



Community forest right and Community forest resource right: Status after amendment of FRA rules in 2012



INTRODUCTION

The forest right act 2006 is mainly enacted to undo years of historic injustice to forest dwelling communities by recognizing and vesting right on forest resources and forest land. The community forest right (CFR) provision of the Act is extremely important for community based forest governance and conservation. Despite the potential of CFR provision, it has been noticed that only few provision of the Act has been emphasized than the Act in its entirety. The thrust of implementation in most part of the country so far has been on IFR while CFR have been largely ignored. Over the last two years this lacuna has been recognized by many government and non government agencies. However, the actual step of communities claiming these rights is easier said than done. For a number of reasons such claims are not being made across the country. It is very difficult to get a national picture on status of CFR rights since little disaggregated data is available even with the Ministry of Tribal Affairs for making proper assessments at State level. Even where titles have been issued, there have been confusions and problems in some areas regarding the conditions and restrictions mentioned in the titles.

This brief is based on report of a study "Understanding the existing, policy and implementation gaps with regards to community forest rights and community forest resource under forest right act."



Further, being a recently enforced Act, the post rights-recognition scenario is unclear and various problems are being faced in assertion of community voices in forest governance and decision-making.

The study is conducted by taking sample hamlets from Srikakulam district (EED project location), of Andhra Pradesh and Nabarangpur district, (Oxfam India, project location), Odisha.

To identify the implementation level implication primary information has been collected through indirect interviews from various stake holders (community, Members of SDLC and DLC). The secondary information has been collected to study the existing policy level implications and the debate going over it through various research reports, state level and district level consultation on CFR, and CFR learning group.

Provisions for Community right under different sections in the Act.

Chapter 1 Sec 1(a) of the Act defines “community forest resource” 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 areas such as Sanctuaries and National Parks to which the community had traditional access.”

Sec 3(1) i provide the “right to protect, regenerate, conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use”.

Section 5 of FRA provides right to the titles holders, gram sabhas and village level institutions to protect the wildlife, forest and biodiversity and to access to community forest resources and to manage and protect the same.

Rule 4e under the Act states that communities which claim rights under the Act have a right to “constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section 5 of the Act”.

Amendment rules in 2012

- Forest dwellers can transport minor forest produce by any appropriate means of transport. Transit passes for transporting minor forest produce will be issued by a committee constituted by the gram sabha.
- The committee constituted under gram sabha will prepare conservation and management plan for community forest resources after forest dweller’s right on such resources are recognized.
- The gram sabha committee can integrate its management plan with the forest department working plans if it considers this necessary.
- The gram sabha will approve all decision of the committee pertaining to issues of transits permit, use of income from sale of forest produce or modification of management plan.
- Forest right related to protection , regeneration and management of community forest resources by forest dwellers for sustainable use should be recognized in all the villages, incase this is not done in a village the reason should be recorded by the district level committee formed to look into the FRA claims.
- To ensure that right claims are not rejected illegitimately by the authorities, the new rules put additional condition for rejection than those which were there in draft rules. The authority will now not be able to reject the claims for being absent from the field verification process. If they remain absent thrice after giving consent for verification then verification done by gram sabha will be considered for further action.
- No committee or individual official at panchayat, block, or forest range level except forest right committee shall be eligible to receive, decide or reject the forest right claims.



GAPS IN THE IMPLEMENTATION PROCESS

- The gram sabha can be rendered dysfunctional and ineffective. The Forest right Committee should be formed at the hamlet level with due consent of gram sabha, but in states like Andhra Pradesh, Committees are formed at gram panchayat level and in Orissa it has been constituted only at revenue villages. As a result the right couldn't be ensured to its true sense to the real community members.
- The act provides right on thirteen different types of community rights but only two or three rights are often seen to be claimed and without proper corroboration.
- The community members have to struggle hard to get a piece of evidence. Claims lie pending because of lack of evidences.
- Single SDLC in a district as in Malkangiri and Nabrangpur makes it very difficult for villagers from remote areas to travel 80 km – 125 km to submit the claim at SDLC.
- In such cases the district collector has authorized the Welfare Officer to receive the claim but then it's difficult to track the status of those claims as in most cases the officer are ignorant and claims are not forwarded.
- There has been large scale interference of forest department in the right recognition process.
- Certain conditions were imposed on exercise of final rights.
- Issuing titles in the name of VSS or for area under VSS (instead of recognizing Gram sabha and customary boundary) i.e. In Andhra Pradesh most of the CFR title distributed are in the name of VSS.
Even if few CR titles are distributed, the department and the officials are not keen to distribute title under form C which gives management right on the resources to the community members.
- The titles were distributed with reduction in extent of resources claimed.
- Moreover the rights were granted on very few common properties like grazing land, water bodies & NTFP.
- Habitation rights and other such important rights are ignored.
- The customary rights and traditional boundary are ignored in provided titles for unilateral reduction in size of land.
- GPS technologies are abused to manipulate maps and areas for which titles are being given. It is also seen that few cases are hanged between FRC and SDLC and are not taken to DLC for further action.
- Both IR and CFR rights are denied to OTFD community.

While a large fraction of the problem lies in poor implementation, there are issues and ambiguities that need to be resolved at policy level too.

GAPS AT POLICY LEVEL

- Ambiguity regarding role of forest department and other government agencies in CFR received areas could be identified in regards to continued operation of forest department through working plan activities.
- Lack of clarity on integration of CFR management plan with working plan and management plan of Forest Department.
- FRA did not specify how villages would manage forest after CFR was granted. It was observed that the community is facing lot of challenges in selling of NTFP and bamboo procured by them under CFR.

- JFM and other related programme is still in continuation, with new resolution that contradicts the community forest governance in many aspects.
- Continued operation of the government, in diverting forest lands for non forest purposes.
- There is apprehension that proposed Land Acquisition bill and mines and mineral development bill will make it possible for the government to take away rights given under FRA.
- Claims from OTFD are not recognized in most states, partly due to wrong interpretation that they required to have occupied land for three generation. There is also difficulty in providing evidences.
- The provision for community / habitat right of PTG, pre agricultural communities is not implemented properly so far. There is lack of clarity on mechanism for claiming right.
- Awareness about CFR provision in FRA, under protected areas is very low. The protocol released by NTCA on relocation from tiger reserve is not in conformity with the FRA and is apprehended to lead to more violation of forest right in tiger reserves.

RECOMMENDATIONS

- A mass awareness programme for FRC/SDLC/DLC and community members should be conducted at regular interval by MOTA.
- Strengthening gram Sabah, and FRC.
- Particular attention is needed to CFR and habitat rights for disprivileged group such as PTG, nomads & shift cultivators.
- Ensuring customary boundaries: All states should ensure that CFR claims and titles follow customary boundaries and are not artificially restricted by consideration such as JFM, VSS etc.
- Transparency building mechanism- Minutes of the meeting of SDLC and DLC should be put in to public domain, as it will communicate status of Implementation. Websites should be updated regularly.
- Particular attention is needed for protected areas to implement FRA, particularly CFR.
- The protocol released by NTCA on relocation need to be withdrawn as it hinders FRA implementation
- There should be appropriate FRA rules or FRA amendment to provide clear cut powers and authority to institution to carry out the role described in section 3(1) i and section 5. The relationship of the gram sabha and its committee with the forest department needs to be clarified.
- CFR titles: MOTA should issue clarification to states that titles cannot be issued with any condition and all such titles issued in past must be rectified.
- The role of forest department needs to undergo gradual transformation from that of regulation and control on forest to that of service agency which monitors forest management and conservation and provides technical guidance and capacity building to local communities for better forest governance.
- Funding schemes that are proposed by MoEF relating to natural resources should be channelized through Gram sabha and PRI.
- Review needs to be carried out of environment related programme and laws to bring it in consonance with FRA.



Developed by:



Centre for People's Forestry
Rights | Livelihoods | Conservation

12-13-483/39, Street No. 14, Lane No.6, Nagarjunanagar Colony, Tarnaka, Secunderabad - 500017
Tel / Fax: 91 40 27154484/94 | info@cpf.in | www.cpf.in

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