

Community Forest Resource Rights under the Forest Rights Act: Potential for Enhancing Conservation and Livelihoods

Kalpavriksh¹

Apt 5 Shree Datta Krupa, 908 Deccan Gymkhana, Pune 411004, India

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This note discusses the implications of the community rights provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, in particular for supporting and enhancing community-based forest conservation.

The key issues for discussion raised here are:

- Civil society monitoring of the claims process, in particular to increase the focus on community claims (including bottlenecks and opportunities).
- The institutional framework that needs to emerge in the post-claims scenario, e.g. between government departments and gram sabha committees set up for forest management, or wildlife authorities and such committees within protected areas; other issues in operationalising Section 3(1)(i).
- Contours of the community based or collaborative governance systems, including the importance of traditional knowledge in management.
- Need for civil society forums as platforms to share exchange and lobby for better implementation of the community rights provisions.

Background

A wide range of studies on the interface between natural resource management and livelihoods has established that local community rights, responsibilities, practices and knowledge in relation to natural resources are significant determining factors for conservation and sustainable management. Local level decision making and decentralised governance thus provides a necessary (though by no means always sufficient) environment for better governance and management of resources.

There is substantial documented evidence of community protected forests in India since pre-colonial times. The significant features of these initiatives have been local institutions which have evolved regulated and collective approach towards access, use and governance of forests. This is not to argue that they were ideal institutions in all cases. Some of them lacked democratic approach, and were often non-inclusive of women and disprivileged sections. However they were usually designed to cater to the local situation and needs.

Since independence, the legal policies of the state overlooked these diverse local initiatives, displacing and dismantling the systems by imposing rigid norms and policies. This led to an

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erosion of traditional institutions, in turn causing an overall decline in of the managed ecosystems and resources. Most of the policies have largely bypassed local community governance institutions and have vested more powers in the local state-controlled administration. Even where local governance structures were recognized, they were straitjacketed into uniform approaches that did not support diverse local initiatives (as in the case of the Joint Forest Management programme in many parts of India).

Across India, forest-dependent communities access and use forests, with or without legal backing. In situations where communities have chosen to manage the resources that they use, as in the case of hundreds of community conserved areas (CCAs), this is *de facto* management rather than with a legal mandate. Many forest-dependent communities have evolved elaborate systems of resource use. These include well-defined boundaries and regulations regarding the time and amount of utilization of forest produce. Experience has shown that in many (but by no means all) cases, community resource use is more equitable since most or all households, including the poor, can gain access to resources.

Space for community forest conservation and management in the FRA

The passage of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (hereafter called Forest Rights Act or FRA) is a watershed event in the prolonged struggle of adivasis and other forest dwellers of the country. For the first time in the history of Indian forests the state formally admits that rights have been denied to forest dwelling people for long, and the new forest law attempts not only to right that 'historic injustice' but also give forest communities a central role in forest management.

The FRA addresses the right to live in forestland for habitation or cultivation, right of access, use and sale of minor forest produce, and right to protect, regenerate, conserve or manage any community forest resource, amongst other rights (these rights can be claimed both as individuals and as a community). It provides tribal and other forest dwelling communities the first legislative handle to assertion of tenure rights and addresses important livelihood security issues, while also stressing the rights and responsibilities of forest dwellers in maintaining sustainable forest use patterns and the conservation of forest biodiversity. This space, guaranteed under FRA, has immense scope for community-based or collaborative forest management.

There are two broad aspects of FRA that have great positive potential in this context. One, the package of rights that includes the claim of the community over tenure and management of forests. Second, the decentralized self-governance model that it mandates. The FRA mandates the lowest tier of local self-governance – the Gram Sabha – as a decision-making body in forest governance.

The Act confers secure community tenure on “Community Forest Resources”, defined as customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in case of pastoral communities, including reserved forests, protected forests and protected area such as Sanctuaries and National Parks to which the community had traditional access. On such land, they will enjoy (as per Section 3):

- Right of ownership, access to collect, use or dispose of minor forest produce which have been traditionally collected within or outside village boundaries;
- Other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled and trans-human) and traditional seasonal resource access of nomadic or pastoralist communities
- Rights including community tenure of habitat and habitation for primitive tribal groups and pre-agricultural communities.
- Right to protect, regenerate or conserve or manage any community resource which they have been traditionally protecting and conserving for sustainable use
- Right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity
- Any other traditional right customarily enjoyed by the forest dwelling scheduled tribes, and other traditional forest dwellers as the case may be, but excluding the traditional right of hunting or trapping or extracting any part of the body of any species of wild animal.

Further, Section 5 empowers the Gram Sabha to:

- (a) “protect the wildlife, forest and biodiversity;
- (b) “ensure that adjoining water catchment area, water sources and other ecological sensitive areas are adequately protected;
- (c) “ensure that the habitat of the forest dwelling scheduled tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage”
- (d) “ensure that the decisions taken in gram sabha to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity are complied with”

The term ‘empower’ is crucial, for it implies that the community has the legal powers to ensure all the measures listed above, which would clearly include the power to stop any project or process which could threaten the forest, wildlife or biodiversity. Given that development projects often end up affecting ‘cultural and natural heritage’, and adversely affect wildlife and forests, the implication is that the gram sabha has the powers to stop such projects, and that project proponents need to get its consent. Reportedly the Ministry of Environment and Forests is also considering issuing a circular to all state governments that they must comply with the FRA’s provisions in any applications for diversion of forest land for development projects, that are made under the Forest Conservation Act.

Overall, therefore, the FRA both in spirit and in letter, reflects a significant paradigm shift in the way forest governance has been officially viewed in the country. Gram Sabhas have been empowered as the decision making body, thus accepting local rights and responsibilities based framework for forest governance.

Implementation and post-claims scenario

The pace of implementation of the FRA has varied from rushed to relaxed in different States. The various awareness campaigns undertaken by civil society organisations and government agencies during the past year have focused on a few provisions rather than the Act in its entirety.

As a result, the thrust of the implementation so far has been on claiming individual rights to land. Community rights have remained largely invisible. It is therefore crucial to focus the attention of both the relevant government agencies, and of communities and civil society organisations, on these rights.

It is also important for the State governments, forest-dwelling communities and civil society organizations to work on a post-claims scenario where the rights accepted under the Act would get exercised, and local institutions required for the purpose would be put in place. This may require, in the case of many sites and communities help with mapping, building institutional capacity, and other kinds of facilitation.

The Act is silent on how conservation duties will be distributed among various actors or through what mechanism community conservation practices will be incorporated into forest management plans. Discussions are also needed on how to monitor the protection, management and use of a forest. Clear systems of checks and balances need to be incorporated to ensure that despite the current fast changing socio-economic scenario, the exercising of rights indeed leads to a sustainable management of resources.