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Forest Laws in India

The importance of conserving and preserving forests has been a focus of religion and governance in India since ancient times.[1] The first modern forest-related statute was enacted during the British Raj in 1865. It was soon folded into a more comprehensive law, the Indian Forest Act, 1878. The legislation was predicated on the assumption that local communities were incapable of properly managing forests and that only a trained, centrally organized cadre of officers could properly manage them.[2] This statute was subsequently superseded by the Indian Forest Act, 1927 (IFA), which reaffirmed state ownership and control over certain forests.

The IFA continues to be the most important forest-management statute in India.[3] However, India has witnessed significant post-independence developments in the legal and policy framework on forest management, including the enactment of the Forest Conservation Act (FCA), 1980, the National Forest Policy (NFP), 1988, and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA), 2006. While the FCA was enacted to address the increasing pressures of industry on forests, the FRA accorded formal recognition to the rights of forest-dwelling scheduled tribes and other traditional forest-dwellers.

The Indian Constitution and Forests

Under India's Constitution, "forests" falls under the Concurrent List, a category of subjects for which legislative matters are shared between the central and state governments.[4] The IFA, a piece of central government legislation, has either been adopted by the states as it is or with certain amendments.[5] Alternatively, some states have enacted their own forest statutes on similar lines to the IFA.[6] As a result, there are numerous state laws on forests and forest resources. However, the basic framework for forest classifications, trade in and transit of timber, and forest products is largely drawn along the lines of the IFA.

The Indian Constitution requires the government as well as the citizens of India to protect and improve the environment and to safeguard the natural environment, including forests and wildlife.[7]

Interestingly, the Indian Constitution does not specifically assert state ownership over the forests and forest resources. However, it validates and retains a few state private forest acquisition acts,[8] wherein certain state governments are empowered to acquire and take over private forests for better management and preservation. As described above, the underlying principle of the legal framework on forestry in India is state sovereignty over forests. This principle draws its origin to the British Raj, when the government was keen to establish its primacy over forests in order to secure timber and other forests products. To date, forests are primarily government-owned with a small handful of private and community forests in certain parts of India.

The state ownership of natural resources was endorsed by the Supreme Court of India in the landmark judgment of *M.C. Mehta v. Kamal Nath*.[9] In this case, the Supreme Court upheld the "public trust doctrine," which primarily rests on the principle that certain resources like water and forests have such great importance to the people as a whole that it would be unjustified to make them subject to private ownership.[10] The doctrine enjoins the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

In the above matter, the Supreme Court took guidance from the famous case of *National Audubon Society v. Superior Court of Alpine County*,[11] the "Mono Lake case," in which the Supreme Court of California stated that public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands,

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ELR India Update™

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and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust.

Given the dynamics of the people-forest interface in India, as well as the ambiguity in forest inhabitants' historical rights over forest resources, the assertion of state ownership over forests has led to sustained conflicts between forest-dependent people and the government. Though the FRA formally granted legal protection to the forest rights of scheduled tribes and historical forest-dwellers, the state forest departments continue to have effective control over forests.

The Definition of "Forest"

Despite three pieces of comprehensive national forestry legislation dealing with varied aspects of forest management, there is no single commonly accepted definition of forests at the central government level, though certain states have attempted to define forests under their state forest statutes and for the limited purposes of such statutes. For example, the Maharashtra Private Forests (Acquisition) Act, 1975, defines the term "forests" in an extremely broad manner, including not only the land recorded as forests under the government records, but also the tracts of lands covered with trees, whether naturally grown or plantations.

Indian courts have been instrumental in filling the void in the legal framework. In 1953, the Nagpur Bench of the Bombay High Court held that while interpreting the term forests, the definition of forests as given in the Shorter Oxford Dictionary may be applied: "an extensive tract of land covered with trees and undergrowth sometimes intermingled with pasture."[12] Similar views were expressed by the Supreme Court of India while interpreting the scope of the terms "forest" and "forestland" as used in the FCA.[13] The Court held that the term forest must be understood according to its dictionary meaning. The Court further stated that this description would cover all statutorily recognized forests, whether designated as reserved, protected, or otherwise. The term "forestland" would not only include forest as understood in the dictionary sense, but also any area recorded as "forest" in the government record irrespective of the ownership. Today, these definitions of forests and forestlands, as used by the Supreme Court, are most commonly used, especially while enforcing the stringent provisions of the FCA, as discussed below.

It is critical to set out a legal definition of forests under the FCA or the IFA, considering the fact that in India, under the applicable laws, no ecological criteria are stipulated for the declaration of lands as forests. In fact, in a number of states, huge tracts of land having no or negligible tree cover have been classified as forests. The extension of the FCA to such wastelands or areas with scanty tree growth has repeatedly been questioned for impeding developmental works.

The Broader Scheme of the IFA

The IFA is the primary law regulating the management and control of government-owned forests and forest wealth. The IFA classifies forests into three categories—reserved, village, and protected—which are declared or notified as such by the relevant state government according to the process set out under the IFA. As mentioned above, the IFA does not lay down any ecological, sociological, or other criteria for the declaration of forests as reserved, village, or protected.

Under the IFA, any forestland or wasteland that is the property of the government or on which the government has proprietary rights can be declared a reserved forest. Human access and activities in such forests, including the felling of trees, as well as quarrying, grazing, and cultivation, are prohibited. However, the term "reserved forest" does not actually signify an ecologically sensitive area where human interaction is kept minimal with the intention of preserving natural resources. During colonial times, these areas were used exclusively for producing timber by the forest department. The surrounding villages had no rights other than the ones explicitly permitted by the state.[14] An area is declared a reserved forest only after the settlement of rights or other claims (of access and use of the land in question) of the local population. In this process, various historical rights and privileges enjoyed by the local communities often get extinguished.

The government is empowered to assign its rights over a reserved forest to a village community, and such forests are called village forests. The state may formulate rules for management of such forests by the communities. The idea is to create space for people's participation in forest management, along with defining the broader framework for such management. Unfortunately, this has been the most underutilized legal provision of the IFA. Very few examples of village forests can be seen in India, concentrated only in a handful of states, including Orissa and Uttarakhand.[15]

The third category of forests, protected forests, include forestlands or wastelands—not already included in a reserved forest—that are the property of the government

Settlement of Rights in a Reserved Forest

First Notification: Once the state government has determined that an area is to be declared a reserved forest, it notifies of its intention to do so along with the location and limits of such area. At this time, a forest settlement officer (FSO) is also appointed to inquire into and settle the rights of people over such lands. These rights may include right-of-way, right to graze, right to collect timber or other forest products, and right to cultivate.

Inquiry Into Such Rights: The FSO fixes a period of not less than three months to hear the claims and objections of every person having or claiming to have any rights over the land that is so notified to be reserved. The FSO conducts an inquiry into such rights, which includes giving a personal hearing to the claimants, perusing government records and other documents, and conducting an independent inquiry at the local level.

Settlement of Rights: After completion of the inquiry, the FSO passes an order either admitting or rejecting such a claim or right. When a claim is admitted, the FSO may exclude the area under consideration from the limits of the proposed forest. The FSO may also enter into an agreement with the owner or beneficiary for the surrender of his rights or may proceed to acquire the land under the terms of the Land Acquisition Act, 1894.

Record of Rights: All admitted rights are recorded in writing, with complete details of the right holder and the nature and description of the right admitted. These are called the forest settlement records. For example, in the case of the right to graze cattle, the settlement record would indicate the season during which grazing is permitted, the exact area over which grazing can be undertaken, and the number and description of the cattle permitted to graze.

Final Notification: After completion of the above requirements, the government passes the final notification for declaration of the forest as a reserved forest.

or over which the government has proprietary rights or entitlement to all or part of the land's resources. Similar to the process for declaring an area a reserved forest, the rights of the communities are settled before declaring an area a protected forest. However, most privately held use and access rights continue unless they are specifically extinguished by the government. The government may frame rules regarding the manner in which the village community may collect timber, trees, and other forest products, or graze cattle.

The IFA also regulates trade in forest products and timber, which is primarily controlled and managed by the government. However, states have enacted their own rules for the transit of and trade in timber and other forest products.

The IFA is primarily a control-driven forest statute, a manifestation of state assertion over forests and forest resources lacking convergence with conservation aspects. This is perhaps due to lawmakers' failure to anticipate the massive impact that the developmental and infrastructural activities would cause to forest wealth in the coming years. Thus, resource conservation was a void in the statutory framework that needed to be filled.

Private Forests in India

The concept of private forests in India is not uncommon, but after independence, the area classified as private forests has substantially decreased. Generally speaking, the term "private forest" is commonly used to describe private land supporting forest-like vegetation. These are mostly revenue lands under private ownership. Before independence, private forests existed in several Indian states, including Jharkhand, Maharashtra, and the northeastern states. However, with the introduction of land reforms after independence, the government acquired several tracts of private forests and took over their management. For example, in the state of Jharkhand, as much as 79% of forests were privately owned until the Zamindari system was abolished under the Bihar Land Reforms Act, 1950.[16] The acquisition was made necessary by the degradation and overexploitation of these forests, as well as the need to ensure equitable distribution of forest wealth to all communities. Various states enacted their own private forest acquisition statutes, whereby the state governments were given ample authority to acquire private tracts of forest.[17] Nonetheless, a few private forests still exist in certain Indian states.

In addition to the state private forests laws, the IFA also grants unbridled powers to state governments to take over the management of private forests. For example, in cases where owners have neglected forestland, the

government can take over the management of such lands under the terms of the Land Acquisition Act, 1894. The IFA also empowers the government to prohibit non-forest activities on private land and wasteland.[18]

The enactment of the FCA, read in conjunction with the Supreme Court directive described above,[19] changed the dynamics of private forest management in India, as the restrictive provisions of the FCA also apply now to private forests and plantations. Thus, while a person or private entity may own a forest, it cannot put such forestland to non-forestry purposes without the prior approval of the central government.

Forest Conservation and Restriction on Non-Forestry Uses

The FCA was formulated to fill a gap in the then-existing forest statutory framework: balancing ecological and developmental needs. Enacted to check deforestation and the use of forestland for non-forestry purposes, the FCA has provided a framework for the regulation of the indiscriminate and unscientific use—more bluntly, exploitation—of forests and forest resources, which was leading to the degradation of the natural environment.

The FCA is very clear in its approach and categorically prohibits the state governments from (i) de-reserving reserve forests, (ii) using forests for non-forestry purposes, (iii) assigning or leasing forestland to a private person or a nongovernment entity, and (iv) clearing naturally grown trees on a forestland for the purposes of using such land for reforestation, without prior approval from the central government. In other words, these activities are not completely prohibited and may be permitted in writing by the central government. The term "non-forestry purposes" includes the clearing of any forest land for the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops, or medicinal plants, as well as any purpose other than afforestation. Thus, every activity that leads to the denudation of trees or other growth aside from afforesation is a non-forestry activity under the FCA. However, the works relating to or ancillary to the conservation, development, and management of forests and wildlife, such as the establishment of check-posts and fire lines or the construction of fencing, bridges, culverts, dams, waterholes, trench marks, boundary marks, and pipelines, are not regarded as non-forestry purposes.

The Forest (Conservation) Rules (FCR), 2003, promulgated under the FCA have created a detailed procedure for obtaining forest clearance for undertaking the aforementioned non-forestry activities or pursuing the de-reservation of forests or forestlands. It is pertinent to note that a project proponent planning to set up an industry or any non-forestry activity, such as mining, building construction, or agriculture, is required to first apply to the state government. It is the state government that forwards the application to the Ministry of Environment and Forests (MoEF), only after an application has satisfied the state on all material aspects.

Before deciding upon an application, the MoEF forwards all applications to the Forest Advisory Committee (FAC) for advice on the proposed project and the conditions or restrictions that may be imposed to minimize any adverse environmental impact while granting the forest clearance. The FAC, while rendering its advice on a project, takes into consideration several factors, including the nature of the forestland—that is, whether the land forms part of a nature reserve, national park, or wildlife sanctuary; the nature of the proposed project; and whether any other non-forest area is available for the proposed project. The diversion of forestland for industry must also be compensated through the payment of the net present value of the forestland. Separate funds must be earmarked for compensatory afforestation and wildlife management.

The process of obtaining forest clearance is complicated and time-consuming. It involves several rounds of impact assessment studies, analysis, and deliberation. However, noncompliance with the provisions of the FCA may result in heavy penalties, including a complete moratorium on the project or industry. Many large-scale developmental projects have been stalled in recent times for noncompliance with the provisions of the FCA.

Rights of Forest-Dwelling Communities

Over recent years, the enactment of the FRA has completely changed the dynamics between forests and people in India. The IFA and the FCA were often criticized for subverting the forest-community relationship and pushing the forest-dependent communities beyond the forest boundaries. While the IFA led to large areas of forests—historically, the home of forest-dwelling communities—declared as reserve forests, the FCA made such a position unalterable by mandating that no forestland can be diverted to non-forest use without the permission of the central government. Thus, tremendous pressure was placed on the government to grant some legal sanctity to the rights of these communities. The preamble to the FRA also affirms that the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of state forests during the colonial period, as well as in independent India.

The FRA seeks to recognize and vest forest rights in forest-dwelling communities, including the occupation of forests. The FRA is based on the premise that forest-dwelling tribal communities and the traditional forest-dwellers are integral to the survival and sustainability of the forest ecosystem. It thus aims to address the long-standing insecurity of tenurial and access rights of forest-dwelling communities who were forced to relocate outside the forests due to state interventions.

The beneficiaries under the FRA include forest-dwelling scheduled tribes and traditional forest-dwellers. The term "scheduled tribe"[20] has a specific legal meaning in India, but it is incorrect to assume that every scheduled tribe is a beneficiary under this law. The FRA vests the forests rights into the scheduled tribes that primarily reside in and depend on forestlands for bonafide livelihood needs. To qualify as a traditional forest-dweller, a person must have resided in forestland for at least three generations prior to December 13, 2005, and be dependent upon forestland for bonafide livelihood purposes. The many forest rights covered under the FRA include both individual tenurial and access rights, as well as community rights over forest resources. The rights can also be categorized as land rights, access rights, usage rights, ownership rights, and management and control rights.

Similar to the IFA, the FRA also stipulates a process for the settlement of claims by tribals and forest dwellers. The FRA lists certain records and documents, such as gazetteers, censuses, surveys and settlement reports, research studies (which have the force of customary law), and the statements of elders in writing, all of which are taken as evidence of these individual and community rights. The rights under the FRA are inheritable, but not alienable or transferable. The FRA also places the Gram Sabha in the centre of the whole process and makes it the nodal agency for the settlement of rights process.

The FCA reinforced the idea of forest conservation in the forest policy, and the enactment of the FRA brought to the forefront the rights of the traditional forest-dwelling communities.

Conclusion

The forest regulatory framework in India is diverse and varied, but the three most important forest statutes are the IFA, the FRA, and the FCA. Each of these has a different intent and perspective over forest resources. This is essentially because forest management has always been a contentious issue in India, driven by economic interests, community practices, and cultural considerations. These laws also reflect changing government policies and priorities. The balance between individual and community rights of access and use, developmental needs, and conservation is difficult to achieve, especially since there are limited forest resources and increasing demand. Consequently, the implementation of these laws poses conceptual as well as administrative challenges for the government. The key lies in balance and harmony between seemingly inconsistent considerations.

Endnotes

1 The Mauryan emperor Ashoka, for example, motivated by his conversion to a pacifist form of Buddhism, made forest conservation a central focus of his reign in the third century B.C.E.
2 Preamble to the Indian Forest Act, 1878.
3 Although the IFA has been amended several times, its basic framework for forest management has remained the same.
4 Entry 17-A, Seventh Schedule, Constitution of India. Forests were brought under the Concurrent List, or List-III, under the Constitution (Forty–Second Amendment) Act, 1976, which came into effect January 3, 1977. Prior to this amendment, forests were covered by the states.
5 The states of Uttar Pradesh, Maharashtra, Gujarat, and West Bengal have introduced changes to the IFA.
6 See, for example, the Assam Forest Regulation, 1891, Orissa Forest Act, 1972, and Kerala Forest Act, 1961.
7 Directive principles of the state policy [Article 48A] and Fundamental Duties [Article 51A(g)].
8 Ninth Schedule, Constitution of India.
9 Writ Petition (C) No. 182 of 1996, Order dated 13.12.1996.
10 *Id.*
11 33 Cal. 3d 419.
12 Laxman Ichharam vs. Divisional Forest Officer (AIR 1953 Nag 51).
13 T.N. Godavarman Thirumulkpad vs. Union of India & Ors (In WP (C) No. 202/95 with WP (C) No. 171/96) decided on 12.12.1996.
14 Saxena NC; Tenurial Issues in Forestry in India (Planning Commission Report).
15 Though in Uttarakhand, the village forests were actually created under a different legislation, namely Scheduled Districts Act (Anon: Forests People and Power; Oliver Springate–Baginski & Piers Blaikie; 2007).
16 Department of Forests & Environment, *Jharkhand Forest*, *at* http://www.jharkhandforest.com/index.aspx.
17 Maharashtra Private Forests Acquisition Act, 1975, Kerala Private Forests (Vesting and Assignment) Act, 1971, Himachal Pradesh Private Forest Act, 1954, etc.
18 Section 35(1) of the IFA.
19 T.N. Godavarman Thirumulkpad vs. Union of India & Ors (In WP (C) No. 202/95 with WP (C) No. 171/96) decided on 12.12.1996.
20 The Constitution of India, Article 366 (25) defines scheduled tribes as "such tribes or tribal communities or part of or groups within such tribes or tribal communities as are deemed under Article 342 to be the scheduled Tribes (STs) for the purposes of this Constitution."

Neglecting the Forest Rights Act: The Case of Pohang Steel Company (POSCO)

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA or Forest Rights Act), 2006, was hailed as a historic step toward correcting past injustices and recognizing the rights of peoples living in India's forests. The preamble to the Forest Rights Act states that forest rights on ancestral lands were not adequately recognized during the consolidation of state forests during the colonial period and subsequently in independent India. It thus became necessary to address the long-standing insecurity of tenurial and access rights of the forest-dwelling scheduled tribes and traditional forest dwellers.

The Forest Rights Act not only provides for the rights to forest products and individual landholdings, it also recognizes that communities have the right and the power to protect and manage their community forests.

The key features or provisions of the FRA are as follows:

1. Section 3 recognizes certain rights of forest dwellers over forest land, minor forest produce, and the like;
2. Section 4(5) prohibits the removal of any forest-dwelling scheduled tribe or other traditional forest dweller from forestland until the completion of the recognition and verification of rights;
3. Section 5 recognizes the right and power of forest-dwelling communities to protect and manage their community forest resources; and
4. Section 6, when read with the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007, sets out the process of recognition and verification of forest rights.

There is some overlap between the FRA and the older Forest (Conservation) Act (FCA), 1980, particularly with regard to the diversion of forestland for non-forestry purposes, mostly development. This has become one of the most contentious issues in modern forest management. Section 2 of the FCA mandates prior permission of the Ministry of Environment and Forests (MoEF) for the use of forestland for non-forestry purposes. With the recent enactment of the FRA, the MoEF, when considering any diversion of forestland for non-forestry purposes, must now consider the settlement process in relation to the FRA. In addition, Section 5 of the FRA empowers village-level institutions to protect forest, wildlife, and biodiversity and to ensure that forest dwellers' living space is protected from destructive practices affecting their culture and heritage.

A circular dated August 3, 2009, provides further clarification on the relationship between the FCA and the FRA in development matters. In the document, the MoEF states that the state government is required to submit (along with the proposal for diversion) evidence of having initiated and completed the forest rights settlement process within the terms of the FRA. In particular, the following documents are required to be submitted:

1. A letter from the state government certifying that the complete process for the identification and settlement of rights under the FRA has been carried out for the entire forest area proposed for diversion, with a record of all consultations and meetings held;
2. A letter from the state government certifying that proposals for such diversion (with full details of the project and its implications, in local languages) have been placed before each concerned Gram Sabha (village council) of forest dwellers that are eligible under the FRA;
3. A letter from each of the concerned Gram Sabhas, indicating that all formalities and processes under the FRA have been carried out, and that they have given their consent to the proposed diversion and the compensatory and ameliorative measures, if any, having understood the purposes and details of proposed diversion; and
4. The Gram Sabha's written consent to or rejection of the proposal.

The FRA has faced resistance from government authorities and industry. There are undoubtedly issues concerning the tenability of placing certain individuals' rights over the needs of conservation. There is also some room for misuse of the Act by those not otherwise eligible under its provisions. However, these concerns do not occasion complete disregard of an otherwise well-intentioned law.

Still, the case study on Pohang Steel Company (POSCO) demonstrates how the spirit of a statute can be defeated by mere paper formalities.

About the Project

The government of Orissa, a state in eastern India, and (POSCO), a conglomerate from the Republic of Korea, signed a Memorandum of Understanding (MoU) on June 22, 2005, for setting up an integrated steel plant of a total capacity of 12 million tonnes per annum in Orissa at Paradeep. It was agreed that the Indian subsidiary of POSCO, POSCO-India, would develop and operate the steel plant to eventually produce a total of 12 million tonnes per annum, starting with four million tonnes per annum in Phase 1 with a proposed investment of 510 billion rupees (US$8.5 billion). The plant site is spread over an area that includes forestland as well as a coastal regulation zone (CRZ). The plant would require a total of 1620.496 hectares of land, of which 1253.225 hectares, or more than 77% of the total, is forestland. It would affect eight villages.

After the signing of the MoU, POSCO-India commissioned a rapid Environment Impact Assessment (EIA) of Phase 1 of the steel plant, along with a captive power plant and a captive minor port. The MoEF granted CRZ clearance as well as EIA clearance to the integrated steel plant in 2007. Further, in 2007, "in-principle" (Stage I) forest clearance was also given to the project for the proposed diversion of the forestland, subject to certain conditions, including the rehabilitation and resettlement of affected populations. By this time, FRA had not yet come into force.

The FRA became operational in January 2008. On December 29, 2009, the MoEF issued the final forest clearance under the FCA for the plant subject to several conditions, including a specific condition that rights of the forest dwellers in terms of the FRA should be settled before implementation of the project. Subsequently, in a letter dated January 8, 2010, the MoEF clearly communicated to the government of Orissa that the final approval of diversion of forestland in favor of POSCO is conditional on the settlement of rights under the FRA. However, the government of Orissa informed the MoEF that there are no tribal people or traditional forest-dwellers residing in the forest area proposed to be acquired by POSCO.[1]

However, by that time, large-scale public protests by the local inhabitants affected by the project had started. Several petitions were filed with the MoEF in this regard. A probe was ordered into the project and the MoEF and the Ministry of Tribal Affairs jointly constituted a committee to study the implementation of the FRA, particularly from the point of view of sustainable forest management. A sub-committee under the aegis of this joint committee submitted a report in August 2010, which observed noncompliance of the required processes under the FRA. Based on the sub-committee's report, on August 5, 2010, the MoEF asked the government of Orissa to stop transferring forestland until all the processes under the FRA had been satisfactorily completed.

Meanwhile, on July 25, 2010, a four-member committee was also constituted by the MoEF based on a recommendation made by the Forest Advisory Committee (FAC) to examine all issues relating to the diversion of forestland for the POSCO project. This was done in consideration of the substantial amount of forestland being diverted and in view of the representations that the FAC had received. The committee was first requested to look into issues relating to the implementation of the FRA and the rehabilitation and resettlement of project-affected communities. Subsequently, the committee was also directed to review the EIA, CRZ, and other clearances to the project. The report of the four-member committee was submitted on October 18, 2010. The committee members were not unanimous in their observations and recommendations, with one member submitting one set of findings and recommendations, and three others taking a different view. However, on the issue of the implementation of the FRA, there was broad agreement in the committee that the procedure to recognize forest rights should be redone in the project villages, as there were gaps in the settlement undertaken by the state government.

As per the report prepared by the majority of members, a large amount of documentary and oral evidence was found to support the presence of forest-dwelling scheduled tribes and other traditional forest-dwellers in the proposed POSCO project area, contrary to the claims made by the district administration and the Orissa government. The majority of the committee pointed out the following gaps in the settlement process:

- There was not adequate publicity, awareness campaigning, or training as required in the project-affected villages about various provisions of the FRA and the process that forms the first link of the FRA implementation.
- When the village councils were called for the first time in these villages on March 23, 2008, the required quorum in many cases was not complete to constitute the Forest Rights Committee (FRC). The district administration also did not fulfill its obligations to assist, support, and provide records as a part of the process.

- The district administration imposed an artificial and arbitrary deadline in an attempt to prevent the filing of claims. In fact, the power to extend the period of filing claims rests with the Gram Sabha as per FRA Rule 11. The Gram Sabha, if it considers it necessary, may extend the filing period an additional three months after recording the reasons in writing. This provision has not been followed by the district administration.

The committee therefore observed that the final forest clearance of the MoEF overlooked serious violations of their own rules and the procedures prescribed by law; imposing additional conditions in MoEF's January 2010 clarification, while allowing the clearance to stand, does not remedy the illegalities. The committee, therefore, strongly recommended the revocation of the final forest clearance to POSCO. It also recommended that the Orissa government initiate the implementation of the FRA process anew in the project area to ensure the settlement of individual and community rights as per the provisions of the FRA. The majority opinion also highlighted critical issues concerning noncompliance with the provisions of the EIA notification and the CRZ notification.

Ignoring the reports of the committee and other facts, the MoEF lifted the moratorium on the POSCO project through an order dated January 31, 2011, stating that the project can go ahead with "final forest clearance" if the Orissa government gives an "assurance" that there are no eligible persons in the area. The MoEF took the view that the area under consideration is not a scheduled tribal area. It appears that based on this, the MoEF assumed that there are no tribal communities in the area. However, it is pertinent to note that the FRA is not applicable only to scheduled tribal areas. As long as there are scheduled tribes in the forestland who qualify as "forest-dwellers" in terms of the Act, the FRA is applicable. With regard to the rights of non-tribal communities, the MoEF directed the state government to provide an assurance that there are no traditional forest-dwellers in the area who meet the eligibility criteria under the FRA. With this, most of the other issues concerning EIA and CRZ clearances were also put to rest with the MoEF deciding in favor of the project and only imposing additional conditions for such clearance. The Orissa government submitted the requisite "assurance" as requested by MoEF on April 13, 2011, and by May 2, 2011, the MoEF had lifted the stop work order on the POSCO project.

Recently, the National Green Tribunal suspended the environmental clearances granted to the project. The final order dated January 31, 2011, of the MoEF has been suspended until fresh review and appraisal of the project. This order was mainly based on the grounds of violation of the principles of natural justice and irregularities in the EIA.

The story of POSCO reveals that where the state government is not committed to honoring its obligations under the FRA, the spirit of the Act can be subverted by taking advantage of small technical issues. The state government's submission that there are no tribal communities in the forestland was unfortunate. The MoEF's final order based on the fact the area in question is not a notified tribal area and seeking only the state government's assurance that there are no forest dwelling non-tribals in the area clearly stands on shaky ground.

Endnote

1 Letter dated March 16, 2010, from the Government of Orissa to the MoEF regarding the status of the tribal people or traditional forest-dwellers residing in the forest area.