

Why India's forest rights act is the most viable forest conservation law

11 May 2021

The Union environment ministry called for expressions of interest from consultancies on April 8, 2021, to prepare a draft comprehensive amendment to the Indian Forest Act 1927. Will fortress conservation make a legal comeback? And will Parliament collaborate in this disaster?

For too long forest conservation has been plagued by 'fortress conservation'. Based on the myth that humans can be separated from the natural world, forest enclaves are created, enclosed and policed by guards, gatekeepers and administrators. Increasingly militarised, these are fast emerging as killing fields. Forests, wildlife and forest dwellers faced the brunt of this ill-conceived pernicious conservation approach. India's Forest Rights Act 2006 (FRA) is perhaps the first law in the world to outright discard state-led fortress conservation, adopting conservation-based community forest governance instead. Conservation science affirms rights-based conservation as the future of conservation.

Fortress conservation is traced to the establishment of Yosemite National Park in 1864 for 'public use, resort and recreation'. It was carved out of California's Sierra Nevada Mountains by waging a war against its indigenous people, the Ah-wah-ne-chee, and forcing them out. The first Protected Area (PA) in the world, the Yellowstone National Park, was set up in 1872, a public park or pleasuring ground for the benefit and enjoyment of the people. The first legal conservation framework is the US Wilderness Act of 1964 which recognised the value of preserving "an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." The fact however is that there is hardly any part of Earth that is truly pristine and wild where human beings have not set foot and manipulated to meet their needs.

Protected areas

Of the 510.07 million sq. km surface area of the earth, 70.8% is ocean and the rest land. Currently [15.4% (20,749,121 sq km) of land and 7.6% (27,718,127 sq km) of oceans are under the PA regime through 257,889 designated PAs as on February 2021. About 363 million people inhabit these PAs. Tragically, 10.8 to 173 million people are estimated to have been displaced to make way for these PAs. Mark Dowie, the renowned investigative historian, says that "the only thing that has displaced more people around the world than war is wildlife conservation." And 1.65 billion to 1.87 billion people live in important biodiversity conservation areas.

According to the UN, 75% land surface has been altered and 66% ocean impacted. Some governments, powerful global conservation agencies and scientists argue that 30% of Earth should be under formal 'protection and conservation' by 2030 increasing to 50% by 2050.

Globally, forests cover 31% land area of 40.6 million sq. km accessed by about 1.5 billion people of whom 60 million are indigenous peoples or tribals. Three-fourths of these forests are government owned. About half the forest area is relatively intact. About 4.2 million sq. km of forest have been lost through conversion to other land uses since 1990. Between 2015 and 2020, deforestation was 0.1 million sq. km per year down from 0.16 million sq km in the 1990s. [18% of the world's forest area](<http://www.fao.org/3/ca8642en/online/ca8642en.html>) or more than 7 million sq km fall within legally established PAs.

Tryst with fortress conservation

India, with 2.4% of the world's land area, accounts for 7-8% of all recorded species. Forests, simply lands notified as forests by law, increased steadily from 18.19% of the land area in 1949-50 to 23.34% (767,400 sq km) in 2019. This is 1.78% of total global forests. The government aims to convert 33% of land into forests.

The Indian Forest Act 1927 provides for declaration of Reserved Forest (all rights are banned unless granted), Protected Forest (rights permitted unless banned) and Village Forest (Reserved Forest

assigned to villages), and regulates transit of forest produces and prescribes duty leviable on them. It defines what constitutes forest offences, prohibited acts and prescribes penalties for their violation. There are 4,526 forest villages (inside the forests) and many more that are undemarcated or unsurveyed. 100 million to as much as 400 million people access these forests. About Rs 20,000 crore per year is earned from non-timber forest products and absorbs 50% of the employment in forestry sector. The State of Forest Report 2019 tells us that 13 out of 28 States have 33% or more land area as forest lands. These include all the eight states in the northeast (Goa, Kerala, Uttarakhand, Chhattisgarh and Odisha being the other states) where about half of the land is forested. Over 55% of these forests are not notified as forests, nor administered by the Forest Department. Local communities govern them. They are categorised as unclassed forests. Of the top 5 States with forests, 4 are tribal majority states. The forest area in the north-east has, more or less, remained the same and dense forests have generally increased in most of these states. There are more forests in tribal dominated regions where forest department is not there or are present minimally. That's at least 110 out of 640 districts in the country. This stark reality should have been built upon assiduously as the basis for our approach to conservation. But it wasn't.

Fortifying the fortresses

Some 171,921 sq km (5.03% of the total land area or 24.27% of the forests) are under the PA regime of the Wildlife (Protection) Act 1972. It carves out National Parks with no rights, Wildlife Sanctuaries with restricted rights, Conservation Reserves in uninhabited government land but accessed by people and Community Reserves which include private land. The Act prohibits hunting of endangered species, lays down restrictions on hunting many animal species and list out offences that attract penalties as though conservation is merely a law and order issue. Yes. this conferred immense power to the forest bureaucracy to do what they will.

Currently this PA regime consists of 104 national parks covering 43,716 sq km (25.43% of PAs), 566 wildlife sanctuaries covering 122,420 sq km (71.21% of PAs), 97 Conservation reserves covering 4,483 sq km and 214 Community reserves covering 1,392 sq km. Marine PAs consisting of 10 National Parks, 115 Wildlife Sanctuaries, 4 Conservation Reserves and 1 Community Reserve cover 8,716.98 sq km. Of them, 6 National Parks, 95 Wildlife Sanctuaries and 4 conservation reserves covering 1,864.84 sq are in the island region and the rest in the Peninsular India. In addition, Tiger Reserves, an administrative category until 2006, were carved out of these National Parks and Wildlife Sanctuaries consisting of critical tiger habitat (CTH) or core area and buffer area. Provision was made to relocate the inhabitants from CTHs under Project Tiger which is still in operation, with a Rs.10 lakh relocation package which has been increased to Rs 15 lakh in April this year. There is no clear data available on number of people displaced from these PAs. However, 1 to 6 lakh people are estimated to have been displaced. Officially as on 12 July 2019, there were 57,386 families in 50 tiger reserves of which 18,493 families (33.23%) in 215 villages have been relocated from the CTH or core area. There are still 41,086 people in 496 villages. That these have been carried out in gross violation of the laws is another matter.

The forests and its PAs, including the much hyped Tiger Reserves, are denotified and diverted for all kinds of non-forestry projects including highly polluting extractive industries, and now for huge tree plantations to replace forests. Ironically, the State and Central governments are required to do all these under the Forest (Conservation) Act 1980 overseen by the Supreme Court constituted Central Empowered Committee. These too are fortresses of a different kind: no entry for forests, wildlife and forest dwellers. The lives of millions of forest dwellers do not figure any way in these blueprints for nation's glory.

Since 1947, over 6.2 million ha have been diverted for non-forestry purposes. The government charges Rs 4 lakh to Rs 10.43 lakh per ha of forest land diverted as Net Present Value (set in 2008) which was recommended to be revised to Rs 5.65 lakh to Rs 55.55 lakh per ha in 2014 but not revised. The government earned Rs 74,825 crore from the user agencies, of which Rs 65,378 crore [was disbursed](#) to states by 2019 as a compensatory afforestation fund.

Fortress breached

The first breach in fortress conservation occurred when the Wildlife (Protection) Act itself was amended in 2006 making Tiger Reserves, the most zealously guarded part of the PA, a statutory

category, until then only an administrative category. Such an amendment was deemed urgent to stem the tide of vanishing tigers. This was when the draft Forest Rights Bill was being debated heatedly. The critical wildlife habitat (CWH) provision in the Bill was grafted almost completely into this amendment as CTH. These are scientifically identified community confirmed areas facing irreversible damage due to the presence and activities of forest dwellers that threaten the existence of tigers. Community rights are to be recognised, livelihood affirmed, coexistence with wildlife promoted and, if not possible, only then secure livelihood based relocation and resettlement on mutually agreed terms with gram sabha consent. CTHs are to be kept 'inviolable', meaning not violated or harmed. The buffer area is to be identified scientifically with the gram sabha consent. Human-wildlife coexistence is to be promoted, livelihood, developmental, social and cultural rights of the local people recognised.

50 Tiger Reserves have been carved out of these National Parks and Wildlife Sanctuaries covering 71,027.10 sq km. Of this, 40,340.12 sq km is CTHs or Core Area and 30,686.98 sq km is the Buffer Area.

The second and final breach, the enactment of FRA, swept aside fortress conservation outright. Enacted four months later, and operationalising in 2008, FRA applied to 'land of any description falling within any forest area'. It includes unclassified forests, undemarcated forests, existing or deemed forests, protected forests, Sanctuaries, National Parks and Tiger Reserves including 'wastelands'. FRA recognised all conceivable traditional rights, whether listed in the law or not, except hunting. The demarcation of forest areas on the basis of rights, from no rights to graded rights have all been swept away. Conservation agenda was made central, all pervasive and expansive covering all forests and beyond. Forest governance was entrusted to all habitations that have any rights to the forests, literally lakhs of habitations with millions of people.

So what has changed?

The first big blow was when the Environment Ministry had to issue an order in 2009 making FRA implementation and gram sabha consent for diversion preconditions for admissibility of the forest diversion proposals. The Rules to the Forest (Conservation) Act were subsequently amended in 2014 and 2016 substituting these with District Collector's certificate instead, certifying that these have been done, and that too only after in-principle first stage clearance by the Environment Ministry. The tribal ministry meekly protested that this would make the diversion a fait accompli. Making a mockery of forest laws is nothing new for the government to facilitate 'ease of doing business'.

CWHs under FRA, once notified, cannot be diverted for any non-forest purposes unlike CTHs under the Wildlife (Protection) Act. This was the second big blow to the Environment Ministry. No wonder, the Environment Ministry issued guidelines for CWH notification, under pressure from the Court, only in 2018. No CWH has been notified yet.

The purveyors of fortress conservation are fighting back against the loss of their hegemonic power to do what they want with forests, wildlife and forest dwellers. Since 2009 till 2019, 253,179 ha were diverted for non-forestry purposes while another 182,817 ha degraded forests were diverted for tree plantations to compensate the former diversion, ironically branded 'Compensatory Afforestation'.

There are 170,379 villages, each having one or more hamlets that have forest lands as land use which are officially recorded. The Environment Ministry reckons that at least 40 million ha of forests (56% of the total forests) accessed by these forest dwellers need to be transferred to village institutions from the forest bureaucracy. By the end of 2020, only a fraction of this has been recognised and titled: 5.3 million ha, just 13.18% of the potential area and 6.9% of forests. The forest bureaucracy aggressively resists FRA implementation, especially in PAs. The constitutional validity of FRA itself is now under litigation in the Supreme Court by the proponents of fortress conservation.

Jurisdiction of gram sabhas

The third big blow, the biggest of them all, was that FRA designated the gram sabhas as the governing authority of the forests. They are to demarcate their community forest resource area (Sec.3(1)(i) of FRA): "forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities", and protect, regenerate, conserve, manage and regulate access (Sec.5(d) of FRA). This area includes the forest lands claimed under

individual rights of its members which are inalienable, non-transferable but inheritable, areas claimed for community rights of any kind irrespective of whether the area falls within any PA including the CWHs if and when notified by the Environment Ministry.

Further, the gram sabhas are to protect 'adjoining catchment area, water resources and other ecologically sensitive areas' (Sec.5(b) of FRA). They are also to preserve their habitat 'from any form of destructive practices affecting their cultural and natural heritage (Sec.5(c) of FRA). These may fall outside their community forest resource area. The gram sabhas are now required to prevent any activity in these areas, and outside as well, that could harm these areas. The territorial jurisdiction of the gram sabhas with regard to conservation now covers vast forest areas. They overlap with adjacent gram sabhas creating an intricate ecological web of collective responsibility. Conservation, access and use of these forests demands cooperation amongst adjacent gram sabhas rather than competition or conflict through the fullest expression of democracy.

Source:<https://science.thewire.in/environment/why-indias-forest-rights-act-is-the-most-viable-forest-conservation-law/>