

# When can Users be Owners? An Analysis into the Forest Rights Act, 2006 among the Sahariya Tribal Community in Central India

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## Abstract:

Often described as the “upland, forested, remote and tribal” region of India, Madhya Pradesh is home to 46 Scheduled Tribes, who according to several studies appear to be the ‘poorest of the poor’ in India. The Sahariya *adivasi* community form a part of this diverse group of people that contribute to this population. For decades, even after India gained independence and the advantage of positive discrimination, the Sahariyas have barely been able to stay afloat. The ‘free gifts of nature’ that have been distributed in the ecologically diverse and richly endowed tribal belt of India necessitated exercising ‘control over nature’ by the Modern Democratic State Agencies in the pursuit for ‘economic growth’. Forest ‘commons’ in the form of pastures, non-timber forest produce etc. that have been used and collected by the tribals were categorised under *state property*. The idea of eminent domain prevailed above all. Under such circumstances, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 enacted by the Central Government of India has been the first attempt by the state to revisit these sweeping take-overs and attempt to repair the historical injustices that have been played out on people living in and around forested areas. Though the Forest Rights Act shows potential in legitimising ‘commons’, ground realities during implementation have thrown up varied challenges from all parts of the country. This paper will attempt to look at the effectiveness of the Forest Rights Act in the governance and management of Common Property Resources. To what extent and in what ways is this legislative reform playing out on ground? Who gains and who loses, and why? These are some of the fundamental questions that will be attempted to be answered through an *action research* studying policy and practice in Sheopur District of Madhya Pradesh.

*Legal reforms; Forest Rights Act; Sahariya tribals; governance of commons*

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## INTRODUCTION:

*“Oh horse, what difference does it make if you are stolen by a thief? You do not get much to eat here, you will not get much to eat there. No matter who becomes the next master, we will remain his slaves.”*

-Fakir Mohan Senapati in *Six Acres and a Third*

Often described as the “upland, forested, remote and tribal” region of India, Madhya Pradesh is home to 46 Scheduled Tribes<sup>2</sup> who according to Sundaram and Tendulkar (2003) and several others appear to be the ‘poorest of the poor’ in India. The Sahariya *adivasi* community form a part of the diverse communities of people that contribute to this population. For decades, even after India gained independence and the advantage of positive discrimination, the Sahariyas have barely been able to stay afloat. The tribal belts of India have often been around the most diverse and richly endowed lands of the country. But the ‘free gifts of nature’ necessitated exercising ‘control over nature’ by the modern democratic state agencies in the conquest for ‘economic growth’. Forest commons in the form of pastures, non-timber forest produce etc. that have been used and collected by them were now categorised under state property. In 1999, 1650 households of the Sahariya tribals were displaced from the Kuno Wildlife Sanctuary, anticipating the introduction of the *Asiatic lions* without adequate compensation. Specific studies have shown deterioration in their material conditions post displacement (Kabra 2009). Now in 2012, once again, an equally large number is anticipating another displacement due to the construction of a dam further downstream of the river. In both cases, the idea of eminent domain prevails above all. The state of the Sahariyas like most other tribes is akin to the *horse* in Senapati’s *Six Acres and a Third*.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 can be seen as an attempt to address the grave situation that recalls the 19<sup>th</sup> Century feudalism prevalent in India. Interestingly, this legislation provides a valuable link between the idea of commons and its associated legal reforms.

## ASPECT OF RESEARCH

Historically, the idea of ‘commons’ as a jointly-used resource extraction regime has been studied and documented all across the world, especially in developing countries. Large areas of land have been traditionally used and controlled by people dependent on common pool resources to shape their livelihoods. But increasingly, common land and resources therewith are reported to have been shrinking, through state policies that are instrumental in acquiring them citing various reasons (Menon and Vadivelu 2006).

A substantial part of these ‘commons’ have been classified in state records as ‘forests’. A large number of literature concerning dependence on Common Property

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<sup>2</sup> [http://censusindia.gov.in/Tables\\_Published/SCST/dh\\_st\\_madhya\\_pradesh.pdf](http://censusindia.gov.in/Tables_Published/SCST/dh_st_madhya_pradesh.pdf),

(website accessed on October 30, 2012)

Resources (henceforth CPR)<sup>3</sup> has concentrated on forest dependence (Chopra and Dasgupta 2002). Thus forests form an integral part of commons, especially in India.

In the Indian context, post-independence strategies have been bent towards acquisition and conversion of 'commons' into exclusive state asset, thus restricting access and control for locals residing around such areas (Arnold 1998). Forest dwellers, in this context, have been positioned at the bottom of all socio-economic hierarchies, facing marginalities in multiple aspects of living. The state on the other hand, which acts as a guarantor of fundamental rights to its citizens also plays the dual and contrasting role of taking the lead in violent resource extraction, to feed the ever-hungry 'economic growth'. Since forests act as a store of wealth-generating natural resources, control over forest remains to be in the state's assertive hands. The state, within its powers also plays the role of a decision maker during competing demands for resource extraction (Kashwan 2013). Through its forestry arm, the state exerts control over resource extraction; customary forests used by generations of forest dwellers are internalised by them as belonging to the state.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of) Forest Rights Act (henceforth FRA) in this context is a legislation that aims at legitimising use of forest commons and common property resources through land rights. Enacted in 2006 and enforced in 2008, this legislation attempts to undo the historical injustice that have been faced by individuals and communities that have lived in and around forest land, and whose livelihoods have depended considerably on the forest. The legislation was the result of a sustained campaign for forest rights by forest dwellers, tribal organisations and activists. It divides forest rights into two categories: individual tenurial rights on forest land, and community rights to gain access to common property. By recognising land rights, the FRA attempts to secure livelihood and food security, while promoting sustainable use of commons.

This paper is divided into three parts; the first part problematises the idea of environmental conservation in terms of global pressures and state reaction. This is followed by an attempt to grasp the idea of ownership of forest commons among users and state representatives, and trace the changing patterns of resource ownership. It goes on to investigate whether the subjects sense a shift in power hierarchy in the use of forest commons with the new legislative reform. Finally I will show that the changing idea of ownership is only loosely attached to protection of commons in context of this new legislation.

This paper has been informed by field knowledge obtained through an action research while participating in the process of implementation of the Forest Rights Act 2006.

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<sup>3</sup> Common Property Resources, in its most common understanding refers to resources that are used in common and are managed collectively, unlike open access resources. The use of the term in this context however, refers to all resources that are used by a broadly defined collective of users. It may be *de jure* under the control of a specific group of users, or *de facto* used by a group of people. 'Common Pool Resources' or 'Commons' will be distinguished from 'Common Property Resources' for the purpose of this paper, to represent resources that are *used but not strongly managed* by users as common property.

## THE IDEA OF CONSERVATION

With the intensification of the discourse of 'conservation' in the 1970s, there was a rise in the number of protected areas across India. In three decades, between 1969 and 2000, areas demarcated as 'protected' increased ten times, covering 4.7 percent of India's landmass (State of Forest Report 1999). The idea of *eminent domain* was reinstated with the support of 'biodiversity conservation', 'environmental protection' and 'developmental progress' (Kumar and Kerr 2012). Keeping in line with international norms and standards, these tropes were attempted to be achieved through policies that excluded local population from this effort.

The 'idea' of conserving forest landscapes is to be read in the background of a specific imagination of the 'forest'. 'Deforestation', 'degradation', 'desertification' are terms used to combat 'global environmental crises'. Human land-use has been targeted as the primary factor for such devastation. How are these terms defined, and how do definitions impact the protection and management plans of real forests? Degradation for example, is understood through technical concepts like 'forest cover' and 'canopy cover'. But not every forest is likely to have 'canopy cover', 'thick vegetation' and 'tall trees'. The dryland ecology of Madhya Pradesh classified under state forests, that houses several tribal communities is far removed from these imagined forest landscapes.

In the agenda to salvage the 'environment', conservation topologies were mapped and protected areas demarcated without taking into consideration that 69% of the areas declared as wildlife sanctuaries were inhabited by local communities (Kothari, Sabharwal and Rangarajan 2000) (Prabhu 2005). Conservation efforts and protection of rights of people depending on these spaces were 'mutually irreconcilable', by this technique. Legislations like the Forest Conservation Act 1980, Indian Forest Policy of 1952 reinstated the widening divide between local users and the state. The Indian Forest Act of 1927 empowered the Government to declare stretches of land as Reserved or Protected Forest, and provided for the settlement of rights of forest dwellers before declaration of such spaces. But such surveys were far from being completed. In Madhya Pradesh itself, 82.9% of the forest blocks have not been surveyed till date (Prabhu). Large tracts of land were classified under state forests, which often included huge regions of village commons.

In the developing world, this agenda is being carried out by increasing support from international bodies of the developed nations that have been promoting a certain kind of conservation, without paying attention to the means to achieve the targeted goals. Claims of degradation of forests due to local use allowed technical experts to plunge into the task of rejuvenating the 'inviolable' spaces by displacing forest dwellers or imposing restrictions on them.

This technocratic code of exerting power creates a new subject in the 'local user' from whom the forest space needs to be protected. The 'subject' or the local user is influenced by the external pressure of being subjected to restrictions, as well as the internal 'power over' the subject that makes them internalise the subject position in their everyday. In that sense, not only does state utilisation of power marginalise the local user, but power also allows local users to *ascribe* to their given position and *react* to it. It begins to form the self-identity of the subject. (Butler 1997).

## BACKGROUND OF THE FOREST RIGHTS ACT

Among international debates on planning 'conservation' tactics, a small camp broke away from the 'scientific' way of addressing the issue to a more 'participatory' technique in the 1980s. In India, national debates took a seemingly radical shift in looking at the way forest commons were managed and governed. Borrowed from Kashwan (2013), the discourse of environmental protection took a turn away from *techno-bureaucratic* to a *developmentalist* code of operation. Terminologies like 'community participation' and 'participatory forest management' were the new catchphrases in the agenda for Global Conservation. The 'fortress' model was critiqued by The International Union for Conservation of Nature (IUCN) during this period, and instead, suggested an 'Integrated Conservation and Development Programme' that involved local participation in conservation (Kabra 2009). Power was decentralised to lower offices of the state that would then work along with local communities in an attempt to protect and regenerate forest commons. The Joint Forest Management Programme by the Indian Government was one attempt to play the dual role of forwarding the global strategy of conservation along with promoting local livelihoods.

But efforts such as this failed to grasp the local level politics within communities that prevented many locals from responding within a linear line of logic. A new moral economy was drawn up, to include subordinated groups in managing forests (Sundar and Jeffery 1999), mired by multiple presumptions and uncritical examination. In Robbins' words, "Similarities and differences are negotiated, hijacked, and reformed along the fault lines and schisms of local power." (Robbins 2000)

Between the 80s and the early 2000s, regulations and legislations were drawn up without altering the predominant tenurial control of the state over forest land. Since rights of forest tribals and non-tribal forest dwellers were never legally recognised, any attempt to include locals in conservation effort had a possibility of being seen by them as a half-hearted effort towards restitution. Primary decision making was still in the hands of the lower strata of the state bureaucracy. Even within the locals, power dynamics informed decision-making within the bureaucratic system.

Such was the historical context within which the Forest Rights Act of 2006 played out. It gave a new meaning to the understanding of participatory forest management and community participation by the way it dealt with the concept of *state property*.

The present situation in the selected field site is note worthy, since they are likely to be displaced due to the construction of a dam further downstream of the river. The area occupied by the villages has been identified as being in the proposed reservoir area. Thus in the event of displacement, these villages stand to lose those livelihood resources that are acquired from the adjoining forest commons. The implementation of the FRA plays a key role under such circumstances, as time as again it has been noted that compensation for livelihoods dependent on common pool resources has never been integrated into the displacement package. Thus it becomes essential to assess their dependence on common resources and devise a way they can be best compensated when displaced. To this regard the FRA acts as a significant legal

apparatus. Forest commons, that were so long classified as state forest in land records, belonging exclusively to the Forest Department, would now change hands to be a property of the user. Herein lies a potential of radical change in the way commons could be viewed and experienced by the new beneficiaries/ right holders/ locals/ traditional conservationists or in whichever terminology the new owners are called. How do the dynamics of power play out between the traditional *subordinated* and *subordinator* when legislative reforms alter authoritative control over resources?

## THE LEGISLATION

The Forest Rights Act, passed by the Ministry of Tribal Affairs (MoTA) aims at acknowledging the organic linkages between conservation and community rights. Under the provisions of the act, rights can be acquired by individuals or communities on forest land that have been traditionally used by them. The Act vests holders with rights of tenure that are heritable but not saleable. The land in question continues to remain classified under state forests, but the ownership of resources on that land is vested to the right-holder.

The two study villages claim two separate types of rights under the provisions of the Act

### 1. Community Forest Rights (CFR) to claim rights to

- Own, access, use and dispose of minor forest produce which has been traditionally collected with the claimed land
- Other community rights of uses or entitlements such as fish and other products of water bodies, grazing
- Protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.

### 2. Individual forest Rights (IFR) to claim rights to

- Own, access, use and dispose of minor forest produce which has been traditionally collected within claimed land (resin from *boswellia serrata* in this context)

## THE COMMUNITY

The community for the purposes of claiming right and also for this paper refers to the Sahariya *adivasis*, classified as a Primitive Tribal Group (PTG) in state documents. The Sahariyas have been a socially, politically and economically marginalised community, their lives linked very closely with the adjoining ecological surroundings. They have over the years, evolved a diverse livelihood portfolio to deal with multiple risks associated with dryland ecosystems. The livelihood practices of the Sahariyas have been noted to be less market-oriented and profitable than their non-*adivasi*

counterparts (Kabra 2009), depending mostly on resources from forest commons. Resin from *Boswellia serrata* is one of the primary NTFP collected by them. Other interactions with the forest commons include pastures and fodder for their cattle, fire-wood collection, and collection of various fruits, tubers and roots for consumption as well as sale.

## THE 'FIELD'

During the course of the study I actively participated in the process of claiming Community Forest Rights (henceforth CFR) and Individual Forest Rights (henceforth IFR) under the Schedules Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, by the Sahariya *adivasis*.

I selected one village and one hamlet to initiate the process of claiming rights. These villages were prioritised over many others in the vicinity since they were most likely to be affected earliest by the construction of the dam. Since the attempt was also to claim compensation for common pool resources in the event of displacement, these sites were preferred over other potential study areas. The work involved informing them about the provisions of the Act, attending to their queries about the Act, giving them time to discuss among themselves and walking through the entire process of claiming rights with them.

## LAND USE PRACTICES OF THE SAHARIYAS

On the part of the local users, the Sahariyas have not had a strong system of societal control over forest usage. Although the use area has been classified as state forests, the Sahariyas have not identified with this space as plainly as 'forest' in its commonly understood idea. The Sahariyas use the term 'forest' (*jangal* in local language) not just to signify the western idea of forest<sup>4</sup>, but also as a space that is used for accessing and extracting forest resource. 'Access' and 'extraction' as key words get priority over 'wilderness conservation' and 'preservation'. Modern state language like 'community forest rights', which were earlier not part of the used language are now being integrated slowly into the local parlance.

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<sup>4</sup> Conservation of nature has been primarily about rejuvenating the biblical imagery of 'wilderness' devoid of human presence. William Cronon in his work explains that historically, the concept of wilderness has been a construction of humanity, as against the popular notion of being apart from humanity. He follows the path of history to show how the term 'wilderness' has shifted its connotations from having strong biblical associations in the 18<sup>th</sup> century to being an antithesis of order and goodness in the 19<sup>th</sup> century. It was attached with moral values and cultural symbols at every new phase. Wilderness was then compelled to be made into the 'sacred' by poets and writers like William Wordsworth, with the help of symbols that evoked awe and a sense of grandeur in the reader. They were able to romanticise the 'wild' in a way that revived the desire to preserve it at the national level. . Humanity and nature were kept at opposing poles, and this dualism prevented any interaction of nature and humans (Cronon 1996).

Though the Sahariyas utilise their freedom over this de facto property, the fact of *state ownership* of the forest and its produce has been fixed in their minds through continuous reminders in the form of bribes, fees and policing by the Forest Department<sup>5</sup>.

Myriad control mechanisms by the state over an extended period of time prevented local users from exercising traditional authority over forest commons (For similar work on emasculation of traditional authorities due to colonisation see Geschiere 1982). Social hierarchies, work customarily associated with differing caste and class groups also had an impact on how forest commons were experienced by users. Forest dependence is strongly associated with poverty. To step out of forest dependency into a market-based livelihood is considered to be an upward movement in the hierarchy, much like farming, that began to be devalued with the onslaught of the 'development' discourse (Springer 2000). But since the opportunity cost of labour for extraction is lower than the value of common pool resources, the rural poor are primary dependents of these resources (Jodha 1990). Since no social value is attached to being forest-dependent, the forest space in recent times at least is seen by many as a stepping stone, a waiting room before entering the 'real marketplace'. My field assistant, a Sahariya, employed with a local NGO mentions several times about his good fortune of not being compelled to continue going into the forest for resin extraction. Local users develop a propensity to view commons as a space primarily for extraction of resources as a result of social norms of utilisation and management of forest commons not being too strong.

Forest Rights Act of 2006 in this context, brings in a new dimension to the way 'forests as commons' are seen by different user groups. Unlike most other legislations that are introduced with the idea of emancipation (such as the Right to Education, Right to Information etc.), this Act deals with claims over tangible property. But claims are contested and ideas of ownership have been fixed over time. For decades what had been instilled as state property all of a sudden is being promoted as 'community property' in the language of the legislation. The history of uncompensated displacement of the Sahariya communities from the Kuno-Palpur Sanctuary must also be kept in mind while analysing user's perceptions of the new Act. If even until a decade ago the language used by state forces towards local users was that of being encroachers and primary degraders of forest land, the initiation into a new legislation that guarantees habitation and habitat rights, rights to collect manage and sell forest produce must necessarily involve a time-consuming transition. But what the Act has definitely done is rejuvenated a discourse on 'rights over forest produce' among users and the state alike. Everyday struggles over forest resources were with respect to collection of firewood, harvest of boswellia resin and setting up cattle camps<sup>6</sup> for grazing in the commons. The information about the new

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<sup>5</sup> The Indian Forest Act of 1927 gave extra-ordinary powers to the state forestry arm, which have been used and abused for rent-seeking and personal gains.

<sup>6</sup> *Cattle camp* is a tactic used by forest users to make best use of forest resources for their livestock. For four months of the year beginning from the monsoons in India, cattle owners camp with their animals in the forest to take advantage of the high fodder availability and to assist the cattle to stock up for the impending hardship with the onslaught of the dry winter and summer months.



legislation has given them a fresh motivation to recall and remember all their associations with the forest commons, some forgotten and others, unused.

Multiple tools for claiming rights over their forest are being evoked by claimants. One interesting tool is the use of memory to define the territory within which community rights were being claimed. Forests, that have so long been created and defined as a space with minimal human intervention had to be reinvoked to be a space that had substantial human use and intervention. Extended discussions with claimants brought out different narratives of land use<sup>7</sup>. Old temple spots, long forgotten routes between villages, remembered tubers and fruits that were collected by ancestors, wells, community stone quarries (*khadaan*) and various other claims that reinstated rights over forest commons. Not always were these claims 'traditional' in its literal sense. Medicinal plants that were earlier not remembered to have been collected by the community were now being extracted from forest commons to meet demands from ayurvedic medicine companies. Similarly, not all traditional customs were being followed in the present times, but were reclaimed with the initiation of the FRA. A number of people, who due to various market and state pressures had abandoned setting up cattle camps in the forest, eagerly reclaimed their past by asserting rights over their previous camp site through the FRA.

The case of the study area is also slightly away from the usual, with respect to the extraction of resin from *boswellia serrata*. Though the land on which the trees grow is accessed as a common pool resource, the trees growing on it have been traditionally divided between individual members of the family. Thus, the land is managed under commons, while the trees are managed individually; different claimants hold land and tree rights respectively. Local users can use the land for extraction and access of any non-timber forest produce (henceforth NTFP), except for resin from *boswellia*, which is accessible only to its owner. A situation then arises, when common property is simultaneously common *and* private. The overlapping of multiple stake holders to the same land brings in an interesting dimension to the implementation of the FRA in context of community forest rights. Enterprising individuals have the freedom to expand their individual tree count by harvesting from trees not owned by others. Though each owner is responsible for their own trees, the land on which it grows is common property, the ownership of which is claimed by the community. Thus a situation arises where forest rights are claimed by different people on the same piece of land over varying resources.<sup>8</sup>

## WHOSE FOREST?

For decades, the forests around the study villages have been used by locals depending on NTFPs. The Sahariya livelihood in this region depended almost exclusively on forest produce from nearby forests. Livelihood options accessed by them were less market oriented than their non-*adivasi* counterparts, although recent

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<sup>7</sup> For a diagrammatic representation of claimed land and land-use, see Annexure 1.

<sup>8</sup> For a similar situation where land rights and tree rights are held by different claimants, see Peluso 1996.

economic developments in adjoining villages have altered the balance between forest and market dependence. Agra, a neighbouring host village of the displaced in the early 2000s became a hub of economic activities in the post displacement period (Kabra 2009). Considerable money was poured into this village for resettlement and rehabilitation, including the construction of an all-weather road aimed at increasing connectivity and economic development in the area, the effects were disseminated in the surrounding villages, including the two study villages.

The forest accessed and used by the claimant forms part of the Reserved Forest (RF) under state classification. It is visited by villagers on a regular basis to collect various forest produce primarily firewood, resin from *boswellia serrata* and seasonally seeds, tubers, berries, fruits that are locally sold in the village market or extracted at the request of middlemen for the wider market outside of Agra. Since the resource collection region falls under the control of the Forest Department, often resource users have to forge alliances with the local face of the Forest Department.

The Forest Department, as an entity believes in the overriding ownership of all classified forest land. Foresters harbour a moralistic code of conduct towards the upkeep of the forest. Foresters continuously attempt to portray the officer's duty as performing the sacred task of preserving the forests and subsequently human life on this planet. But with the new language of participatory conservation, a need is also felt to be a humane officer, who is considerate and understanding of the local needs. But caught between the calls of preservationist duty on one side and humanity on the other, he chooses duty over humanity, as involving locals in a process of participation takes away the power that is wielded by being sole owners of the forests. The state forests are as good as the private property of the foresters.

Legally, the dynamics of power changes considerably with the implementation of the FRA. The forests that the state had sole rights over, now have to be shared with the users. This involved right over habitat and habitation on forest land, right to use, extract and sell minor forest produce from forest land, among others. The Forester who was earlier responsible for guarding state property had to assist in devolving powers to the local community in preparing management plans for protection of the forests. What would have earlier been a good will gesture of 'permitting' locals to access the forest, now will be accessed by them as a 'right' (Peluso 1993).

The local foresters, who were the implementers of decentralised state power, now would be required to devolve their powers to the local community under the provisions of the Act. This shifted away from the global discourse of decentralisation which called for redistribution of state authority within its bureaucracy to lower rank-holders. Under decentralised bureaucracy, though authority was transferred to the bottom of the hierarchy, power was wielded by the higher ranks of the bureaucracy, since a strict system of accountability was in place. The Central State pushed by international pressures to adopt a 'community' approach to environmental protection, undertook this form of bureaucracy.

Previously, state's effort towards decentralisation amounted to half-hearted policies that attempted to bring together local participation in the management of forest resources, embellishing them with monetary incentives and positions of authority, all of which would be under state supervision. In India, a large scale endeavour for

community participation resulted in the implementation of the Joint Forest Management. Thus communities were *constructed* and tied together as a unit for the benefit of 'community involvement' according to state plans. Such communities often have a well-defined power-structure which determines outcomes of the state programmes (Sundar and Jeffery 1999). The Forest Department has also played the role of dispersing knowledge systems to locals through 'training programmes' on modern tree growing technologies like clonal multiplication, mist chambers, root trainer plants, information about manures and fertilizers, seeds, nurseries, 'hi-tech' plants and others.<sup>9</sup> Power to the local authorities has been held back and taken over by the state through state policing. Thus a unilinear dissemination of knowledge from the state to the locals has been the norm instead of knowledge sharing between the two.

The FRA required transfer of authority and simultaneously power had to be modified and *devolved* to representatives of the 'community', who were accountable to the locals (Oyono 2004). But never before has the community experienced exercising such powers. The new holders of legal power, through various practices have internalised the custom of being directed 'from above'; regulatory powers exploit this desire for norm and subjection (Butler 1997). Thus with the new legislation, there is still an internalised need for assistance, instead of taking independent decisions. How do these new right holders negotiate the space between their new found power and the internalised desire for being on the receiving end?

The power of the state over forest commons which manifested itself through the preparation of management plans, continuous surveillance, decision making about species introduction, protection and governance etc. now were to be shared with the community, under the provisions of the Act. The bureaucracy and paper work involved in the process conveniently 'fences off' the community from participating in the procedure (Peluso 2011). Working plans that were earlier created on the basis of state identification of the 'social and economic needs' of the locals were to be discussed with the people themselves. Previous studies on decentralisation have demonstrated that decentralisation of power to local communities almost always involves manipulation and infantilisation of the local representatives (Peluso 1993) (Oyono 2004). Community conservation programmes almost always require management plans. In the case of the Forest Rights Act too, the community will be required to plan a management programme, once vested with land rights.

The point in reiterating the mode of operation of state arms of forestry is only to speculate on the kind of treatment the new legislation could get from the state, with the new shift in power. Historical authority over forest land even among the lowest ranks of the state bureaucracy makes it difficult to acknowledge and cater to the new legitimisations as provided under the Act. The Forest Rights Act has been pitted against the trope of conservation; the latter allowing state actors to have legal and extra-legal control over forest land. The state forest arm has vehemently challenged the constitutional validity of the law by filing several Public Interest Litigations (PILs)

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<sup>9</sup> Information provided by the Madhya Pradesh Forest website at <http://www.mpforest.org/research.html> accessed on 13th April 2013.

to this regard. Interactions with Forest Department officials tend to prove that the Act does not reveal itself in a radically different form or that there is a disdain for acknowledging the provisions of the Act. How local power dynamics play out, and whether state authorities will force their prior knowledge and experience in making management and working plans on behalf of the locals is something we can only speculate at the moment.

## EXPERIENCES FROM THE FIELD DURING IMPLEMENTATION

The implementation of legislations like the FRA that is entirely dependent on the local community for its success, throw up multiple challenges as soon as they are initiated. Beginning with local users who are potential beneficiaries in the legislation, to state arms that are responsible for smooth implementation of this 'historic' Act, the FRA in spite of being right-holder friendly, is difficult to negotiate through the labyrinth of bureaucracy without an external help.

Claimants of community forest rights (CFR) are struggling to grapple with a new dimension of forest politics, the stability of which can only be cemented if resource ownership is truly vested to the customary users. Until then the possibility of owning 'state-owned' forests is a distant reality that people in the study area like to dream and debate about, but which has no secure roots. "*It will be a blessing if the Forest Department gives us our right over forest land...*" said a respondent on being asked about their perception of being a right holder.<sup>10</sup> Years of social conditioning compels the users to view the state forestry arm as the legitimate owners of forest commons. In spite of the Act clearly mentioning negligible role of the Forest Department in the vesting of rights, legitimate forest ownership, although contested in the everyday, is tied exclusively to the forest department.

Prior to my stay on field, prospective claimants had no information about the FRA. No state level official had visited or intimated them about the provisions of the Act. On receiving information about the provisions of the Act, the aspect of rights over forest resources on paper was the primary motivation behind starting the procedure for claims, particularly in anticipation of a looming displacement. As noted by Bremner and Lu through a review of various publications, "collective action by resource users was in most cases stimulated by an external threat to an important resource." (Bremner and Lu 2006)

The implementation work involved forming a Forest Rights Committee at a village/hamlet level, holding village level meetings, collecting documents for proof of forest use from claimants, assisting in filing claims, making rudimentary maps, conducting field verification with the Forest Rights Committee along with State representatives, holding meeting for claim hearing, and finally, submit to the Sub-divisional Level Committee.

Though the steps involved seem relatively smooth on paper, ground level implementation looks entirely different. The sequence of steps is difficult to follow

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<sup>10</sup> From personal interviews conducted during the field study.

within the dynamic environments of the village. To bring everyone together on one single day is a task by itself. For the legislation does not have a precedent with respect to complete devolution of procedural formalities, claimants of my study area were not habituated to organising village level meetings, and displaying authority for making decisions. It must be remembered that the study area consisted only of the Sahariya *adivasis*, an economically, socially and politically marginalised community. Even though they formed a part of the local level village political system and participated in state elections, the community as a whole hardly had a voice in the workings of a democracy. Meetings have always been procedural, restricted to sheets of paper, hardly democratic or inclusive. The process of claiming for community rights in letter and spirit was a shift away from the ordinary Village Council (*Gram Sabha*) meetings, where physical presence was not a priority. It required complete participation of the village in every procedure. The insistence for an understanding of each step involved, and full participation in village council meetings, led to a long drawn procedure of claiming rights spanning over 3 months.

Passing of legislations at the parliament and its implementation on ground are two very separate and disconnected acts, especially in the context of India, the largest 'democracy'. More often than not, they reveal themselves very differently on interaction with the larger user group. Though the provision of the Act empowers the Sub-divisional Level Committee at the bottom-most level to assist in acquiring claim forms, mapping community forest area and making any other required documents available to the claimants, in effect, none of such duties are upheld by the state. In fact, the committees have little information about the provisions of the Act themselves. Local state actors responsible for implementation of the FRA at the field site feel obliged to report to the state forest arm about the implementation of FRA. In the case of the claims from the field site, the sub-divisional level committee chairperson refused to accept the claim forms and asked them to be submitted to the Forest Department, in spite of the law clearly stating otherwise.

The event of a politically and socially weak class getting stuck at this bureaucratic level leads them to a difficult place to negotiate from. Being turned away from the very state office that is meant to accept and assist in the process of vesting rights instantly reinstates the authority of the State on common pool resource. The idea of the FRA being an effective legislative reform in claiming rights over commons holds little value under such circumstances.

It seems from field experiences, that even in the presence of the FRA, stakeholders' perspectives on viewing forests as 'commons' remains almost static. Though 'community forest resource', 'forest rights' etc have become part of the local parlance both with state actors and customary users, the idea of eminent domain has an overarching prevalence. The State with the help of judicial and extra-judicial powers has been successful at subverting their very own legislative mechanisms. A recent circular<sup>11</sup> issued by the Ministry of Environments and Forests (MoEF) dilutes the requirement of Gram Sabha consent for forest clearance in the event of linear project

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<sup>11</sup> Accessed at

<http://www.fra.org.in/New/document/Circular%20on%20Diversion%20of%20forest%20land%20by%20MoEF%20dated%20on%2005.02.2013.pdf> on 23<sup>rd</sup> April 2013

constructions at the recommendation of the Prime Minister's Office (PMO). Such state activities quash the effectiveness of the FRA as a tool to promote 'Commons as a Governance Paradigm'.

## CONCLUSION

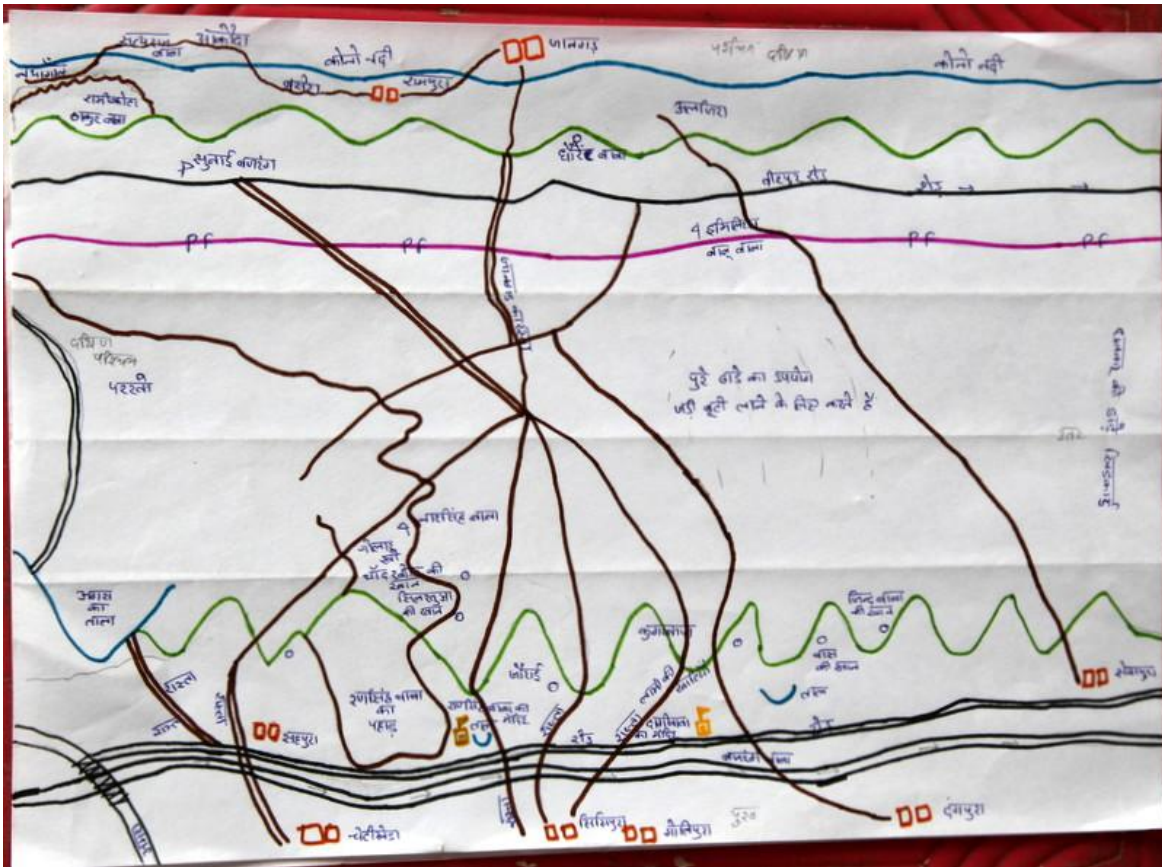
This paper, through ground experiences attempts to string together some of the key questions in the governance of commons, with reference to the Forest Rights Act.

Where multiple stake-holders have claims over the same land, various tactical support were employed by claimants to reinstate rights over land. By remembering and defining the long forgotten, tribal forest users attempt to control resources and landscapes through this Act. The objective of claiming rights by users in my study area was not just to claim rights over resources, but also to control a tangible property, which can be compensated for in the event of displacement.

Though the FRA was passed with the intention of undoing historical wrongs, like any other legislation, it demonstrates barriers once it begins to play out on ground. In spite of the FRA promoting complete devolution of power to the communities in question, on ground, this is a difficult task to achieve especially with respect to a socio-economically and politically weak social group. The FRA became instantaneously popular because word spread that "*the government is giving land*" in the name of the community. Decades of social conditioning about exclusive state ownership of land cannot be easily erased by the passing of legislation by a far-removed government.

In spite of the Act having rejuvenated the discourse on 'rights over commons', it will only add to the tool-kit that promotes 'commons as a governance paradigm'. In this specific case, the irony lies in the very fact that *adivasis* who were displaced from a protected area on account of 'biodiversity conservation' will again be ousted from a part of the same protected area for 'developmental needs'. That 'economic development', 'environmental concerns' and lastly, 'rights of forest dwellers' occupy a strict hierarchical position in state action plans, is hardly a secret. Any real change in the way commons are used and managed will require a radical change in the way commons are seen by the arms of the state on ground, and power is played out between state representatives and resource users. Local foresters and bureaucrats must surrender their authority to manage commons, as required by the Act. This field study suggests that, the precision that any legislation achieves on paper is most often difficult to see when thrown into a dynamic play between people and resources.

Annexure 1:



Rudimentary map by villagers to mark community forest land



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