

## Legal Framework for Forest Rights in India: A Critical Analysis

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### Abstract

*The Forest Rights Act (hereinafter referred to as FRA) of 2006 is a landmark piece of legislation in India, designed to address the historical marginalisation of indigenous and forest-dwelling communities. It acknowledges the symbiotic relationship these communities have with forests and seeks to restore their land and livelihood rights. Rooted in India's constitutional promise to uplift oppressed groups, the FRA also aligns with international frameworks like the ILO Convention No. 107 and the United Nations Declaration on the Rights of Indigenous Peoples, recognising the significance of self-determination, land ownership, and cultural preservation for indigenous populations.*

*Despite its progressive framework, the FRA has sparked debate regarding the balance between conservation efforts and the rights of forest-dependent communities. The delay in implementing the Act, as well as opposition from various stakeholders, highlights the entrenched conflicts over land and resource management in India. The paper highlights that the FRA positions indigenous communities not merely as beneficiaries of state protection but as active participants in forest conservation and governance, drawing on traditional knowledge systems to ensure sustainable environmental stewardship.*

*This paper also discusses how this Act places significant responsibilities on local governance bodies, particularly the Gram Sabha, and establishes a multi-tiered institutional framework to oversee the recognition and vesting of forest rights. However, the efficacy of the FRA remains contingent on transparent and accountable implementation by state and central authorities, as well as the active involvement of the communities it aims to empower. The FRA represents a critical step toward achieving social justice for India's indigenous populations. It*

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*challenges existing paradigms of forest governance, promoting a more inclusive model that integrates human rights and environmental sustainability.*

**Keywords:** Forest Rights Act 2006, Indigenous communities, Forest Rights, Structural Framework, Operational Framework, Institutional Framework, Remedial Framework

## I. Introduction

Tribal evolution has long been the focus of study throughout the world, particularly in India, which is the largest democracy in the world<sup>3</sup>. After India gained freedom, its Constitution stipulated that the country had an obligation to '*include all exclude none*'.<sup>4</sup> The framers of the Indian Constitution prioritised the welfare of the oppressed, particularly the indigenous tribes that suffer from weak ties to the rest of the nation. The Constitution gives the tribes enough room to grow through constitutional clauses, fundamental rights, fundamental obligations, and democratic public order principles. It places duties on the State and the populace for the development of the tribes<sup>5</sup>.

In the past, there has been coexistence between tribal groups and the forests in India, and these communities have been seen as essential to the survival and sustainability of the natural system. These mutually beneficial ties were recognised and formalised as customary rights over forest products. However, the government failed to acknowledge and document these rights.

The Food and Agriculture Organisation estimates that nearly 400 million people rely on forests for food and supplemental income<sup>6</sup>. These populations are among the most vulnerable: two-thirds of the extremely poor are forest-dependent, and half of them are members of marginalised Adivasi communities. Since independence, between 100,000 and 600,000 people have been evicted from protected areas, jeopardising their

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<sup>3</sup>Satyavathi Dandi, *Role of Law in Social Transformation of Tribal People in India: Constitutional, Legislative and Policy Perspectives* (2021) (Ph.D. thesis, Andhra University Visakhapatnam).

<sup>4</sup>Tarun Arora, *Sexuality, Law and Constitution Beyond Gender Binary in India: Judicial Approach*, 11 *Indian J.L. & Just.* 4 (2020).

<sup>5</sup>*Supra* note 1.

<sup>6</sup>Kaysara Khatun, *Integrating National Forestry Initiatives in India with International Climate Change Policy*, Taylor & Francis Online (2013).

means of subsistence due to uncertainties in the data used to quantify the magnitude of displacement<sup>7</sup>.

The recognition of the rights of forest dwellers and scheduled tribes derives from the provisions of the Indian Constitution, which establishes a *social contract* between those who were historically in power and those who were historically oppressed but aspired to change power hegemony and chose to govern themselves<sup>8</sup>.

## II. International Norms of Rights of Indigenous People

### A. The Indigenous and Tribal Populations Convention, 1957

The Fortieth Session of the General Conference of the International Labour Organisation was convened at Geneva by the Governing Body of the International Labour Office on 5 June 1957. During this session, it was resolved to adopt an international Convention aimed at safeguarding and integrating indigenous, tribal, and semi-tribal populations in independent countries. The Convention was formulated in collaboration with the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific, and Cultural Organisation, and the World Health Organisation. Its objective was to solicit their ongoing collaboration in advancing and ensuring the implementation of the standards resolved under the Conference. The scope of this Convention pertained to individuals belonging to tribal or semi-tribal groups residing in sovereign nations whose socioeconomic status is comparatively less developed than other segments of the domestic populace. These individuals' legal status is governed by their respective customs, traditions, or specific laws and regulations<sup>9</sup>. The principal duty of formulating coordinated and systematic measures for the safeguarding of populations and their gradual integration into the societal framework of their various nations lies with governments. The measures shall include (a) ensuring equitable access for populations to the rights and opportunities afforded by national laws or regulations to other segments; (b) promoting the social, economic, and cultural

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<sup>7</sup>Oxfam, *Implementing the Forest Rights Act: Addressing a Historical Injustice* (Dec. 2013).

<sup>8</sup>Live Law, *Courts Must Reach Out to People: CJI DY Chandrachud's Speech on Constitution Day, 2022*, (November 27, 2022) <https://www.youtube.com/watch?v=x-h0-m3venU>

<sup>9</sup>*Indigenous and Tribal Populations Convention, 1957, Art. 1.*

advancement of these populations and improving their quality of life. The Convention mandated the act of fostering national integration, which should prioritise the establishment of opportunities for inclusivity rather than enforcing methods that may lead to forced assimilation of diverse populations. The principal aim of any such endeavour is to promote personal self-respect and to enhance personal efficacy and ingenuity. The utilisation of violence or compulsion for the purpose of facilitating the assimilation of these groups into the cultural fabric of the nation is prohibited<sup>10</sup>. It is imperative to implement specific measures to safeguard the institutions, individuals, assets, and workforce of these communities. Governments are required to apply the provisions of this Convention that pertain to the protection and integration of the populations concerned, namely by (a) soliciting the cooperation of these communities and their authorised representatives; (b) offering these communities ample prospects to foster their ingenuity and resourcefulness.

The imperative is to employ all available methods to encourage the advancement of civil liberties and the formation or engagement in elective establishments within these communities<sup>11</sup>. The plans for the comprehensive economic development of regions inhabited by these populations will prioritise the improvement of quality of life, working conditions, and educational standards for said population<sup>12</sup>. The customary laws of the respective populations shall be taken into account while delineating their rights and obligations. The preservation of customs and institutions of populations is allowed, as long as they do not contradict the national legal framework or the goals of integration activities.<sup>13</sup> As per the Convention, it is mandated that the recognition of the right of ownership, whether collective or individual, of the populations concerned over the lands that have been traditionally occupied by them shall be ensured<sup>14</sup>. Furthermore, it stipulated that the affected communities must not be relocated from their customary lands without their voluntary agreement, except when such action is carried out in compliance with national legislation and regulations and is necessary for reasons pertaining to national security or for the advancement of

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<sup>10</sup>*Indigenous and Tribal Populations Convention, 1957, Art. 2.*

<sup>11</sup>*Indigenous and Tribal Populations Convention, 1957, Art. 5.*

<sup>12</sup>*Indigenous and Tribal Populations Convention, 1957, Art. 6.*

<sup>13</sup>*Indigenous and Tribal Populations Convention, 1957, Art. 7.*

<sup>14</sup>*Indigenous and Tribal Populations Convention, 1957, Art. 11.*

national economic development or the well-being of the said communities. In situations where the removal of certain populations becomes necessary as an extraordinary measure, it is imperative that they are granted access to lands of comparable or superior quality to those they previously inhabited. These lands should be capable of meeting their current requirements and facilitating their future growth. When alternative employment opportunities are available and the affected populations express a preference for monetary or non-monetary compensation, they should receive such compensation with adequate assurances. Individuals who are displaced as a result of this action shall receive complete compensation for any damages or harm incurred<sup>15</sup>. The Convention establishes provisions for the recruitment and employment conditions of individuals, as well as vocational training, handicrafts, and rural industries, with the aim of improving their socio-economic status<sup>16</sup>. The Convention was ratified by India on September 29, 1958.

#### **B. The International Labour Organization (ILO) Convention, 1989**

International Labour Organisation (ILO) Convention No. 169, adopted in 1989, is an international instrument that addresses the rights and protections of Indigenous and tribal peoples. It emphasises the importance of participation and consultation in decision-making processes that affect these communities. Specifically, Article 6<sup>17</sup> mandates that Indigenous peoples must be consulted through appropriate and effective procedures regarding any legislative or administrative measures that may impact them. In addition to ensuring their involvement in governance, the convention recognises the critical importance of land rights, as outlined in Article 14<sup>18</sup>, which asserts that Indigenous peoples have the right to ownership and possession of the lands they traditionally occupy. Furthermore, the convention highlights the need to safeguard Indigenous cultural integrity by recognising and protecting their distinct cultures from external pressures and influences, ensuring that their traditions, customs, and ways of life are preserved for future generations.

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<sup>15</sup>*Indigenous and Tribal Populations Convention, 1957, Art. 12.*

<sup>16</sup>*Indigenous and Tribal Populations Convention, 1957, Part III and IV*

<sup>17</sup>*Indigenous and Tribal Populations Convention, 1989, Art.6.*

<sup>18</sup>*Indigenous and Tribal Populations Convention, 1989, Art.14.*

## 1. UN Declaration on the Rights of Indigenous People, 2007

The United Nations Declaration on the Rights of Indigenous Peoples asserts the equality of indigenous peoples with all other peoples, acknowledges their contribution to the diversity and cultural richness of civilisations, and advocates for their freedom from discrimination. The Declaration acknowledged the entitlement to self-determination, thereby granting individuals the liberty to independently determine their political standing and actively pursue their economic, social, and cultural progress. The Declaration also recognised the diversity of circumstances experienced by indigenous communities across various geographical regions and national boundaries. It emphasised the importance of recognising the unique historical and cultural contexts of these communities and the significance of regional and national differences. The indigenous populace and individuals possess the entitlement to be affiliated with an indigenous community or nation, to not undergo involuntary displacement from their lands or territories, and to engage in the preservation and rejuvenation of their cultural traditions and customs. Indigenous people are entitled to a range of rights, including the ability to practice their religious traditions, customs, and ceremonies, as well as control and use of their ceremonial objects. They also have the right to repatriate their human remains, revitalise, use, develop, and transmit their histories, languages, oral traditions, philosophies, writing systems, and literatures. Additionally, they have the right to designate and retain their own names for communities, places, and persons<sup>19</sup>.

The indigenous population is entitled to exercise their right to development<sup>20</sup>, traditional medicines<sup>21</sup>, access to all social and health services<sup>22</sup>, and an equal right to physical and mental health<sup>23</sup>. They possess the authority to determine and establish priorities and strategies for the rights<sup>24</sup>. It is imperative for states to establish and execute a just, autonomous, unbiased, accessible, and lucid

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<sup>19</sup>UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res. 61/295, GAOR, UN Doc. A/RES/61/295 (Oct. 2, 2007), <https://digitallibrary.un.org/record/606782?ln=en>.

<sup>20</sup>*United Nations Declaration on the Rights of Indigenous Peoples, 2007, Arts. 3 & 4.*

<sup>21</sup>*United Nations Declaration on the Rights of Indigenous Peoples, 2007, Art. 24.*

<sup>22</sup>*Ibid. Art. 24.*

<sup>23</sup>*United Nations Declaration on the Rights of Indigenous Peoples, 2007, Art. 7.*

<sup>24</sup>*United Nations Declaration on the Rights of Indigenous Peoples, 2007, Art. 23.*

mechanism that duly acknowledges the rights of indigenous communities<sup>25</sup>. Also, it is imperative under the Convention that the territorial and land rights of Indigenous peoples are respected and upheld and that they are not subjected to forced displacement. The relocation of indigenous peoples must be carried out only after obtaining their free, prior, and informed consent. Additionally, an agreement on just and equitable compensation must be reached before the relocation takes place<sup>26</sup>. If feasible, the option of return should also be provided. The indigenous population has rights to the lands, territories, and resources they have historically owned, inhabited, or exploited. The indigenous population possesses the rights to ownership, utilisation, development, and governance of the lands, territories, and resources they hold through traditional ownership or occupation, as well as those acquired through alternative means. States must offer legal recognition and protective measures for these lands, territories, and resources. Recognition shall be conducted with due regard for the customs, traditions, and land tenure systems of the respective indigenous people<sup>27</sup>. The indigenous populations are entitled to compensation for lands, territories, and resources that have been appropriated, occupied, utilised, or damaged without their express, informed, and voluntary permission<sup>28</sup>. The indigenous communities possess the right to the protection and conservation of the environment, together with the productive capacity of their respective lands or territories<sup>29</sup>. The United Nations Declaration on the Rights and Freedoms of Indigenous Peoples acknowledges the entitlements of indigenous communities, such as the provision of financial and technical support, timely decision-making, and efficient redress for any violations of their communal and personal entitlements. The rights and freedoms acknowledged in this Declaration are equally ensured to both male and female indigenous persons<sup>30</sup>. Additionally, it stipulated that no interpretation of this Declaration shall reduce or eliminate the rights that indigenous peoples currently possess or may acquire in the future<sup>31</sup>.

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<sup>25</sup>United Nations Declaration on the Rights of Indigenous Peoples, 2007, Arts. 8 & 11.

<sup>26</sup>United Nations Declaration on the Rights of Indigenous Peoples, 2007, Art. 10.

<sup>27</sup>United Nations Declaration on the Rights of Indigenous Peoples, 2007, Art. 26.

<sup>28</sup>United Nations Declaration on the Rights of Indigenous Peoples, 2007, Art. 28.

<sup>29</sup>United Nations Declaration on the Rights of Indigenous Peoples, 2007, Art. 29.

<sup>30</sup>United Nations Declaration on the Rights of Indigenous Peoples, 2007, Art. 44.

<sup>31</sup>United Nations Declaration on the Rights of Indigenous Peoples, 2007, Art. 45.

## 2. Forest Rights Act, 2006

The Forest Rights Act (FRA) was enacted by the Indian Parliament in December 2006 and subsequently implemented on 1 January 2008. The policy acknowledges and bestows forest-related entitlements to scheduled tribes and other communities, who have historically resided in or relied on forested areas for their lawful subsistence requirements. The Act has a pan-India applicability, except for the state of Jammu and Kashmir. It mandates that the areas designated as critical wildlife habitats are to be exclusively utilised for the purpose of wildlife conservation and precludes any other usage thereof. The implementation of the Forest Rights Act (FRA) represents a distinctive measure towards the decentralisation of governance. The Forest Rights Act (FRA) is a robust statutory instrument aimed at safeguarding wildlife and forest regions from encroachment by industrial entities. The implementation process involves a hierarchical structure of multiple authorities, comprising the Gram Sabha, sub-district and district committees, and state-level committees. The Gram Sabha is entrusted with the task of consolidating and verifying the claims of everyone in the village. On the other hand, the sub-district and district committees are responsible for verifying and maintaining records of the claims. Lastly, the state-level committee is responsible for monitoring the implementation of the claims at a state level. Since 2005, the Campaign for Survival and Dignity (CSD) has been engaged in the monitoring and implementation of the Forest Rights Act (FRA) in central India. The potential impetus behind this action could have been the desire to grant forest entitlements as a means of assuaging the mounting dissatisfaction among forest-dwelling populations in central India regarding their limited opportunities for securing a livelihood. The initial version of the Bill underwent significant modifications by the government, thereby instigating a discourse among advocates and adversaries regarding the optimal approach to forest management and conservation. Critics contended that the initiative was conceived by political figures and contractors, whereas advocates maintained that it was a result of longstanding adivasi movements. The FRA Act of 2006 was a result of grassroots movements and requests. The matter was directed to a Joint Parliamentary Committee for the purpose of conducting a review, soliciting feedback, and providing guidance to the Parliament. Following extensive deliberation, the legislation was enacted on the 18th of December in the year 2006<sup>32</sup>.

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<sup>32</sup>Kalpavriksh Environmental Action Group, *Annual Report 2008-09* (Jan. 2009), [https://kalpavriksh.org/wp-content/uploads/2018/07/KVAnnualReport\\_2008\\_09-.pdf](https://kalpavriksh.org/wp-content/uploads/2018/07/KVAnnualReport_2008_09-.pdf).

### ***A. Social Impact***

The Forest Rights Act (FRA) presents a significant prospect for individuals residing in forested areas to enhance their economic and social stability and potentially enable their political enfranchisement. Nonetheless, the occurrence of such a result is not necessarily predetermined. It is imperative to educate individuals residing in forested areas regarding legal provisions, establish well-structured mechanisms for registering their claims, ensure the efficacy and impartiality of gram sabhas for claim registration, and establish unbiased sub-committees for the acceptance or rejection of claims. Claims may potentially remain unresolved for an extended period, or alternatively, they may be dismissed on unsubstantiated justifications<sup>33</sup>. The effective execution of the Forest Rights Act (FRA) has been impeded by insufficient commitment on the part of the central and several state governments, as well as accusations of transgressions by the state, particularly the Forest Department. It is probable that both domestic and foreign vested interests may exert a degree of influence. The Forest Rights Act (FRA) is a legislative measure that safeguards the entitlements of both adivasi and non-adivasi populations in India. Nomadic populations face challenges in asserting their claims as they are required to present them before gram sabhas that are governed by sedentary populations, who may exhibit hostility towards their claims. The potential social and economic ramifications of the FRA are expected to be varied, with the most significant advantages being observed in regions where adivasi communities are effectively mobilised and where nomadic populations are present. The issue of tribal land alienation is a significant concern in numerous states, and it is imperative to prioritise the community rights provisions outlined in the Forest Conservation Act. The allocation of development rights to individuals residing in forests is anticipated to result in increased economic and social stability. However, this measure may pose ecological challenges<sup>34</sup>.

### ***B. Conservation Impact***

The Forest Rights Act (FRA) is a legislative framework that facilitates the recognition and allocation of land and forest resource entitlements in designated conservation zones. The provision facilitates the identification of crucial habitats for wildlife within designated conservation areas through a scientific approach, which is subsequently

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<sup>33</sup>Armin Rosencranz, *The Forest Rights Act 2006: High Aspirations, Low Realization*, 50 *Indian L. Inst.* 656 (2008).

<sup>34</sup>Madhusudan Bandi, *Forest Rights Act: Towards the End of Struggle for Tribals?* 42 *Socia Scientist* 63 (2014).

followed by a procedure for addressing the entitlements of individuals residing in forested regions. The Forest Rights Act (FRA) currently includes provisions for the entitlement of developmental amenities, such as educational institutions, healthcare facilities, communication infrastructure, transportation networks, potable water supply, and alternative energy sources, within demarcated conservation zones. The availability of such amenities has the potential to cause ecological harm if state governments view them solely as a way to acquire more power or as a financial drain. The Ministry of Environment and Forests (MoEF) has recently released guidelines pertaining to the identification of critical wildlife habitats.<sup>35</sup> However, the scientific components of these guidelines with regards to conservation are deemed inadequate, and the prescribed timelines are perceived to be excessively expedited, potentially leading to the neglect of crucial scientific and democratic procedures.

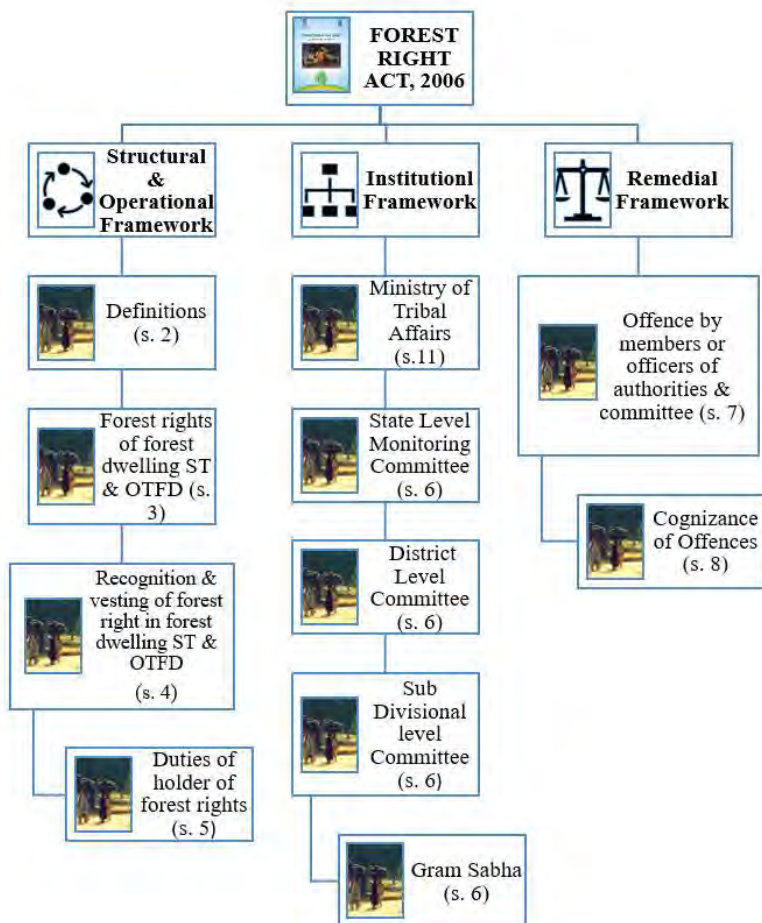
The Future of Conservation network has collaborated with the Indian Institute of Science to jointly conduct a nationwide workshop on the topic. The FRA has been utilised as a means of safeguarding forests in India; however, it has been subject to misuse, resulting in the allowance of new encroachments. Additionally, the FRA permits recognition of "encroached" lands for scheduled tribes who can demonstrate occupation prior to December 2005, as well as for other forest-dwellers who have taken up residence in the area. The cessation of deforestation is of paramount importance to indigenous communities who rely on forests for their survival. This is because the ongoing trend of deforestation poses a significant threat to their long-term existence. The Forest Rights Act (FRA) supersedes the Forest Conservation Act and confers upon communities the entitlement to safeguard, rejuvenate, preserve, or administer any communal forest resource. Despite its significance, the aspect of the FRA in question has not received adequate attention from relevant authorities, non-governmental organisations, and local populations. Therefore, there is an imperative to intensify advocacy efforts in this regard. The responsibility of conservation has been entrusted

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<sup>35</sup>Ishan Kukreti & Shruti Agarwal, *Critical Wildlife Habitat Guidelines Issued; NTCA Order Superseded*, DownToEarth, Mar. 16, 2018, <https://www.downtoearth.org.in/news/governance/critical-wildlife-habitat-guidelines-issued-ntca-order-superseded-59934>.

to Gram Sabhas; however, the course of action in case of non-compliance by the committee or the Gram Sabha remains ambiguous<sup>36</sup>

**III. Scheme Of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**



**Figure 1: Framework of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

<sup>36</sup>Geetanjoy Sahu, *Forest Rights Act: A Litmus Test for Govt to Protect Forest Dwellers*, DOWNTOEARTH (July 25, 2019), <https://www.downtoearth.org.in/blog/forests/forest-rights-act-a-litmus-test-for-govt-to-protect-forest-dwellers-65816> .

## **A. Structural Framework**

This study offers an integrated view of The Forest Rights Act (FRA 2006); the structural framework will act as a roadmap. This part consists of the preamble, scheme of the Act, and the operative part containing a provision for forest rights of forest-dwelling ST & OTFD, recognition & vesting of forest rights in forest-dwelling ST & OTFD, followed by duties of the holder of forest rights.

### **1. Preamble**

The Preamble serves as an introductory statement to an Act, and it could be argued that it functions as a concise overview of the entire FRA 2006. The preamble is an essential component of the FRA 2006, as its absence renders the FRA 2006 incomplete and inadequate. The entirety of the FRA 2006 is explicated within the preamble. The preamble serves the purpose of outlining the underlying principles and goals of the document. The FRA 2006 typically encompasses the original intent of its creators, the historical context surrounding its establishment, and the fundamental values and principles that underpin it. The preamble of the Act underscores four objectives of the Act, namely:

1. The Act recognizes the rights of scheduled tribes living in forests, as well as other communities traditionally residing in forest areas;
2. The Act accords forest rights and land occupation to scheduled tribes and other traditional forest communities residing in forested areas;
3. It provides a framework for documenting the forest rights of scheduled tribes and other traditional forest dwellers who have inhabited these areas for generations but whose rights have not been previously recorded;
4. The Act aims to resolve issues related to tenure insecurity and access rights faced by forest dwellers, including scheduled tribes and traditional communities, particularly those displaced by state development projects.

### **2. Scheme of the Act**

The Act is divided into six chapters and contains 14 sections (herein referred to as S.) in total. Chapter 1 (ss. 1, 2) is a Preliminary Chapter. It talks about the title

of the Act, territorial applicability, and the date from which the Act shall commence and enlists some of the important definitions. Chapter 2 (S.3) is titled Forest Rights. It enlists different types of rights known as forest rights. Chapter 3 (ss. 4, 5) is titled Recognition, Restoration, and Vesting of Forest Rights and Related Matters and talks about the recognition of and vesting of forest rights in forest-dwelling scheduled tribes and other traditional forest dwellers. Chapter 4 (S.6) is titled Authorities and Procedure for Vesting of Forest Rights and talks about different authorities that are empowered under the Act to initiate the process for determining the nature and extent of forest rights that may be given to the scheduled tribes and other traditional forest dwellers. Chapter 5 (ss. 7, 8) is titled Offences by Members or Officers of Authorities or Committees under this Act and talks about the offences that may be committed by any authority or committee or member of such authority or committee concerned with the recognition of forest rights and procedure for taking cognisance by the court. Chapter 6 (ss. 9, 14 ) contains miscellaneous provisions.

#### **B. Operative Part of the Act**

The operative components of an Act are the sentences that constitute Parliament's expressions of law. The operative components normally consist of a short title, extent, and commencement, which are often called 'enactments. Consequently, The Act was enacted on December 31<sup>st</sup>, 2007, vide notification No. S.O. 2224(E), dated December 31<sup>st</sup>, 2007. S. 2 deals with the definition clause, which consists of 17 definitions. The determination behind the definition clause is that the legislature, being the supreme law-making body, must know what it intends in the words of the statute. The words and expressions defined under S. 2 are 'community forest resource,' 'critical wildlife habitat,' 'forest dwelling Scheduled Tribes,' 'forest land,' 'forest right,' 'forest villages,' 'gram Sabha,' 'habitat,' 'minor forest produce,' 'nodal agency,' 'notification,' 'prescribed,' 'scheduled prescribed,' 'scheduled area,' 'sustainable use,' 'other traditional forest dwellers,' 'village,' and 'wild animals. Certain expressions that hold significant legal implications can be further elucidated as follows:

*“community forest resource means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests,*

*and protected areas such as Sanctuaries and National Parks to which the community had traditional access”*; {S.(2)(a)}

**Comment:** The word Community Forest Resource (CFR) has been used three times in the Act. This definition is exhaustive and comprehensive in nature. The word “and” is conjunctive, and the word “or” is disjunctive. These words can often be used interchangeably, as 'and' may be interpreted as 'or,' and *vice versa*. The shared forest land has traditionally been preserved and managed by particular communities for sustainable use. These communities rely on the resources within the village's customary and traditional boundaries and, in the case of pastoralist communities, use the landscape seasonally. Every Community Forest Resource (CFR) area possesses a customary boundary, marked by identifiable landmarks acknowledged by both the community and neighbouring villages.

*“forest dwelling Scheduled Tribes means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities.”* {S.(2)(c)}

**Comment:** The expression Forest-dwelling Scheduled Tribes has been used 20 times in this Act. This indicates the legislator’s inclination towards addressing the problems faced by the Forest-dwelling Scheduled Tribes. This definition is exhaustive and comprehensive in nature. This refers to the Scheduled Tribe populace residing in forested areas and relying on forest resources for their genuine livelihood requirements. It also encompasses Scheduled Tribe pastoralist communities.

*“forest rights means the forest rights referred to in section 3”*; {S.(2)(e)}

**Comment:** The utterance forest rights has been used 39 times in this Act. This is an exhaustive and comprehensive definition. {S.2(e)} shall be read with Chapter II, S. 3 of the Act.

*“Gram Sabha means a village assembly which shall consist of all adult members of a village and, in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women”*; {S.2(g)}

**Comment:** The expression Gram Sabha has been used 13 times in the Act, which shows that Gram Sabha plays a significant role in upholding the forest rights of forest-dwelling Scheduled Tribes. This is an exhaustive and comprehensive definition. The proposed village assembly is to be comprised of all adult members of a given village. In instances where traditional village institutions, such as Panchayats, Padas, and Tolas, as well as elected village committees, are absent in each State, the assembly shall ensure the full and unrestricted participation of women.

*“minor forest produce includes all non-timber forest produce of plant origin, including bamboo, brushwood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like”;*  
**{S. (2)(i)}**

**Comment:** The expression minor produce has been used two times in the Act. This is an inclusive definition that consists of all non-timber forest produce. According to estimations, approximately 300 million indigenous and other local populations in India rely on forests for their sustenance and means of living. Therefore, this act is an effort to recognise the rights of forest dwellers to collect the minor forest produce for their livelihood.

*“other traditional forest dweller means any member or community who has, for at least three generations prior to the 13 December 2005, primarily resided in and who depend on the forest or forest land for bona fide livelihood needs”;*  
**{Section (2)(o)}**

**Explanation. — For the purpose of this clause, “generation” “means a period comprising of twenty-five years.”**

**Comment:** The expression other traditional forest dwellers has been used 23 times in this Act, which is an exhaustive and comprehensive definition. In this provision of FRA, explanation may be needed when doubts arise as to the meaning of the generation. Explanations are given at the end so that it acts as part and parcel of the enactment. Analysis of the oft-stated definition refers to individuals belonging to the Scheduled Tribes community who predominantly inhabit forested areas and rely on forest resources for their genuine livelihood requirements. Individuals or communities who have resided in forested areas for

a minimum of three generations (equivalent to 75 years) prior to December 13<sup>th</sup>, 2005, may assert their claim to the land for legitimate livelihood purposes.

- **Types of Forest Rights**<sup>37</sup>

The forest rights of forest inhabitants can be classified into two distinct categories:

- i. Individual or Community Rights pertaining to all forested areas that ensure either individual or communal tenure, or both;
- ii. Individual or Community Developmental Rights. These can be expressed as under in the first distinct category, there are 13 rights that are spelt out in S. (3)(1) of the Act, namely:
  - a) right of the forest dwellers to hold and live in the forest land under individual or common capacity for livelihood;
  - b) community right such as “*nistar*,” which refers to a form of concession that is provided to farmers and rural inhabitants, allowing them to extract specified forest produce for legitimate domestic purposes upon payment of stipulated rates. It is important to note that this concession is not intended for commercial purposes or exchange;
  - c) right of ownership over minor forest produce;
  - d) community right to use the products of water bodies;
  - e) community rights of tenure of habitats and habitation;
  - f) rights over disputed land;
  - g) rights of conversion of pattas/lease/grant to titles;
  - h) rights of settlement and conversion of forest villages;
  - i) sustainable use of community forest resources;
  - j) rights of tribals recognized under state law(s);
  - k) right to access intellectual property/traditional knowledge pertaining to biodiversity;
  - l) any other customary rights traditionally exercised by forest-dwelling Scheduled Tribes, except for the right to hunt, trap, or extract any part of a wild animal's body.

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<sup>37</sup>The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, § 3.

- m) the right to in situ rehabilitation for forest dwellers who have been unlawfully evicted or displaced from forest land.

In the second distinct category, there are 13 developmental rights of forest dwellers, which are spelt out under S. 3 (2) of the Act. The Central Government is authorised to facilitate the diversion of forest land for government-managed facilities that require the felling of up to 75 trees per hectare, regardless of any provisions outlined in the Forest Conservation Act, 1980. The rights are enumerated as follows:

- a) schools;
- b) dispensary or hospital;
- c) anganwadis;
- d) fair price shops;
- e) electric and telecommunication lines;
- f) tanks and other minor water bodies;
- g) drinking water supply and water pipelines;
- h) water or rainwater harvesting structures;
- i) minor irrigation canals;
- j) non-conventional source of energy;
- k) skill upgradation or vocational training centres;
- l) roads; and
- m) community centres.

An exception clause is introduced to exclude specific provisions from the main enactment, ensuring that elements not explicitly exempted remain within the scope of the primary legislation. In this context, the exception specifies that development projects can only proceed if recommended by the Gram Sabha, with approval from the Central Government.

**Comment:** The FRA<sup>38</sup> seeks to recognise and grant forest rights to Scheduled Tribes and other traditional forest dwellers who have lived in these forests for generations but lack formal documentation of their rights. It aims to create a

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<sup>38</sup>*Lok Sabha Debates* (Oct. 30, 2007), [https://eparlib.nic.in/bitstream/123456789/785518/1/lsd\\_14\\_09\\_15-12-2006.pdf](https://eparlib.nic.in/bitstream/123456789/785518/1/lsd_14_09_15-12-2006.pdf).

framework for recording these rights, along with the necessary evidence required for their recognition and the allocation of land rights.

- **Recognition of, and vesting of, forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers**<sup>39</sup>

**Persons who are eligible to assert their entitlements in accordance with the statute**

Forest rights may be asserted by scheduled tribes and other traditional forest dwellers who have inhabited forest land prior to December 13<sup>th</sup>, 2005, regardless of any conflicting legislation currently in effect. The term 'Forest-dwelling Scheduled Tribes' refers to a specific group of indigenous people who reside in forests or individuals belonging to the scheduled tribe community who predominantly inhabit and rely on forest areas or forest land for their genuine means of livelihood. This also encompasses the scheduled tribe pastoralist communities. The term "Other traditional forest dwellers" refers to individuals or communities who have been residing in forest areas and relying on them for their genuine livelihood needs for a minimum of three generations prior to December 13<sup>th</sup>, 2005. The term "generation" refers to a time span of twenty-five years. The Act confers rights not only upon individuals residing within the forest but also upon those who inhabit forest lands. The term "forest land" encompasses a broad range of land types in forested areas, including unclassified forests, undemarcated forests, existing or deemed forests, protected forests, reserved forests, sanctuaries, and national parks.

- **The alteration or relocation of forest rights within areas designated as Critical Wildlife Habitats.**

Forest-dwelling communities could claim forest rights within Sanctuaries and National Parks. However, it is important to note that these rights may be subject to modification and resettlement in critical wildlife habitats of said National Parks and Sanctuaries. The term "critical wildlife habitat" pertains to designated areas within National Parks and Sanctuaries that have been determined through scientific and objective criteria to be essential for the preservation of wildlife.

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<sup>39</sup>*Ibid*, §.4.

These areas must be maintained as inviolate for the sole purpose of wildlife conservation.

Notwithstanding, the entitlements in question may be subject to certain conditions, including but not limited to:

- (i) The comprehensive fulfilment of the recognition and vesting procedures in all relevant domains;
- (ii) The verification of the fact that the actions or effects of the presence of the beneficiaries will result in irrevocable harm and jeopardise the survival of fauna species and their dwelling places, and
- (iii) The absence of any other feasible alternatives. Furthermore, it should be noted that any alterations or relocations of forest rights must be preceded by the development and dissemination of a resettlement or alternative package to the impacted individuals and communities.

It is imperative that the package offered ensures a sustainable means of livelihood while simultaneously adhering to all pertinent laws and policies set forth by the central government. To proceed with the proposed resettlement and accompanying package, it is necessary to obtain written consent from the concerned Gram Sabha, ensuring that the consent is both free and informed. The resettlement process shall not commence until the necessary facilities and land allocation at the designated resettlement site have been fully established. It is imperative that the vital habitat for wildlife, which has resulted in the displacement of forest right holders, is not repurposed for any other use.

The entities possess the quality of being hereditary in nature; however, they lack the attribute of being able to be relinquished or conveyed to another party. In the event of married individuals, the rights are to be registered in the names of both spouses, while for single-headed households, the rights shall be registered in the name of the head of the household. In the event of an indirect or non-existent. The heritable right will be transferred to the next-of-kin.

The legislation stipulates that forest-dwelling Scheduled Tribes and other traditional forest inhabitants cannot be displaced or expelled from forest areas

that they occupy until the recognition and verification process has been wrapped up.

The mentioned legislation ensures the protection of the rights of both individuals and the community of scheduled tribes who reside in forests, as well as other traditional forest dwellers. These entitlements shall be granted without any hindrances or formalities.

**Comment:** The statement emphasises the importance of rehabilitating all forest-dwelling Scheduled Tribes and other traditional forest dwellers in accordance with the International Labour Organisation (ILO) Convention No. 107 and the principle of "prior informed consent." ILO Convention No. 107, also known as the Indigenous and Tribal Populations Convention, highlights the rights and protections of indigenous and tribal peoples, including their rights to land, resources, and cultural preservation. The convention emphasises<sup>40</sup>

- **Duties of holders of Forest Rights**<sup>41</sup>

The legislation imposes a responsibility upon holders of forest rights to:

- i. safeguard the fauna, flora, and biodiversity;
- ii. they must guarantee the sufficient protection of neighbouring catchment areas, water sources, and other ecologically sensitive regions;
- iii. they must ensure the preservation of the habitat of Scheduled Tribes and other traditional forest inhabitants from any harmful practices that may impact their cultural and natural heritage;
- iv. It is imperative to ensure compliance with the decisions made in the Gram Sabha pertaining to the regulation of access to community forest resources and the prevention of any activities that may have a negative impact on wild animals, forests, and biodiversity.

In addition to forest rights holders, the Gram Sabha and the village-level institutions in areas where there are holders of forest rights are also empowered to perform such duties.

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<sup>40</sup>*Supra*, Note 9.

<sup>41</sup>*Ibid*, §.5.

- **Power of the Central Government**

1. In the execution of its responsibilities and utilisation of its capabilities, as prescribed by or under this legislation, each governing body (Gram Sabha, Sub-Divisional Level Committee, District Level Monitoring Committee, and State Level Monitoring Committee) shall act accordingly<sup>42</sup>.
2. The power is vested in the Central Government to make rules for effective implementation of the provisions of the legislation<sup>43</sup>.
3. Procedural details for the implementation of the procedure are specified in S. 6<sup>44</sup>.
4. The method of submitting a petition to the Sub-Divisional Committee under subsection (2) of S. 6, as well as the process for accepting claims, combining and confirming them, and creating a map showing the area of each approved claim for the exercise of forest rights<sup>45</sup>.
5. The rank of officers who will be appointed to the Sub-Divisional Level Committee, District Level Committee, and State Level Monitoring Committee under paragraph (8) of S. 6 from the state government's departments of Revenue, Forest, and Tribal Affairs<sup>46</sup>.
6. The make-up, duties, and method by which the Sub-Divisional Level Committee, District Level Committee, and State Level Monitoring Committee are to carry out their responsibilities under ss. (6)(9)<sup>47</sup>.
7. Any other matter which is required to be, or maybe, prescribed<sup>48</sup>.

- **C. Institutional Framework**

The institutional framework serves as a guide for the governing body, outlining the structure and functionality of the act. The framework serves as the essential

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<sup>42</sup>*Ibid*, §.12.

<sup>43</sup>*Ibid*, §.14.

<sup>44</sup>*Ibid*, §.14(2)(a).

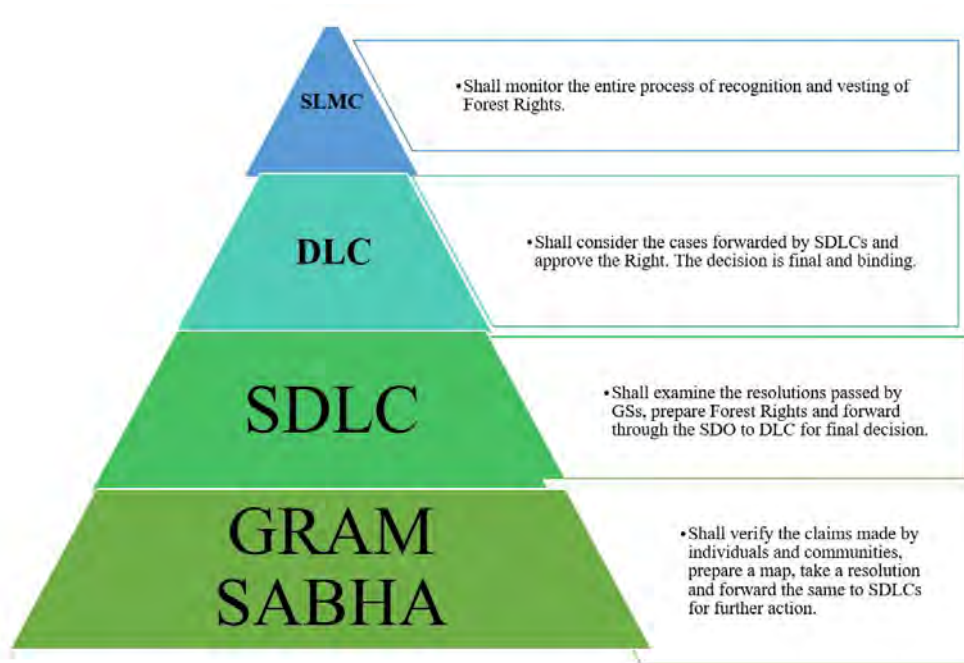
<sup>45</sup>*Ibid*, §.14(2)(b).

<sup>46</sup>*Ibid*, §.14(2)(c).

<sup>47</sup>*Ibid*, §.14(2)(d).

<sup>48</sup>*Ibid*, §.14(2)(e).

support necessary for the coalition to operate effectively. The Act provides for a three-tier structure of authorities to vest forest rights, namely Gram Sabha (GS), Sub Divisional Level Committee (SDLC), and District Level Committee (DLC)<sup>49</sup>.



*Figure 2: FRA 2006-Implementation Structure*

#### 4.3.1 Gram Sabha

The Gram Sabha holds the responsibility of initiating the process of ascertaining the scope and magnitude of individual or communal forest entitlements, or both. The entity in question will be tasked with receiving and attentively listening to the assertions being made. The process will subsequently amalgamate the assertions, authenticate them, and generate a cartographic representation outlining the extent of every suggested claim within the region.

In accordance with established protocols, the Gram Sabha will proceed to adopt a resolution regarding claims on forest rights, ensuring that all relevant parties

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<sup>49</sup>*Ibid*, §.6.

and authorities have been given adequate opportunity to participate. This resolution will subsequently be transmitted to the sub-divisional level committee. The maintenance of a list of individuals who claim rights to forests shall be the responsibility of the Gram Sabha, to be carried out in accordance with the prescribed procedures.

- **Sub Divisional level Committee**

The Sub Divisional Level Committee is tasked with scrutinising the resolutions and maps presented by the Gram Sabha to verify the authenticity of the claim. Upon completion of this process, the Committee will then submit the findings to the District Level Committee for the ultimate decision.

- **District level Committee**

Individuals who are dissatisfied with the resolution of the Gram Sabha have the option to submit a petition to the Sub Divisional Level Committee. Similarly, individuals who are dissatisfied with the decision of the Sub-Divisional Level Committee have the option to submit a petition to the District Level Committee. The determination made by the District Level Committee regarding the record of forest rights is conclusive and legally enforceable.

In addition, the State Government shall also constitute a **State-Level Monitoring Committee** to monitor the process of recognition and vesting of forest rights.

The Ministry responsible for Tribal Affairs at the Central Government level will serve as the primary agency for executing the regulations outlined in this legislation<sup>50</sup>.

#### **D. Remedial Framework**

The remedial framework pertains to the branch of the legal system that is concerned with safeguarding and upholding rights, rectifying injustices, and determining the legal standing of the parties involved.

The legislation establishes penal responsibility for the individuals serving as officers or members of the committee who violate the stipulations outlined in this Act or its corresponding regulations. Individuals who violate this regulation may

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<sup>50</sup>*Ibid*, §.11.

be subject to a fine of up to one thousand rupees. Nonetheless, individuals will not be held accountable if they can demonstrate that the transgression was carried out without their awareness or that they had taken all reasonable precautions to avert the perpetration of said transgression<sup>51</sup>.

According to the statute, a court cannot acknowledge any wrongdoing unless a Scheduled Tribe residing in a forest area provides notice of at least sixty days to the State Level Monitoring Committee in the event of a disagreement concerning a Gram Sabha resolution or if the Gram Sabha passes a resolution against a higher authority and the State Level Monitoring Committee does not take action against said authority<sup>52</sup>.

#### IV. Conclusion

The Forest Rights Act (FRA) of 2006 marks a pivotal legislative moment in India's ongoing efforts to rectify historical injustices faced by indigenous and forest-dwelling communities. Rooted in a framework that prioritises indigenous land rights and communal ownership, the FRA offers a crucial mechanism for restoring rights to populations systematically marginalised by colonial and post-independence land policies. These communities, whose livelihoods have been inextricably tied to forests for generations, are no longer merely subjects of conservationist policies but are recognised as active custodians of the environment.

In the broader international context, India's adherence to global conventions such as the ILO Convention No. 107 and its alignment with the United Nations Declaration on the Rights of Indigenous Peoples reinforce the importance of indigenous participation in governance and conservation. Yet, this legislative intent faces significant challenges—namely, the tension between environmental conservation goals and the livelihood rights of forest-dependent populations. The debate, often framed as a binary between development and conservation, must

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<sup>51</sup>*Ibid*, §.7.

<sup>52</sup>*Ibid*, §.8.

evolve to recognise that indigenous communities offer sustainable solutions to forest management, rooted in traditional knowledge systems.

The FRA's success hinges not only on the legal framework it establishes but also on the capacity of state and local institutions to implement its provisions transparently and equitably. While the Gram Sabha is empowered as a key decision-making body, real empowerment will come from robust institutional support, free from political and bureaucratic interference. Equally, the central government's role in ensuring a just and informed resettlement process in critical wildlife habitats underscores the complex balance required between ecological protection and human rights.

In conclusion, the FRA 2006, though ambitious, represents a vital step toward realising economic and social justice for India's most marginalised communities. Its success will require sustained political will, administrative accountability, and above all, the meaningful participation of the indigenous communities whose rights it seeks to protect. As the world grapples with climate change and environmental degradation, India's approach to indigenous rights and forest governance offers a powerful model of inclusive and sustainable development.