



INDIA

# MILLIONS OF INDIGENOUS PEOPLES ON THE VERGE OF LOSING THEIR HOMELANDS AGAIN

Prepared by:



**Scheduled Tribe and other Traditional Forest Dwellers Act, 2006** or better known as the Forest Rights Act, 2006 was conceived to address the 'historical injustices' the Indigenous Peoples and Traditional forest dwellers, who had been denied the legal rights to lands and other resources. The Forest Rights Act legally recognises the rights to access, manage and govern forest land and resources, and resources within village boundaries, which had been controlled by the forest department since colonial times. This was legally recognised by the Parliament by means of the Act, precisely because these communities had managed the forests and resources sustainably.

The Supreme Court's order of 13 February 2019 in the case challenging the constitutional validity of Forest Rights Act (FRA) directed the State governments to ensure the eviction of all forest dwelling Scheduled Tribes and other traditional forest dwellers from forest lands whose claims under the Act have been rejected on or before 24 July 2019. About two million claimants face the threat of eviction. **It is unfortunate that the BJP Government has so far chosen not to defend the FRA which has resulted in the Supreme Court's order of 13 February 2019.** The Judgement reflects a fundamental regression, when considering the purposes of the FRA, which include seeking to address 'historical injustices.' **Rather than reviewing and analysing the implementation of the Act and grounds for rejected claimants, in order to determine constitutional validity, which was what was under challenge, the Supreme Court chose to forcibly evict the people who have been living sustainably in the forests for centuries and protecting biodiversity and wild life.**

However, due to massive protest spearheaded by Indigenous Peoples and forest dwellers, against any dilution of the Act, the eviction order was put on hold until further hearing on 12 September 2019.

This move of the Supreme Court has been condemned by various quarters. Top environmentalists and conservationists across the globe have also condemned the order of the Supreme Court. They reaffirmed the claims of the Indigenous Peoples and forest dwellers to say that this move is a huge setback for conservation in India and called upon the central and state government to seek the reversal of this unjust order, not least because it will cause the immense harm to conservation. The BJP-led government is undermining the fight against climate change by attacking the rights of Indigenous Peoples and forest dwellers.

Additionally, the Government of India is also contemplating to replace the present Indian Forest Act (IFA), 1927 by amendments and bringing in more draconian clauses. The move has again drawn the attention of Indigenous and Tribal Peoples compelling them to go for concerted movement again. Many experts and activists says that **"The Indian government's steps imperil the livelihoods of millions of people, threaten to restore a colonial and autocratic model of forest management, and threaten the global fight against climate change."** This amendment will have severe impact on 8 million hectares of forest land classified as "Unclassed/ Unclassified" in North-Eastern Indian states alone which is customarily controlled by Indigenous Peoples. AIPP's members organizations in mainland India and Northeast India are also putting up their pressure on respective state governments to influence the central government, not to legislate anti-tribal or anti-people Forest Act.

# WHAT IS FRA?

Tribal and forest dwelling communities, who have been living within the forest in harmony with the environment and ecosystems, were faced with tenurial insecurity as a result of the divergence of forest wealth by the colonial regime to meet their economic needs. This continued after independence, as the same laws, which allowed this to happen, was adopted by independent India.

This colonial model forest laws empowered forest officials. This resulted in wide corruption by the bureaucrats at power while Indigenous Peoples and forest dwellers are subjected to harassment, eviction and torture on the pretext of being encroachers in their own home. This situation turned so critical in 1989 the then Commissioner for Scheduled Castes (SCs) and Scheduled Tribes (STs), in his 29th Report had said that “the criminalization of the entire communities in the tribal areas is the darkest blot on the liberal tradition of our country.” The eviction drive against peoples living in forest lands by the government in 2000 led to a mass protest. As a result of the sustained movement by Indigenous Peoples’ organizations and communities with the support from various quarters, The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) was enacted to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded.

## What Forest Rights Act do?

The Act does two things:

- Grants legal recognition to the rights of traditional forest dwelling communities, partially correcting the injustices caused by the forest laws.
- Makes a beginning towards giving communities and the public a voice in forest and wildlife conservation.

## What does the Forest Rights Act say?

The FRA set up three-stage process by which the rights of Indigenous Peoples and other forest dwellers were to be recorded and recognized. There were all together thirteen types of rights, including rights over land being cultivated, rights to non-timber forest produce and most importantly, the right to protect and conserve forest (there was no such law in India before recognizing this as right).

## How does the Forest Rights Act help conservation?

The provisions that recognize forest dwellers rights is used as a tool for conservation by the communities. Communities across the country are using the FRA against tree felling, commercial plantation in the name of compensatory afforestation, oppose ecologically destructive projects and consequent air, soil and water pollution and regenerative biodiversity. Thus, the act is preemptive and essential against climate change as well.

## What is the Supreme Court case about?

A group of retired forest officials and their associations filed [six cases in six High Courts](#) in 2008 and two wildlife NGOs filed cases in the Supreme Court against [Forest Rights Act](#) terming it as unconstitutional. The details of the court cases against Forest Rights Act can be found more in details [here](#).

## Struggle of tribal and traditional forest dwellers

Tribal people in India are converging all over the country and protesting the ruling of the Supreme Court. They have adopted various means of protest: protest march, Dharna, open letter to Governor, President, Chief Minister and the Prime Minister of the country. Tribal organizations have submitted memorandum to the Central Government to interfere in the SC decision. The government, during the court hearing only pleaded to defer the order while they could have appealed to dismiss the case outrightly. The government has done nothing substantial to mitigate the concerns of millions of affected people.

However, there are some state governments who have taken the measures to implement the FRA and stood by the Act. The State government of Chhattisgarh has committed to implement the FRA and assented to delegation of Indigenous Peoples' organizations to proactively settle land issues. **The government has provided community land entitlement to three communities- Surjula Gram Sabha of Jashpur district, Jargaon and Chicholi Gram Shabha of Raipur district in the state totaling 1,345.6 hectares of land.** The Chhattisgarh government also has given recognition to the Indigenous Peoples and declared the 9 August as public holiday to celebrate International Day of the World's Indigenous Peoples. This is the only state in India to do so.

The FRA, in fact has strengthened many communities and other conservation initiatives, and this eviction order puts that at risk. **Some of the cases that may be mentioned, where the FRA has been effectively used by local communities/Gram Sabhas to strengthen protection and management of forests, are the cases of Niyamgiri (Odisha), Gadchiroli (Maharashtra) and protected areas such as the Biligirirangana Hills, Tamil Nadu (BRT Hills).** The success of the management of forests in these cases clearly lies in the fact that the FRA has the potential to democratize forest governance, making it more accountable and transparent.

### People against the Supreme Court's order



Tribal and forest dwellers' protest against the Supreme Court's order in Chhattisgarh.



Protest march against the Supreme Court's order on FRA in West Bengal.



People protesting against police atrocity against tribal in Ranchi, India. Photo credit: AWN



IPFO team submitting memorandum to the Governor of Odisha.

## What did the Supreme Court's order in February 13 says and why?

The petitioner took the softer stand on Act in early 2016 and stopped asking for the Act to be struck down but demanded for the eviction of the forest dweller whose claims have been turned down. It is a completely misplaced claim by the petitioners. The BJP government remained silent on this and finally the Supreme Court gave order to evict the people whose claims were rejected. This led to the aggrieved situation where nine million forest dwellers are under the threat of losing their homelands and livelihood.

The order was condemned by [forest dwellers movement, conservationist](#), opposition parties and many [United Nations special rapporteurs for human rights](#).

Faced by the stiff protest the government went back to court and said that the petitioners are deliberately distorting the facts. The government admitted that the most of the [rejection of claims are illegal](#). The court fixed the date of next hearing on 12 September 2019 after a brief hearing on 6 August 2019.

Some states, despite the order being put on hold, are continuing the eviction drive leading to fatal clashes. The incidents in [Madhya Pradesh](#), [Telengana](#), [Uttar Pradesh](#) and some other states are live example of such clashes.

## What will happen on Supreme Court hearing?

If the court hears the case, it will:

- review the replies by state governments.
- hear applications from different groups seeking to be heard in favour of the FRA, including the senior conservationist and academics, national Indigenous Peoples and farmer's organizations and others.
- hear the view of central government.

Then it will depend on court to choose to keep the earlier order of eviction on hold, withdraw, or lift the hold, which will affect the nine million people.

However, the Indigenous Peoples and traditional forest dwellers of India vowed to fight the government to protect the Act and have the petition withdrawn. Asia Indigenous Peoples Pact (AIPP), being the regional organization doing advocacy and campaign movement for Indigenous Peoples' rights in Asia stand in solidarity with Indigenous Peoples in India in their struggle for justice.

Success story



COMMUNITY FOREST RIGHT  
ENTITLEMENT\_

THE COMMUNITY  
OF SURJULA  
BEGINS  
OWNERSHIP



*Surjula Forest Right Committee*

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Published by: **Asia Indigenous Peoples Pact (AIPP)**, 2019

Prepared by: Dharmodip Basumatary/AIPP

Layout by: Mona Sihombing/AIPP

112 Moo 1, Tambon San Phranet, Amphor San Sai, Chiang Mai, Thailand 50210

Contact : +66(0)53343539

Fax: +66(0)53343540

E-mail: [aippmail@aippnet.org](mailto:aippmail@aippnet.org)

[www.aippnet.org](http://www.aippnet.org)

[www.ccm.in.aippnet.org](http://www.ccm.in.aippnet.org)

[www.iphrdefenders.net](http://www.iphrdefenders.net)

AIPP is a regional organization established in 1992 by indigenous peoples' movements as a platform for solidarity and cooperation. AIPP is actively promoting and defending indigenous peoples' rights and human rights; sustainable development and management of resources and environment protection. Through the years, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/networks and 35 local and sub-national organizations including 16 ethnic-based organizations, 5 indigenous women and 4 indigenous youth organizations.

## **Our Vision**

Indigenous peoples in Asia are living with dignity and fully exercising their rights, distinct cultures and identity, and enhancing their sustainable management systems on lands, territories and resources for their own future and development in an environment of peace, justice and equality.

## **Our Mission**

AIPP strengthen the solidarity, cooperation and capacities of indigenous peoples in Asia to promote and protect their rights, cultures and identities, and their sustainable resource management system for their development and self-determination.



**ASIA INDIGENOUS PEOPLES PACT**  
An organization of indigenous peoples' movements in Asia