

Union govt's letter on implementation of Forest Rights Act an attempt to dilute law

21 July 2021

Earlier this month, the Ministry of Environment and Forests (MoEF) and the Ministry of Tribal Affairs sent a joint communication to Chief Secretaries of all state governments for the “expeditious implementation” of the Forest Rights Act (FRA), 2006 — a significant and long pending demand of tribal communities in the country. At the outset, the communication looks promising, which wanted to act on the pressing demand of implementing the legislation that was passed over a decade ago. However, activists and experts working for the rights of tribal people, say otherwise.

The Act essentially empowers traditional forest dwellers with control over the forest area and its resources. However, according to the experts, the new communique seems to give the Forest Department backdoor control over the forest and its resources. The Forest Rights Act is under the sole purview of the Ministry of Tribal Affairs. With the joint communication, the Ministry of Environment and Forests (MoEF) has also been brought within the purview of the implementation of the Forest Rights Act. This, according to experts, attempts to give more power to the Forest Department in conserving, protecting and managing the forest and its resources, which, in turn, could dilute the rights of the forest dwellers as prescribed in the Forest Rights Act.

How the Act empowers tribal people

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 — commonly known as the Forest Rights Act (FRA) — recognises the rights of the Forest Dwelling Scheduled Tribes (FDSTs) and Other Traditional Forest Dwellers (OTFDs) to the forest resources and their right to occupation in the forest land where they have been residing for generations. The Act was formulated following the long-standing demand of the tribal activists and groups, aiming to “undo the historical injustice” done to the forest-dwelling communities since the colonial period.

The Act protects their rights to access and use the forest resources “in the manner that they were traditionally accustomed, to protect, conserve and manage forests, protect forest dwellers from unlawful evictions and also provides for basic development facilities for the community of forest dwellers to access facilities of education, health, nutrition, infrastructure, etc.”

[As per the Act](#), the Forest Dwelling Scheduled Tribes and Other Traditional Forest Dwellers are vested with several rights, including

- > Rights of self-cultivation and habitation (Individual rights)
- > Community rights like grazing, fishing, access to water bodies in forests
- > Access to biodiversity
- > Community right to intellectual property and traditional knowledge, recognition of traditional customary rights and
- > Right to protect, regenerate or conserve or manage any community forest resource for sustainable use.

It prescribes their rights to allocate forest land for developmental purposes “to fulfil basic infrastructural needs of the community.” The Act also empowers gram sabhas with high decision-making power with regard to local policies and schemes impacting the tribal population.

How the joint communiqué dilutes the Act

The joint communication was issued by Arjun Munda, Minister of Tribal Affairs and Prakash Javadekar, Minister of Environment, Forest and Climate Change (MoEF). It urges the states to review the implementation of FRA and intimate the Union government about any clarifications to ensure a smooth process.

Calling this a move to dilute the essence of the Forest Rights Act, which was under the sole purview of the Ministry of Tribal Affairs, the Campaign for Survival and Dignity, a national platform of Adivasi and forest dwellers' movements, condemned the joint communication.

“The Act (FRA) says that the Ministry of Tribal Affairs will be the nodal agency for issuing directions on forest rights. In fact, and indeed at the time of the Act's passage, the government's Business Rules were amended to place the rights of forest dwellers in the Tribal Ministry's domain. This was done deliberately to ensure that forest officials do not attempt to hijack the law,” Campaign for Survival and Dignity says in a statement.

When FRA was brought in 2006, the same year, the Union government made [amendment](#) to the Allocation of Business Rules, 1961, assigning the Ministry of Tribal Affairs as the nodal Ministry for overall policy, planning and coordination of programmes of development for the Scheduled Tribes. And, the Ministry of Environment, Forest and Climate Change to be only responsible for overall policy in relation to forests, and cannot intervene in legislation and other matters pertaining to the rights of forest-dwelling Scheduled Tribes on forest lands. However, many experts allege that the forest officials continue to govern the forest areas. More importantly experts state, the joint communiqué stands against the 2006 amendment made to the Allocation of Business Rules, 1961.

The new communication also says that state governments should approach the Union government for clarifications, and that “both Ministries may take a collective view” on issues that arise from the law, the platform points out. “This is essentially a back door for forest officials to control the implementation of the law, when the law itself specifically denies them that role,” it says.

Speaking to TNM, CR Bijoy, an activist who is part of the Campaign for Survival, further teases out the nuances. “When the Environment Ministry used to issue problematic orders (impacting the tribal communities), the Tribal Affairs Ministry used to counter it by issuing orders, saying that MoEF is not authorised to issue such orders and that it is a violation,” he says.

For example, in February 2013, the Environment Ministry issued a notification, which said that the consent of gram sabha in forest areas would not be required for linear infrastructure projects. However, the tribal ministry said that it is [constitutionally invalid](#) and would dilute the essence of the Act, which gives rights to the forest dwellers.

“There are many such examples. Earlier, both ministries used to be at loggerheads, but gradually it reduced due to the intervention of top officials. In the case of the Forest Rights Act implementation, the Tribal Affairs Ministry is the nodal ministry. But now, through this (joint communication), they have conceded their role to MoEF, and that is illegal,” explains Bijoy, who engages with natural resource conflicts and governance.

The joint communication also stresses more on the involvement of the Forest Department in matters related to the Forest Rights Act, which strengthens the criticisms against it.

According to section 3 (1)(i) of the Forest Rights Act, forest-dwelling communities have the ‘rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.’ However, the joint communication states that “the frontline staff of the state forest department should extend assistance to the institutions or communities” for preparing conservation and management plan for community forest resources.

The joint communique assigns the state forest department with the role to undertake projects for value chain addition, which include activities that create value for the forest dwellers. This includes capacity building of the primary collectors, new harvesting methods, storage, processing and marketing of the non-timber forest products (NTFP) under schemes implemented by the Ministry of Tribal Affairs, it says. It should be undertaken “in such a manner that both forest productivity increases and local tribal and other forest-dwelling communities derive maximum benefits.”

Experts working with the Adivasi communities point out that this move gives more power to the Forest Department, infringing the rights of the gram sabhas, which has the judicial and [executive power](#) in recognising the rights of the tribals, as per FRA.

“It is like sabotaging the Forest Rights Act itself. As per the Act, the gram sabhas have the major power to decide on matters pertaining to the conservation and management of the forest. Though the fact remains that, practically, gram sabhas are still not given this control specified under this law, the Union government is trying to infringe the powers of gram sabha given by the Act,” says M Geethanandan, Kerala state coordinator of Adivasi Gothra Mahasabha, adding that the Union government wants to keep the resources with the Forest Department under its control.

Campaign for Survival and Dignity alleges that in most of the states, the forest authorities already have a monopoly over non-timber forest produce, which is the main source of income for forest-dwelling people. “This communication indirectly strengthens this practice by directing state forest departments to undertake projects for value chain addition on non-timber forest products without saying a word about respecting ownership rights,” it says.

CR Bijoy also adds that the existing ground reality in many states is already violative of the Forest Rights Act. Citing an example, Bijoy says, “During the scrutiny of the claims to certain forest produce submitted by tribal people under the FRA, the gram sabha approve these claims before it is forwarded to district-level committee, comprising the district Collector and officials from the forest and tribal departments. However, in most instances, the forest officials do not approve of these claims to forest produce.”

"All in all, the new joint communication, rather than a step forward for forest rights, appears to be one more (step) in a long sequence of efforts to undermine the law while rhetorically paying lip service to its provisions. We call upon the NDA (National Democratic Alliance) government to actually ensure respect for forest rights, rather than engaging in cynical eyewash exercises like this new communication," says Campaign for Survival and Dignity. Meanwhile, Adivasi Gothra Mahasabha has also informed that they will soon start a campaign against the joint communication of the ministries.

Source: <https://www.thenewsminute.com/article/union-govt-s-letter-implementation-forest-rights-act-attempt-dilute-law-152731>