

What can the Forest Rights Act Decentralise: Protection or Conservation?

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The Rules for The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 (henceforth RFRA) were finally gazetted in January 2008. The six month wait in gazetting the rules, which first appeared in draft form in June 2007, is only representative of delays that have beleaguered the Act since its introduction as a Bill in 2005. Conflict prevailed between conservationists and tribal rights groups in the form of protests and lobbying. The very process of writing the provisions of the Act, wherein each lobby at different junctures in the nearly 3-year legislative career of the Act included and excluded favourable and unfavourable clauses and whole sections, reflects this conflict. This essay refers to such conflicts, especially the one that possibly prevailed in the changes made to the draft rules. It draws implications these changes could potentially have for how the RFRA achieves what is stated in its preamble, namely, to 'strengthen the conservation regime of forests'.

Drafting Conflicts

Sunita Narain, in an editorial in *Down to Earth* (November 2007) describes well the conflicts among lobbies while the bill was being drafted. She writes that after the tiger lobby blocked the bill, an uneasy truce was brokered to provide for relocation of people and to maintain their rights. The bill later presented to parliament included a provision of temporary pattas (land deeds) for people who were to be relocated from sanctuaries and national parks. This ensured protection of rights even as it

allowed for the government to undertake relocation within a time-bound schedule. But the tribal lobby, with an advantage in parliament, raised the stakes, and in late 2006 the Act, finalised by a joint parliamentary committee, dropped this clause. A new term, 'critical wildlife habitats,' was inserted instead. These habitats would need to be *established* as inviolate wildlife zones. Further, the rules for the Act required guidelines regarding the nature, process, validation, and interpretation of data to be collected for designation of such critical wildlife habitats. This virtually questioned 'the legality of all protected areas'. Conservationists, in turn, reacted and wanted all wildlife areas (over 600 of them) to be re-designated as critical wildlife habitats and removed from the ambit of the Act.

Later, though it appears that the conservation lobby had prevailed in rewriting the draft rules, an opinion prevails among rights sections that the changes introduced in the final rules (especially the exclusion of Section-24, which provided an institutional roadmap for operationalising duties), were all for good, after all. The reason? Because the section contained clauses that required Gram Sabha plans for conservation and protection to be 'harmonised' with working plans. Also these committees were to guide Joint Forest Management (JFM), thereby potentially lending legitimacy to schemes that usually lacked 'jointness'. A comparison of the finalised rules with the draft rules will show that the functions of the Gram Sabha have been diluted even as it is required to accommodate conservation

interests. And, as mentioned, the institutional process for implementing the 'Duties' provision of the RFRA has been excluded.

Draft Rules

So what exactly did the draft rule Section-24 provide for? It provided a possible framework to institutionalise the 'Duties' clause of the RFRA. The clause 'empowered' right holders and Gram Sabhas to protect biodiversity and ensure the preservation of their habitats against destructive practices that affect their cultural and natural heritage. It required that plans, norms, methods, and procedures be prepared for protection and management of community forest resources, and that these be harmonised with official prescriptions and plans. Norms for protection, regulation and sustainable use were required to be institutionalised. So were norms for community wildlife management. Section 24 has, instead, been collapsed into one function of Gram Sabhas under subsection 'e' of Section-6 of the final rules, namely, that Gram Sabhas must 'constitute Committees for the protection of wildlife, forest, and biodiversity, from amongst its members, in order to carry out the provisions of Section-5 of the Act'.

The other alterations made to Gram Sabha functions render temporary any relief that the rights lobby felt over the exclusion of the institutional roadmap. For instance, subsection 'a' of Section-4 of the final rules states that Gram Sabhas will 'initiate the process of determining the nature and extent of forest rights,

receive and hear the claims relating thereto'. The word '*settle*' that appears in the draft rules has been removed. This implies that the Gram Sabhas cannot settle disputes over rights. Before passing any resolution on rights they need to consider the forest department's disputes over rights that are sought to be given. If unsatisfied with the Gram Sabha's resolutions, the forest department can appeal to the sub divisional committee according to subsection 'g' of Section-6. The italicised portions of this subsection, which reads 'hear petitions from persons, *including State agencies*, aggrieved by the resolutions of the Gram Sabhas' have been inserted in the final rules. Leave alone the scenario of Gram Sabhas having to harmonise their plans with official ones, it now appears that vesting such rights could itself be difficult as Gram Sabhas have to take cognizance of objections by the forest department (of which there may be plenty, especially in the context of 'critical wildlife habitats') even as it would be difficult to resolve such objections.

'Conservation' and 'Protection'

In the interim, between the draft and final rules, many a forest in India and its people may have been engaged with by NGOs and scientists, natural and social, broadly in the legislative spirit of the RFRA but also specifically in the context of the institutional roadmap suggested in the draft rules. The positive aspect of the draft provision was that by providing an institutional framework for right holders and Gram Sabhas to carry out their duties it ensured that the duties clause was indeed operational.

Also, by using the words 'protection' and 'conservation' separately, the draft rules facilitated an interpretation of duties as entailing conservation (recruiting local knowledge, e.g., observations through an epistemic partnership) and protection (policing/vigilance) functions. The

separate usage of 'conservation' and 'protection' in the Act's provisions seemed intended. Thus, in phrases such as 'right to protect, regenerate, or conserve or manage,' or 'traditionally protecting and conserving for sustainable use,' these two words seem at best to be used as options but not really as substitutes. As legal codes have to be crisply written for unambiguous interpretation, using 'conserve' and 'protect' in a repetitive sense of meaning the same thing, e.g. policing and vigilance over resources, is counter productive. Also from an external perspective 'protect' and 'conserve' can plausibly be interpreted to mean 'policing,' and 'formal' or 'local knowledge' application, respectively, by way of an appropriate analogy of what a Protected Area means and what happens in terms of management within it.

A forest is protected by wildlife law. An administrative hierarchy consisting of bureaucratic roles that range along a super and subordinate continuum protects a park or a sanctuary using the threat of punitive sanction and physical policing. Within this protected space, 'conservation' happens as a scientific endeavour entailing sometimes theoretically esoteric but usually empirically oriented research in biodiversity. Thus, the use of the word 'conservation' offered scope for recruiting local communities as epistemic partners under decentralised circumstances. This is why the provisions in the draft rules gave scope for decentralised 'conservation,' and not just for 'protection'.

Conclusion:

The Problem with 'Protection'

The suggestion that plans and procedures for protection and conservation needed to be harmonised with official working and management plans, may have been resisted by rights groups and sympathetic alliances. The conservation

lobby would not have been happy with striking epistemic partnerships with local constituencies either. One could attribute lobbying and counter lobbying by rights and conservation lobbies for the insertion of the word 'conservation,' and the need to 'harmonise' plans and procedures for the same with official plans, respectively. Similarly, one could attribute to lobbying the removal of the institutional framework in the final rules. But who lobbied for what is not an easy surmise. The conservation lobby would certainly have resisted the roadmap to decentralisation of not just protection but conservation, which the draft rules provided. The rights lobby, likewise, would have been uncomfortable with such an elaborate institutional roadmap for protection and conservation, and especially with the clause to harmonise.

What now remains is only protection through the impermanent and unstable arrangement of 'committees'—a mode that the government is quite familiar with, and one that has been subject to widespread criticism. And as for 'protection,' it is not some unique prescription of the RFRA, but a general constitutional guideline. Every Indian citizen has the right to protect the environment. The bestowal of protection duties would only create a policing proletariat in Indian forests. Decentralised conservation involving epistemic partnerships—using local and customary knowledge, say in the form of observations and practices in conjunction with scientific knowledge—would remain a dormant democratic agenda.

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