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## **Introduction**

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

## **Preface**

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

**THE FOREST RIGHTS ACT, 2006: A CONSTITUTIONAL  
PROMISE DEFERRED - ANALYSING THE TENSION  
BETWEEN TRIBAL AUTONOMY AND STATE  
AUTHORITY IN CONTEMPORARY INDIA**

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**Abstract**

The Scheduled Tribes and Other Traditional Forest Dwellers Act, was enacted to rectify the "historic injustice" inflicted upon forest-dependent communities by colonial and post-colonial forest laws. Rooted in the constitutional vision of the Fifth Schedule, Article 21, and the Panchayats (Extension to Scheduled Areas) Act, 1996, the FRA sought to democratize forest governance by vesting authority in Gram Sabhas and recognizing both individual and community forest rights. Nearly two decades later, this paper critically examines the widening chasm between the FRA's transformative promise and its ground-level reality. It argues that tribal forest rights are being systematically undermined through a tripartite crisis, bureaucratic resistance leading to mass rejections of claims and non-implementation of community forest rights; legislative dilution exemplified by the Forest (Conservation) Amendment Act, 2023, which exempts large tracts from scrutiny; and emerging policy shifts toward privatisation of forest management. The paper further scrutinizes the judiciary's role, analysing landmark cases to demonstrate a pattern of judicial inconsistency sometimes fortifying rights, at other times enabling their erosion. Drawing upon government data on claim rejections and constitutional analysis, this paper contends that the FRA's failure is not one of legislative drafting but of political will and entrenched state centric paradigms. It concludes by urging a return to the constitutional promise of community led forest governance as the only sustainable path forward.

## I. Introduction

The relationship between Scheduled Tribes and forests in India is not merely one of habitation but one of profound cultural, spiritual, and economic symbiosis. Recognizing this, the Constitution of India, through its directive principles and special provisions, envisaged a protective regime for tribal communities. However, for decades, a colonial legal framework treated forest dwellers as encroachers on their own ancestral lands. A paradigm shift occurred with the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006<sup>1</sup>. This landmark legislation was conceived as a transformative instrument to correct the “historic injustice” meted out to forest-dependent communities.<sup>1</sup>

Nearly two decades since its enactment, the FRA<sup>2</sup> stands at a critical juncture. While it has facilitated the distribution of millions of land titles, its core promise of empowering Gram Sabhas and ensuring community-led forest governance remains largely unfulfilled. Contemporary developments, including a slew of judicial interventions, bureaucratic resistance, and recent legislative amendments, have created a complex and often contradictory legal landscape. This paper argues that despite the constitutional and statutory framework designed to protect tribal forest rights, these rights are being systematically undermined by a combination of executive apathy, judicial inconsistency, and legislative dilution that prioritizes state-centric developmental and conservation paradigms over community autonomy. This paper will first examine the constitutional foundations of these rights, then analyze the challenges in implementing the Act, followed by a critique of recent legal changes, and finally, assess the judicial response to these tensions.

## II. The Constitutional and Statutory Framework for Tribal Forest Rights

The constitutional vision for Scheduled Tribes is twofold: protective and integrative. This vision is operationalized through specific provisions that create a unique legal framework for tribal communities, particularly those in forest areas.

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<sup>1</sup> The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, § 3, No. 2 of 2007, Acts of Parliament, 2006

<sup>2</sup> Ibid

### **A. Constitutional Safeguards: Fifth Schedule and Article 21**

The Constitution provides a robust, though often underutilized, framework for tribal autonomy. The Fifth Schedule of the Constitution<sup>3</sup> empowers the President to declare areas inhabited by STs as "Scheduled Areas." Within these areas, the Governor has a special responsibility to regulate the application of laws passed by Parliament and the State Legislature, particularly concerning the "prohibition of transfer of land" from tribals.<sup>2</sup> More importantly, it empowers the Gram Sabhas in these areas to play a crucial role in the governance of natural resources.

This constitutional mandate was strengthened by the Panchayats (Extension to the Scheduled Areas) Act, 1996<sup>4</sup> (PESA). PESA was a revolutionary statute that declared the Gram Sabha as the competent authority to safeguard and preserve the traditions and customs of the community, and more critically, to own and manage minor forest produce.

Furthermore, the Supreme Court, through its expansive interpretation of Article 21<sup>5</sup>, has woven the right to livelihood and cultural existence into the fundamental rights framework. In *Gramin Sewa Sanstha v. State of M.P.*,<sup>6</sup> the Court held that the resettlement of displaced tribals must enable them to "continue with their lifestyle unaffected." More recently, in *Anil Agarwal Foundation v. State of Orissa*,<sup>7</sup> the Supreme Court quashed land acquisition proceedings in a Scheduled Area, holding that it violated the tribals' right to life and livelihood under Article 21<sup>8</sup>, as it deprived them of their natural resources and cultural identity.

### **B. The Forest Rights Act, 2006: A Corrective Legislation**

The FRA was enacted to operationalize these constitutional promises. It is a seminal law that explicitly recognizes the historical injustices suffered by forest-dwelling communities due to the colonial and post-colonial forest policies. The Act grants not just individual titles to cultivated land but, more importantly, recognizes community rights over forest resources.

Section 3 of the FRA provides a comprehensive list of rights, including the right to hold and live in the forest land under individual or common occupation, community rights and the rights over

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<sup>3</sup>Schedule V, Para. 5. The Constitution of India, 1950

<sup>4</sup> Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, No. 40, Acts of Parliament, 1996

<sup>5</sup> Article 21, Constitution of India, 1950

<sup>6</sup> *Gramin Sewa Sanstha v. State of M.P.*, (1986) Supp SCC 578.

<sup>7</sup> *Anil Agarwal Found. v. State of Orissa*, (2023) 10 SCC 435 (or 2023 INSC 361).

<sup>8</sup> *Supra* note 5

non-timber forest products. The most transformative provision is the right to community forest resources (CFR), which empowers the Gram Sabha to protect, regenerate, or conserve forests and to ensure that the developmental activities do not infringe upon the customary rights of the community. The FRA mandates the 'free, prior and informed consent' of the Gram Sabha for any relocation or developmental project affecting their forest rights, embedding a principle of community veto power.

### **III. The Implementation Chasm: Bureaucratic Resistance and Ground-Level Realities**

Despite this robust legal framework, the implementation of the FRA has been fraught with challenges. The gap between the law's intent and its execution reveals a deep-seated resistance within the state apparatus, particularly the forest department, which views the FRA as a threat to its Article 21<sup>9</sup>.

#### **A. The Scourge of Rejections and the Crisis of Pendency**

Official data paints a picture of slow, uneven progress, but a closer look reveals a crisis of rejection. According to data presented in the Lok Sabha in February 2026, as of December 31, 2025, a staggering 18,90,360 claims (36.41% of all claims filed) have been rejected. This includes over 18 lakh individual claims. During the last three years alone (2023-2026), 1,60,715 claims were rejected.<sup>10</sup> The primary reasons cited by states include lack of evidence or failure to prove three-generation residence criteria that are often impossible to meet for communities with oral traditions and no formal land records.<sup>11</sup> The Ministry of Tribal Affairs itself has acknowledged that "several claims are rejected on technical grounds, such as the absence of satellite imagery," clarifying that such technology should be supplementary, not a substitute for the evidence provided by the Gram Sabha. This "weaponisation of technicalities" by state-level committees, often dominated by forest

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<sup>9</sup> Ibid

<sup>10</sup> Ministry of Tribal Affairs, Government of India, 'Individual and Community Forest Rights Claims', PIB Delhi (5 Feb. 2026).

<sup>11</sup> Chitta Ranjan Pani, 'Forest rights act: A tale of bureaucratic intent and ground-level betrayal', Down To Earth, <https://www.downtoearth.org.in/governance/forest-rights-act-a-tale-of-bureaucratic-intent-and-ground-level-betrayal>

and revenue officials, effectively denies rights and renders communities vulnerable to eviction as "encroachers."

### **B. The Unfulfilled Promise of Community Forest Rights**

While 2.39 million individual titles have been distributed, the recognition of Community Forest Rights, which is the "soul" of the FRA, has been abysmally slow. As of late 2025, only 1,21,863 CFR titles have been recognized nationally. Where CFR rights have been recognized, as in the successful cases from Odisha such as Betakata and Rissia villages they have led to remarkable forest conservation and sustainable livelihood generation.<sup>12</sup> These communities have not only regenerated degraded forests but have also established Community Forest Resource Management Committees to manage the resources sustainably. However, in many other areas, even where titles have been granted, the rights are rendered hollow. For instance, the forest department often retains control over the lucrative trade of minor forest produce like kendu leaves, refusing to issue transit permits to Gram Sabhas, thereby perpetuating the exploitative contractor system and directly contravening Section 5 of the FRA.<sup>13</sup>

## **IV. The Emerging Threats: Dilution Through Legislative and Policy Changes**

Beyond the challenges of implementation, a more fundamental assault on tribal forest rights is unfolding through legislative amendments and policy shifts that seek to re-centralize forest governance and open it up to private interests.

### **A. The Forest (Conservation) Amendment Act, 2023**

The Forest (Conservation) Amendment Act, 2023<sup>14</sup>, has raised serious concerns. By exempting certain categories of land—including those near international borders and for security-related infrastructure—from the purview of the Act, it effectively bypasses the need for forest clearances and, consequently, the FRA-mandated consent of Gram Sabhas in those areas. Critics argue that

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<sup>12</sup> Nivedita Panda, 'How the Supreme Court order on Forest Rights Act impacts its implementation and forest-dependent communities', Down To Earth, <https://www.downtoearth.org.in/forests/how-the-supreme-court-order-on-forest-rights-act-impacts-its-implementation-and-forest-dependent-communities>

<sup>13</sup> Section 5, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, § 3, No. 2 of 2007, Acts of Parliament, 2006

<sup>14</sup> Van (Sanrakshan Evam Samvardhan) Adhinyam, No. 15 of 2023, Acts of Parliament, 2023

the amendment dilutes the expansive definition of 'forest' laid down by the Supreme Court in the T.N. Godavarman Thirumulpad case<sup>15</sup>, potentially leaving vast tracts of recorded but not notified forests outside the protective regime.<sup>18</sup> Furthermore, the provision that allows the central government to specify activities like eco-tourism or zoos as "non-forestry" purposes paves the way for the diversion of forest land without the mandatory FRA compliance.

### **B. The Spectre of Privatisation**

A related development is the recent circular issued by the Ministry of Environment, Forests and Climate Change in January 2026, which allows the leasing of degraded forest land to private entities for afforestation and plantation activities.<sup>16</sup> The circular exempts such leases from the requirement of paying Net Present Value and compensatory afforestation, sparking fears of privatisation of forest management. The opposition and civil society have argued that this opens the door for "forest land to private entities" under the guise of conservation, fundamentally undermining the community-centric governance model of the FRA. While the government maintains that this is only for "greening degraded land" and does not apply to dense forests, the move signifies a shift towards a market-oriented approach to forests, which sidelines the traditional rights and stewardship of tribal communities.<sup>17</sup>

## **V. The Judicial Balancing Act: Between Rights and Development**

The judiciary has played a pivotal role in shaping the discourse on forest rights, often acting as a crucial check on executive overreach. However, its record is not without blemish.

On the one hand, the Supreme Court has delivered progressive judgments reinforcing tribal rights. The Anil Agarwal Foundation case<sup>18</sup> is a landmark in this regard, where the Court firmly held that land acquisition for a private university in a Scheduled Area was not for a "public purpose" and that the failure to obtain the consent of the Gram Sabha under PESA vitiated the entire acquisition process. The Court explicitly linked the protection of land to the right to life under Article 21<sup>19</sup>.

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<sup>15</sup> T.N. Godavarman Thirumulpad v. Union of India, (1997) 2 S.C.C. 267.

<sup>16</sup> [Van Sanrakshan Evam Samvardh an Adhiniyam, 1980, § 1A, No. 28, Acts of Parliament, 2023](#)

<sup>17</sup> Ibid

<sup>18</sup> Anil Agarwal Found. v. State of Orissa, 2023 INSC 361 (Apr. 12, 2023).

<sup>19</sup> Supra note 5

In the case of *Sugra*<sup>20</sup> a dispute regarding the construction of permanent dwelling houses by forest-dwelling communities within forest areas. The petitioners argued that their right to habitation under the FRA included the right to build safe, durable homes on forest land where their rights had been recognized. The Union government contended that such construction required prior approval under the law. The question of law was on whether the construction of permanent houses by forest dwellers under the FRA could be undertaken without compliance with the regulatory requirements of the FCA, and how to resolve the apparent conflict between the two statutes. The Supreme Court declined to allow one statute to override the other, instead directing the Ministry of Environment, Forest and Climate Change and the Ministry of Tribal Affairs to formulate a joint policy framework within four weeks. The Court held that a "convergent interpretation" is necessary, whereby both statutes supplement each other in protecting human and environmental interests. This case exemplifies the judiciary's attempt to balance tribal welfare with environmental protection by delegating the task of harmonization to the executive branch.

In another matter<sup>21</sup> before the Chhattisgarh High Court, the Ghatbarra villagers in the Hasdeo Arand forest had their community forest rights recognized under the FRA. However, in 2016, the District Level Committee retroactively annulled these titles, claiming they were granted "erroneously" after forest land had already been diverted in 2012 for the Parsa East and Kete Basen coal mines operated by an Adani Enterprises subsidiary. The villagers challenged this revocation.

The question on whether the community forest rights, once vested under the FRA, could be retroactively cancelled on the ground that a mining lease predated the recognition of those rights. The Chhattisgarh High Court upheld the cancellation, labelling the original grant "void ab initio" and suggesting monetary compensation as an alternative to land rights. This ruling has been severely criticized for undermining the FRA's core purpose of correcting historical injustice. It sets a dangerous precedent by prioritizing mining interests over tribal rights and biodiversity, and by disregarding the mandatory procedural safeguards under the FRA, including the requirement of Gram Sabha consultation before any rights revocation.

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<sup>20</sup> *Sugra Adiwasi & Ors. v. Pathranand & Ors.*, Civil Appeal No. 2590 of 2019 (S.C. 23 Sep. 2025).

<sup>21</sup> *Hasdeo Aranya Bachao Sangharsh Samiti v. Union of India*, Appeal No. 16/2019 (NGT, Central Zone, Bhopal), [2019] NGT (CZ) 16

In the T.N. Godavarman Judgment<sup>22</sup> the Supreme Court, was hearing petitions challenging the Forest (Conservation) Amendment Act, 2023. The Court took note that most states had failed to comply with its 1996 and 2011 directions to identify "deemed forests" areas that are forests according to the dictionary meaning but are not officially notified as such. The question of law was whether states must complete the identification of deemed forests despite the 2023 Amendment which restricts the FCA's application to only "recorded" forest areas. The Court expressed anguish over the decades-long delay and directed all states to constitute expert committees to identify deemed forests within six months, warning that Chief Secretaries would be held personally responsible for non-compliance. This order is significant because it attempts to preserve the protective scope of the Godavarman jurisprudence, which the 2023 Amendment sought to curtail. By insisting on identification of deemed forests, the Court has created a potential safeguard against the Amendment's narrowing of forest protection, thereby indirectly protecting the forest rights of communities living in these unrecorded forest areas.<sup>27</sup>

In another matter the Orissa Mining Corporation<sup>23</sup> the OMC sought to undertake bauxite mining in the Niyamgiri Hills, a region considered sacred by the Dongria Kondh tribal community. The Ministry of Environment denied clearance, citing violations of the FRA and environmental norms. OMC appealed to the Supreme Court. The issue was whether mining could be permitted in an area recognized as sacred and central to the cultural and religious identity of a Particularly Vulnerable Tribal Group without the consent of the affected Gram Sabhas. The Supreme Court held that the rights of the Dongria Kondh under the FRA, including their community right to protect their places of cultural and religious significance, were paramount. The Court directed the Gram Sabhas to decide whether the mining project would affect their religious rights. This judgment is a landmark in affirming the principle of free, prior and informed consent and establishing that development projects cannot override the fundamental rights of tribal communities.

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<sup>22</sup> T.N. Godavarman Thirumulpad v. Union of India, W.P. (C) No. 202/1995, order dated 4 Mar. 2025 (S.C.),

<sup>23</sup> Orissa Mining Corporation v. Ministry of Environment & Forest (2013) 6 SCC 476

In the case of *Samatha v. State of Andhra Pradesh*<sup>24</sup>, the State of Andhra Pradesh granted mining leases to private companies in Scheduled Areas. The leases were challenged on the ground that they violated the constitutional protections afforded to tribal lands under the Fifth Schedule.

The Court examined the question on whether the State Government could transfer or lease tribal lands in Scheduled Areas to non-tribals and private companies for mining purposes. The Supreme Court held that the transfer of land in Scheduled Areas to non-tribals and private companies is constitutionally impermissible as it would defeat the very purpose of the Fifth Schedule, which is to protect tribal interests from exploitation. The Court ruled that only the State can hold such land in trust for tribals. This judgment remains a foundational authority on the inalienability of tribal land and has been consistently cited in subsequent cases to strike down acquisitions that dispossess tribal communities without adequate safeguards.

On the other hand, the Court's intervention in the implementation of the FRA has, at times, created chaos and insecurity. The most glaring example is its February 2019 order, which directed the eviction of an estimated 1.8 million forest dwellers whose claims under the FRA had been rejected. This order sparked nationwide protests and was eventually stayed after the government intervened. However, the fear of eviction persists, and the mandated review of rejected claims has been lethargic. The Court is also currently seized of a petition challenging the constitutional validity of the Forest (Conservation) Amendment Act, 2023<sup>25</sup>. While it has provided an interim stay on certain provisions, the final outcome will be critical in determining the future of India's forests and its forest dwellers.

## VI. Conclusion

The FRA remains a beacon of hope for millions of tribal and forest-dwelling communities. It represents a constitutional and legislative commitment to undo historical wrongs and to recognize the symbiotic relationship between communities and their forests. However, the journey from paper to practice has been arduous. The high rate of claim rejections, the lethargic pace of

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<sup>24</sup> *Samatha v. State of Andhra Pradesh* (1997) 8 SCC 191

<sup>25</sup> The Forest (Conservation) Amendment Act, 2023, No. 15, Acts of Parliament, 2023

recognizing community rights, and the continued control of forest bureaucracy over resources demonstrate a persistent state of "betrayal" of the law's spirit.

The new challenges posed by the 2023 Amendment<sup>26</sup> to the Forest Act and the move towards leasing forest land to private entities signal a dangerous shift back to a centralized, top-down model of forest governance. This model views forests as a resource for the state and the market, not as a homeland for its original inhabitants. The judiciary, while a crucial protector of rights, must navigate these complex waters carefully, ensuring that its interventions do not inadvertently cause more harm.

The constitutional promise of social justice for Scheduled Tribes cannot be realized without securing their rights over forests. As the UNDP has noted, global evidence shows that secure community tenure is the most effective way to ensure forest conservation and climate resilience.<sup>27</sup> For India, the path forward is clear: transparent review of rejected claims, strict enforcement of the FRA's provisions, strengthening of Gram Sabhas, and a firm rejection of any policy that seeks to alienate tribal communities from the forests that have sustained them for millennia. The fight for forest rights is, ultimately, a fight for the soul of India's constitutional democracy.

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<sup>26</sup> Ibid

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[https://www.undp.org/sites/g/files/zskgke326/files/2025-08/securing\\_rights\\_enabling\\_futures\\_policy\\_lessons\\_from\\_forest\\_rights\\_act\\_and\\_future\\_pathways.pdf](https://www.undp.org/sites/g/files/zskgke326/files/2025-08/securing_rights_enabling_futures_policy_lessons_from_forest_rights_act_and_future_pathways.pdf)