FRA to reclaim their ownership rights

**September 22-23, 2022, Bhubaneswar, Odisha**



# **Legal hurdles in realisation of FRA's full potential**

C R Bijoy

# Forest Governance

- 1976: 42<sup>nd</sup> amendment 'forests' from State to concurrent list
- 1985: 'Forests' and 'protection of wild animals and birds' transferred from the ministry of agriculture to the newly created MoEF
- 17 March 2006: 'All matters, including legislation, relating to the rights of forest dwelling schedule tribes on forest lands' was carved out and allotted to the MoTA (amendment to the Government of India (Allocation of Business) Rules, 1961 in March 2006) – ended the monopoly of forests of MoEF
- 2014: Climate change added to this ministry's portfolio
  - 12 December 1996 Supreme court in Godavarman Case redefined 'forest land' in Sec. 2 of FCA : it 'will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership' of the land.



# The Colonial Regime

- **1927: Indian Forest Act**

- Reserved Forests – rights extinguished, unless allowed
- Protected Forests - rights allowed unless prohibited
- Village Forests - reserved forests and rights assigned to communities
- subject to modification or regulation, or are extinguished in due course
- List out prohibited activities and penal actions
- Recorded forest area 76,700 sq. km covering 23.34 %
  - 56.66 % - Reserved Forests,
  - 26.53 % Protected Forests
  - the remaining Unclassed Forest - not notified as forest.

# The Colonial Regime

- **1972: Wild Life Protection Act**

- National Parks and the Critical Tiger Habitats of Tiger Reserves to be kept inviolate – no rights
  - Wildlife Sanctuaries and Buffer Areas of Tiger Reserves - rights that are permitted until extinguished
  - Community Reserves on private or community lands
  - Conservation Reserves on uninhabited government lands
  - Lists out offences and prescribes punishments.
- The Protected Area is 173,053.69 sq. km covering 5.26 % of the land area (24.43 % of the recorded forests).
    - 106 National Parks (44,372.42 sq. km)
    - 564 Wildlife Sanctuaries (122,509 sq. km)
    - 216 Community Reserves (1,445.71 sq km)
    - 99 Conservation Reserves (4,726.24 sq. km)



# The Colonial Regime

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  - Community Reserves on private or community lands
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  - Lists out offences and prescribes punishments.
- The Protected Area is 173,053.69 sq. km covering 5.26 % of the land area (24.43 % of the recorded forests).
    - 52 Tiger Reserves – 71,027 sq. km
      - 40,340.12 sq. km Critical Tiger Habitat
      - 30,686.98 sq. km Buffer Area

# The Colonial Regime

- **1980: Forest Conservation Act**

- diverts forests for forest and wildlife negating non-forestry purposes (and afforestation)
- Equivalent revenue land to be afforested and notified as forest; if not....
- Double the land in degraded forest with a crown density below 40 %
- Required Gram Sabha certification of FRA implementation and consent for diversion
- Net Present Value - Rs. 4.38 Lakh - Rs. 10.43 lakh per ha since 28 March 2008 - increased to Rs. 6,70,140 - Rs. 15.96 lakh per ha on 06 Jan 2022

- Between 2009-19

- 2,531.79 sq. km diverted for non-forestry purposes.
- 474.35 sq. km degraded forests diverted for tree plantations



# The Godavarman Case

- 1995: IA 202 of 1995 - Godavarman Thirumulpad SC admitted
- 12 Dec. 1996: Dictionary meaning of 'forest'
- 14 Feb. 2000 : Prohibits dead, dying and diseased trees from PAs
- 13 Nov. 2000 : SC no de-reservation of forests
- 23 Nov. 2001 : Restraining regularisation. No further regularisation
- 18 Feb. 2002: States to report back on 'what steps have been taken to clear the encroachments from the forest'
  - 03 May 2002 : MoEF issues order outlining a "time-bound action plan" for the eviction of encroachers by 30 September 2002.



# The Godavarman Case

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- 23 Nov. 2001 : Restraining regularisation. No further regularisation
- 18 Feb. 2002: States to report back on 'what steps have been taken to clear the encroachments from the forest'
  - Between May 2002 and March 2004, evictions carried out from 1,524 sq. km of forest land, out of a total of 13,430 sq. km of encroachment of which 3,656.69 sq. km were regularised till then

# The Godavarman Case

- 09 May 2002 : SC constitutes Central Empowered Committee
- 21 July 2004 : MoEF Affidavit in SC on 'historical injustice'
- 28 March 2008: SC - "Net Present Value' from user agency at Rs.4,38,000 to Rs.10.43 lakhs per ha from 30.12.2002 and remitted to Compensatory Afforestation Fund Management & Planning Authority (CAMPA) set up on 23.04.2004
- 03 June 2022 : Eco-Sensitive Zone order



# MoEFCC Assaults on Forests and FRA

## National Forest Policy

- 2018: Draft National Forest Policy proposed to replace National Forest Policy of 1988 that recognised ‘the symbiotic relationship between the tribal people and forests’.
  - Ignored FRA and its gram sabhas.
  - Commercial plantation-centric investment-seeking forest management through privatisation of forests under the rubric of private-public participation.
  - Increase tree cover and productivity to meet industrial and other needs

# MoEFCC Assaults on Forests and FRA

## National Forest Policy

- MoTA response
  - MoEFCC no longer has 'exclusive jurisdiction' to frame policies related to forests..need to consult MoTA and forest dwellers.
  - 'disregarded the traditional custodians and conservatives of the forests, namely, tribals',
  - 'thrust to increased privatisation, industrialisation and diversion of forest resources for commercialisation'
  - 'the public-private partnership models for afforestation and agroforestry detailed in the policy will open up the areas over which tribals and forest dwellers have legal rights under FRA'.
- The draft got shelved.
- Another Draft National Forest Policy, 2020 - not yet in the public domain - is finalized and under consideration for adoption (*Annual Report 2020-21*).



# MoEFCC Assaults on Forests and FRA

## Indian Forest Act 1927

- 07 March 2019: Amendment circulated
  - use fire arms to shoot anyone to protect forest; no criminal action if done in accordance with law, no inquiry without prior inquiry of the executive magistrate and state government sanction;
  - end forest rights of any forest dweller in the name of forest protection by just compensating them in cash or kind;
  - conduct raids and arrests without warrant, confiscate property of any forest dweller.
  - Accused to prove innocence and not the accuser.
- 15 Nov. 2019: Environment Minister disowns this draft

# MoEFCC Assaults on Forests and FRA

## Indian Forest Act 1927

- 22 June 2021: call for consultancy firms to prepare a draft IFA amendment to
  - ‘decriminalizing relatively minor violations of law, expeditious resolution through compounding relatively small offences,
  - reducing compliance burden on citizens, rationalization of penalties, preventing harassment of citizens,
  - de-clogging criminal justice system,
  - expanding and improving of the use efficiently of resources’.
- 09 July 2022: amendment proposed to 'decriminalise' certain offences under the Indian Forest Act, 1927
  - False – removes jail increases fine



# MoEFCC Assaults on Forests and FRA

## Forest Conservation

- 05 Feb 2013 : Informs that gram sabha consent 'may not be required for the projects...where linear diversion of use of forest land in several villages are involved, unless recognised rights of primitive tribal groups (PTG) and pre-agricultural communities (PAC) are being effected'.
  - MoTA on 7 March 2014, declared that the Feb and July 2013 and Jan 2014 orders should not be honoured
- 2014 and 2017: FCA Rules tweaked - getting gram sabha certificates on completion of FRA implementation and consent transferred to the District Collector;
  - Collector's certificates substitutes gram sabha's certificates

# MoEFCC Assaults on Forests and FRA

## Forest Conservation

- 26 Feb 2019: forest diversion FRA compliance not required for 'in-principle' Stage – I approval, but only for final approval (Stage-II).
  - 05 April 2019: MoTA disagreed
- 28 Oct 2014: Granted the District Collectors the power to sanction diversion of forest land in areas notified as 'forest' less than 75 years prior to 13 December 2005 and with no record of tribal population as per Census 2001 and 2011.
- 2015: PMO overrules MoTA's objections for exempting projects under five categories of projects from obtaining gram sabhas' consent including projects such as underground mining.



# MoEFCC Assaults on Forests and FRA

## Forest Conservation

- 02 Oct 2021: FCA amendments proposed to strike down the SC expanded definition of 'forest' – to exclude lands alongside railways and highways with tree plantations notified as protected forests, lands left fallow having wild growth, private lands under tree plantation and revenue lands with trees or afforested after 12 December 1996.
- To exempt non-forestry activities
  - as amenities and habitations up to 0.05 ha alongside roads and railway lines with strip plantations
  - infrastructure development along the international border
  - Extended Reach Drilling which enables exploration/ extraction of oil and natural gas by drilling holes from outside the forest areas without impacting the soil or aquifer

# MoEFCC Assaults on Forests and FRA

## Forest Conservation

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- To exempt non-forestry activities
  - structures for bonafide purpose, including residential unit up to 250 sq mtr, in private land notified as Private Forest or simply forests as per the dictionary meaning,
  - survey and investigation activities
  - activities ancillary to conservation of forests and wildlife such as establishment of zoos, safaris, and forest training infrastructures etc.



# MoEFCC Assaults on Forests and FRA

## Forest Conservation

- All these are without reference to FRA and gram sabha consent.
- 22 June 2022: FCA rules replacing the 2003 rules did away with FRA compliance

# MoEFCC Assaults on Forests and FRA

## Forest Conservation

- 2015: Guidelines to lease out 40 % of forests, classified as 'degraded forests', to private companies through joint agreements with the FD to 'carry out afforestation and extract timber', with access to 10-15 per cent of the leased-out area for minor forest produce to tribal communities - - no reference to FRA or Gram Sabha consent
- 08 Nov 2017: Guidelines for land bank - no reference to FRA and Gram Sabha consent
  - Over 26,300 sq. km land identified in Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Jharkhand, Odisha, Tamilnadu, Rajasthan and Uttar Pradesh.
- 2019-20: Use of forest land for temporary work for 'unavoidable public purposes' not exceeding two weeks with permission - no reference to FRA or gram sabha consent.



# MoEFCC Assaults on Forests and FRA

## Forest Conservation

- March 2020: Agreed with the Mineral Laws (Amendment) Act 2020 that new lessees of expired mines do not need fresh approval; so no need the gram sabha consent to operate on the same land for two years.

# MoEFCC Assaults on Forests and FRA

## Wild Life Protection Act 1972

- 2005: Tiger-less Sariska tiger reserve in Rajasthan results in 'Joining The Dots', a report of the tiger task force
- 2006: WLPA amended a few months prior to FRA.
  - Provisions of Critical Wildlife Habitat under FRA spilled over into this amendment.
  - From an administrative and a project category, Tiger Reserves became a statutory category
  - Develop scientific and objective criteria for identifying CTH
  - Recognise forest rights and gram sabha involvement
  - Voluntary relocation where unable to coexist with tigers, on mutually agreed terms and conditions without adversely affecting their rights
  - Provide 'livelihood for the affected individuals and communities' (WLPA) and 'secure livelihood' (FRA)



# MoEFCC Assaults on Forests and FRA

## Wild Life Protection Act 1972

- 16 Nov. 2007: NTCA asked the chief wildlife wardens of all Tiger Reserves for proposals, giving less than 13 days' time, to identify and notify CTHs before 29 November 2007 with a minimum area of 800-1000 sq. km and buffer area by 31 January 2008
  - No 'scientific and objective criteria' as required under WLPA.
  - All the provisions were in effect violated.
  - Existing core and buffer area of the tiger reserves were invariably proposed together as CTH and notified
  - 24 tiger reserves securing 23,248.25 sq. km before the end of 2007, just days ahead of the January 2008 notification of FRA rules.

# MoEFCC Assaults on Forests and FRA

## Wild Life Protection Act 1972

- 28 March 2017: NTCA issued an order to the chief wildlife wardens of tiger range states barring the recognition of rights under FRA in the CTHs. Reason – No CWH Guidelines under FRA by MoEFCC
  - The CTHs now cover an area of 40,898.97 sq. km.
- 04 Jan. 2018: ‘Guidelines for notification of Critical Wildlife Habitat’ issued
- 12 March 2018: NTCA withdrew earlier ban on rights order
  - CWH of FRA once notified ‘shall not be subsequently diverted’



# MoEFCC Assaults on Forests and FRA

## Wild Life Protection Act 1972

- Relocation
  - CTHs are to be kept inviolate, not violated or harmed.
  - Only voluntary relocation of forest dwellers
  - All forest rights to be recognised
  - Secure livelihood prior to relocation
  - Gram Sabha consent
  - Under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

# MoEFCC Assaults on Forests and FRA

## Wild Life Protection Act 1972

- Relocation

- MoEFCC continues to ignore
- Centrally sponsored scheme under project tiger of 2012 which was hiked to Rs.15 lakhs per family in April 2021.
- If no suitable revenue land, then relocated on forest to the extent vacated 'after extinguishing all existing rights' as per its May 2019 order.
- Existing forest rights, whether recognised or not, are not to be acquired or compensated; just extinguished.



# MoEFCC Assaults on Forests and FRA

## Wild Life Protection Act 1972

- Relocation

- 14,441 families (25.17 %) out of 57,386 families in 50 tiger reserves were relocated
- 42,398 families remain in the CTHs
- Of the 2,808 forest villages, 334 are located within these CTHs
- CA funds are now available for 'voluntary relocation' even when they are forcibly relocated.

# Anti-FRA Cases: Status

## Challenging the constitutional validity of FRA....

|    | CASE NUMBER     | PETITIONERS   | COMMENT          |
|----|-----------------|---|------------------|
| 1. | WP (C) 50/2008  | 1. Wildlife Trust Of India, New Delhi<br>2. All Assam Tribal Youth League, Assam<br>3. Wildlife Society Of Orissa   | Challenge to FRA |
| 2. | WP (C) 109/2008 | 1. Wildlife First, Karnataka<br>2. Nature Conservation Society, Maharashtra<br>3. Tiger Research and Conservation Trust, Maharashtra  | Challenge to FRA |
| 3. | WP (C) 514/2006 | 1. Bombay Natural History Society, Maharashtra<br>2. Wildlife Protection Society of India, New Delhi<br>3. Wildlife First, Karnataka<br>4. Conservation Action Trust, Maharashtra | Challenge to FRA |
| 4. | TC (C) 85/2011  | Ranmat Singh Maravi, Madhya Pradesh   | Proper FRA       |
| 5. | TC (C) 87/2011  | Kallu Singh, Madhya Pradesh   | Proper FRA       |
| 6. | TC (C) 39/2015  | V. Sambasivam IFS (Retired)<br>Tamil Nadu   | Challenge to FRA |



# Anti-FRA Cases: Status

## Challenging the constitutional validity of FRA....

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|-----|-----------------|--|------------------|
| 7.  | TC (C) 41/2015. | 1. J.V. Sharma IFS (Retd), Andhra Pradesh<br>2. L. Lohit Reddy IFS (Retd), Andhra Pradesh<br>3. A H Qureshi IFS (Retd), Andhra Pradesh                             | Challenge to FRA |
| 8.  | TC (C) 59/2015  | T.N.S. Murugadoss Theerthapathi, Tamil Nadu  | Challenge to FRA |
| 9.  | TC (C) 103/2015 | Dr. P.G. Najpande, Madhya Pradesh  | Challenge to FRA |
| 10. | TC(C) 132/2015  | The Karnataka Retired Forest Officers Association, Karnataka   | Challenge to FRA |
| 11. | TC (C) 3/2016   | The Society of Retired Forest Officers, Orissa   | Challenge to FRA |
| 12. | TC (C) 12/2018  | 1. Sevanivrutta Vana Karmachari Sangh (SNVKS), Maharashtra<br>2. Sh. Radhakrishna Laxmanrao Chowdhary IFS (Retired)<br>3. Sh. Tanaji Genu Birdavade, IFS (Retired) | Challenge to FRA |

# Anti-FRA Cases: Status

## Challenging the constitutional validity of FRA....

- In High Courts of Andhra Pradesh, Tamilnadu, Maharashtra, Odisha and Karnataka, mostly by Retired Forest Officers Association;
- In Supreme Court by environmental NGOs and institutions (Bombay Natural History Society and Wildlife Trust of India later withdrew );
- January 2015: transferred all cases to the Supreme Court;
- WP(C) No. 109 of 2008 Wildlife First & Ors – 13 February 2019 - to report on status of claimants whose rejections ‘attained finality,’ and ordered their eviction; Eviction order put on hold on 28 February 2019;
- Most States reported that rejections grossly violated FRA; hence review of all rejected claims necessary.
- 13 Sept 2022 – adjourned to 10 November 2022



# Anti-FRA Cases: Status

## Court rulings impacting FRA....

- Mudumalai elephant corridor - 2006 - 279.85 acres (11.06.2006) - 397.934 acres (06.11.2006) - 592.17 acres (June 2008) - 7000 acres of private and revenue lands for the expanded corridor, comprising 4225 acres of private lands of about 200 families and about 3000 acres of Govt land including land cultivated by 7000 families
  - SC WP(C) 897/1996. 14.10.2020: 3 member committee under Justice K. Venkatraman (Parveen Bhargav)
- 08 Feb. 2022: Vehicular ban on NH through Sathyamangalam Tiger Reserve - - -MHC
- 04 March 2022: Ban on grazing in forest, revised to only PAs on 17 March 2022 -MHC
- 17 March 2022: Eviction of encroachers -MHC
- 3 June 2022 – ESZ from SC

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....thanks