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 much 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 multiple 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 Adivasi) 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 any time. 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

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Political opportunism, forester resistance and bureaucratic apathy have affected the Act which seeks to create a more democratic structure of forest governance

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.

Distortions in implementation

Unfortunately, the politicians in most States focused solely on individual rights and projected the Act as an 'encroachment regularisation' scheme. Some even encouraged illegal new cultivation in a few pockets. But even the recognition of IFRs was done rather shabbily,

compromised by Forest Department resistance, the apathy and ignorance of other departments, and misuse of technology. Claimants were put through enormous hardship during claim-filing, subjected to faulty and non-transparent rejections and (equally important) arbitrary partial recognition (thereby getting tagged as 'approved' claims). Imposing absurd digital processes in areas with poor connectivity and literacy, such as the VanMitra software in Madhya Pradesh, is just a continuation of injustice. Even the open-and-shut case of 'forest villages' has not been addressed in most States.

But the biggest lacuna in FRA implementation is the extremely slow and incomplete recognition of community rights to access and manage forests (loosely, community forest rights or CFRs). The (still colonially structured) forest bureaucracy is vehemently opposed to these rights, as it stands to lose its *zamindari*: our estimates show that 70%-90% of the forests in central India should be under CFRs. The other departments and political representatives can only visualise forest-dwellers as 'labharthis' (beneficiaries of state largesse), not as autonomous users and managers of their own forests.

Maharashtra, Odisha, and, more recently, Chhattisgarh, are the only States to recognise CFRs substantially. But only Maharashtra has enabled their activation by de-nationalising minor forest produce, at least in Scheduled Areas, resulting in at least a thousand villages managing their own forests. Even here, illegal non-recognition of community rights in densely forested potential mining areas has led to protest and unrest.

The non-recognition of community rights is convenient to the hardline conservationists and the development lobby alike: communities in Protected Areas are then precariously placed and easy targets for 'voluntary rehabilitation', and forests can be handed over for mining or dams without community consent.

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

The stormy Red Sea, the complexities of global events

At the end of October, after the audacious terror attack by Hamas against Israel, which has upended a renewed sense of regional stability, the Yemen-based and Iran-aligned Houthi militia announced that it would join the war to support the people of Gaza. This brought the critical waterways of the Red Sea, which connects the Suez Canal, into the middle of the conflict. The Suez by itself carries nearly 15% of all global trade between the West and the East.

In mid-November, the Houthis released a video of armed men in a helicopter raiding a cargo vessel that reportedly had Israeli links, which was travelling through the Red Sea towards India. While the Strait of Hormuz on the other side of the region, bordering Iran, Saudi Arabia, Bahrain, Kuwait, Iraq, and Qatar, is seen as a major geopolitical chokepoint, the Red Sea is increasingly being seen as an alternative. Saudi Arabia's new futuristic city of Neom, a pet project of Crown Prince Mohammed bin Salman which represents the rapidly changing face of the kingdom, is based off the coast of the Red Sea from where vast amounts of oil are also shipped.

Since the incident in November, the number of commercial vessels facing Houthi aggression has only increased, and cases are being reported on a near daily basis. The United States has been at the forefront of deploying military capacity towards the Red Sea to counter the threats in the form of drones, missiles that now include longer-range ones, and direct operations by the group's military cadre. The U.S. has now called upon partners to deploy a multinational task force around the narrow Bab al-Mandad Strait between Yemen, Djibouti (which hosts the military bases

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The Israel-Hamas war has opened a new front in the Red Sea, which will impact Asian economies

of the U.S., China, Japan, Italy, and France), and Eritrea. The Houthis have showcased an eclectic mix of military capability, including torpedoes and missiles with up to 1,000 km range capability. As of 2022, the Houthis are known to have acquired eight different types of missiles into their arsenal compared to just three previously, which had less than 50 km range and were acquired in the 1990s.

To further highlight the region's infamous geopolitical complexities, Riyadh has in fact called for "restraint" by Washington DC in taking any military action directly against the Houthis. With the Saudis having launched a war against the Houthis in Yemen in 2015, one that technically is still under way, the kingdom is now holding talks with the group's leadership on the back of the Saudi-Iran détente brokered by China earlier this year. According to recent data published by Arab Barometer, a quantitative research institute on the Middle East (West Asia), Beijing's balanced stance on the ongoing Gaza crisis has found a positive response among Arabs on the back of the near-complete support given to the Israeli military campaign by the U.S. President, Joe Biden.

Impact on Asian economies

Beyond the regional crisis points, depletion of security in the Red Sea will have a global impact, specifically for Asian economies such as India, Japan, South Korea, and China, drawing in their interests as well. In the Persian Gulf for example, India has operationalised military capacities under Operation Sankalp since 2019, where the Indian Navy began escorting India-flagged ships, specifically oil tankers. Japan has worked its diplomatic channels directly with Tehran while South Korea has also experienced tensions with Iran over its ships travelling through the region.

A U.S. call for partners to mobilise is not irrational. Previously, the global community did rally to address the issue of piracy off coastal eastern Africa, specifically around the waters of Somalia. In 2012, India joined China, Japan, and South Korea for coordinated joint patrols in the Gulf of Aden. All states took point by rotation in leading these patrols. This was of course at a time when global geopolitics looked very different. While Beijing's position in such multilateral engagements is near improbable today, New Delhi, Tokyo and Seoul continue to have common security concerns as net importers of oil and gas from the region, which automatically places them as stakeholders in West Asian security both strategically and kinetically.

Role of non-state actors

Through the current churn in the global geopolitical order, there is one major trend that states must factor into their calculus: that non-state militant actors are strengthening in agency, both politically and militarily, and often as part of state-promoted designs to secure short-term gains for long-term strategic victories. These are the fundamentals at play in an area such as the Red Sea which, in capitals such as New Delhi, do not enjoy the luxury of space in security debates. However, in an increasingly interconnected world colliding with an increasingly challenged stability of the western-led international security order, a more progressive, nimble, and practical development and deployment of power will have to be accepted to address challenges beyond the comforts of self-defined areas of interests.