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Narratives of Dalit Inclusion and Exclusion in Formulating and Implementing the Forest Rights Act, 2006

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THE HINDU CENTRE
for
Politics and Public Policy

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ABSTRACT

This Report traces the narratives of inclusion and exclusion of Dalit forest-dwelling communities in the process of formulating and implementing the Forest Rights Act (FRA), 2006. The process of formulating the FRA saw the creation of a new category of beneficiaries called 'Other Traditional Forest Dwellers' (OTFDs), which includes Dalit forest-dwelling communities. This Report documents the politics and priorities that paved the way for such a classification to emerge. It lays the foundation for a theory of evidentiary bias, which forms the legal basis of exclusion of Dalit forest-dwelling communities and OTFDs, as they are required to provide 75 years of evidence to claim their tenure rights despite not being in a position to access such evidence.

The Report explores the strategies of resistance adopted by Dalit forest-dwelling communities in overcoming this evidentiary barrier by exploring the different scripts of resistance developed by communities in Chitrakoot and Sonbhadra in Uttar Pradesh, and Kandhamal in Odisha. The Report concludes by unpacking the relationship between untouchability, caste bias and the implementation of the FRA.

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I. INTRODUCTION

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, (popularly referred to as the Forest Rights Act, FRA), is an outcome of conflict of diverse interests in the management, use and ownership of India's natural resources and forests. These interests ranged from enabling inclusive conservation paradigms, providing tenure to communities living within forest areas, correcting historical injustices meted out to these communities, and protecting wildlife.

Historical injustice as understood in the context of the FRA is multi-layered. In a paper titled *Redressing 'historical injustice' through the Indian Forest Rights Act 2006*, the research consortium for Improving Institutions for Pro-poor Growth points out that 23 per cent of India's land area is composed of forests and is home to 20 per cent of its poorest population, spread across the tribal belt.

This poverty is caused by the historical deprivation of forest rights through the colonial forest laws. Such forest rights include the denial of tenure over forestland, which was a result

of state control of forest resources as enshrined in the Indian Forest Act, 1927[1].

In 2010, the Supreme Court of India expanded the notion of historical injustice experienced by tribals to include such atrocities and explicitly states as follows:

> The mentality of our countrymen towards these tribals must change, and they must be given the respect they deserve as the original inhabitants of India. … The injustice done to the tribal people of India is a shameful chapter in our country's history. … They were slaughtered in large numbers, and the survivors and their descendants were degraded, humiliated, and all kinds of atrocities inflicted on them for centuries. They were deprived of their lands, and pushed into forests and hills where they eke out a miserable existence of poverty, illiteracy, disease.[2]

'Historical injustice' as referred to in this Report is derived from these sources. However, it calls for a deeper examination of this understanding from the perspective non-tribal forest-dwelling communities and Dalit forest-dwelling communities. As such,

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[1] O. Springate-Baginski, M. Sarin, S. Ghosh, P. Dasgupta, I. Bose, A. Banerjee, K. Sarap, P. Misra, S. Behera, M.G Reddy and P.T. Rao, 'Redressing 'historical injustice' through the Indian Forest Rights Act 2006', Discussion Paper Series number twenty-seven, 2009.

[2] Kailas and Others V State of Maharashtra TR., Taluka P.S, Special Leave Petition (Crl) No. 10367 of 2010.

historical injustice would intersect with the history of untouchability and caste based oppression.

The FRA, when located in India's environmental history, has come out of Adivasi movements for *jangal*, *jal* and *zameen* [forest, water and land] triggered by the understanding of environmentalism of the poor and increasing attention on community-based conservation efforts which were underway in different parts of India. The tenets of this environmentalism were embedded in the idea that resource dependent communities, particularly Adivasi communities, need to have secure rights over resources to ensure their survival, and in turn, will protect the forests as they are culturally inclined to do so. This dominant understanding brought into the environmental discourse questions of environmental justice. Some of these questions were:

- How can communities living in these areas historically be referred to as encroachers on their own land?
- How can colonial laws, which were created to enable commercial exploitation of forests, continue to govern independent India's forestland?
- Should not the communities that have co-evolved with their ecosystem be acknowledged for their traditional knowledge and role in managing the forest space?
- Lastly, is it not necessary to address the vulnerability of these communities arising from development projects that take place in areas to which they are culturally linked?

These questions internalise certain assumptions of communities living within forest areas in India. The primary assumption was this: Communities that live in forests and are dependent on the forest are culturally attuned to conserve and protect these forests. The entry of market forces and other influences like religion are seen as externalities that have mildly influenced this cultural underpinning.

However, forest dependent communities are diverse and include pastoral communities, tribal communities, primitive tribal groups and others. Their cultural relationship to the forest and their resource-use patterns are different depending on their livelihood strategies and beliefs. Thus, the cultural underpinning embedded in the FRA becomes problematic. In this diverse set of communities, there has seldom been a concentrated examination of the interests and beliefs of forest dwelling Dalit communities.

The scholarship on environmental issues and movements, and debates on development have particularly focused on voices and visions of women and tribals. However, though Dalits have often participated in significant numbers in various environmental movements, they have been, as a category, largely missing in most studies because they are usually merged

with the general definitions of poor, marginal, vulnerable, displaced, environmental refugees and migrants (Sharma, 2012).[3]

Borrowing from Mukul Sharma's paper there is a sense of 'invisibilising' forest-dwelling Dalit communities or an 'environmental blindness' of these communities in the shaping of the environmental discourse in India. Dalit perspectives on the shaping of the movements building up to the FRA have not been captured adequately.

There is an integral link between caste and the process of exercising and asserting rights over resources. This link can be seen in the struggles for entry to public spaces, and for access to resources such as water in public wells. In forests, this struggle takes specific forms, such as the right to use commons or to access water and other resources.

The decentralisation of governance of natural resources has also increased community-control over resources. Such control may appear to be essential. Yet, when placed in the setting of a village entrenched in the caste system, local dynamics of resource-governance and management can often be unfair to

[3] Sharma, Mukul. 2012. 'Dalit and Indian Environmental Politics', *Economic and Political Weekly,* Vol. XLVII No. 23, June 9, pp.46-52.

those at the bottom of the social hierarchy. This Report seeks to understand these questions through fieldwork in Chitrakoot and Sonbhadra in Uttar Pradesh (UP), and Kandhamal in Orissa.

It examines the impact of this "environmental blindness" towards Dalit communities in the making of the FRA and strategies for inclusion within its legal framework that forest-dwelling Dalit communities are adopting.

This Report critiques the perspective of forest-dwelling Dalit communities and the existing environmental discourse on forest rights. It is difficult to understand this perspective without understanding the relationship shared by the Adivasi communities and forest dwelling Dalit communities, and how these relationships have changed in different parts of India after the FRA was passed. The Report also highlights the intersections between Dalit land rights movement and the movement for rights over forest resources and land, which led to the framing of the FRA.

The Report is divided into four parts. The first part chronicles the making of the FRA and the expression and exclusion of Dalit interests in that process.

The second part delves into particular provisions of the Act, which create a framework for Dalit exclusion to occur, particularly the need for 75 years of evidence in the claiming of individual forest rights. In this section, I will explore the notion of evidentiary bias where differentiated evidence requirements depending on identity of the individual, create an uneven basis for claiming these rights. This section will also unpack the challenges of a bottom-heavy legislation that results in either multiple interpretations or popular understandings of the law, which may differ from the spirit behind the legislation. This could result in creating an environment for Dalit exclusion.

The third part of the Report highlights the varied scripts of resistance to overcome these barriers through in-depth case studies of techniques of resistance taking place in Chitrakoot, Chandauli, and Sonbhadra in UP, and Kandhamal in Orissa.

The final part outlines potential policy interventions that can address questions of Dalit exclusion.

II. MAKING OF THE LAW

> One facet of law is specific, functional, instrumental, and strategic, calculated to produce certain specific effects… These strategies are forged in a certain context of beliefs, values and ideologies.
>
> – Akhileshwar Pathak[4]

The Bill that preceded the FRA went through multiple versions. Each step of the drafting process was negotiated by many stakeholders. These included the tribal movement represented by the Campaign for Survival and Dignity (CSD), non-tribal movements, the United Progressive Alliance (UPA), the Left, the conservationists and the Ministries of Environment and Forests (MoEF), and the Ministry of Tribal Affairs (MoTA). In each version of the Bill, there was a struggle for control over determining the nature and process through which the historical injustice meted out to these communities was to be corrected.

This chapter will focus on the competing values and ideologies that underpinned this Bill and document its transition from

[4] Pathak, Akhileshwar. 2002. *Laws, Strategies, Ideologies: Legislating Forests in Colonial India.* Oxford University Press, Delhi.

being a Scheduled Tribes Bill to include another category: Other Traditional Forest Dwellers (OTFD).

The purpose for mapping this particular transition is to understand how Dalit interests were incorporated in the creation of the OTFD category, despite continued resistance to the evidentiary need of 75 years to benefit from this legislation. The creation of the OTFD category was seen as a means to expand the scope of the bill beyond Scheduled Tribes to include other forest dependent communities. This process of inclusion was seen as symbolic by the peoples movements as the evidentiary need of three generations was almost impossible to provide.

As an outcome of constant protest[5], in 2012, the rules for the implementation of the FRA loosened the evidentiary barrier through procedural innovation. It allowed a written statement by an elder in the community as evidence enough to procure individual forest rights, which provide tenure over forestland. It is pertinent to note that this evidentiary barrier is present in the process of claiming individual forest rights alone, but not for community forest rights.

[5] "Based on the responses received on a questionnaire sent by the author to Shankar Gopalakrishnan from the Campaign for Survival and Dignity"

The key questions are: a) how did this creation of the two beneficiaries of this legislation occur, and b) why was the scope of the initial bill restricted to Scheduled Tribes. At the heart of these questions lies the building of a legal framework, which became the basis for the exclusion of Dalit forest-dwelling communities. In 2004, the UPA mentioned the need to regularise the rights of forest-dwelling communities in forest areas in the National Common Minimum Programme, which read:

> The UPA will urge the States to make legislation for conferring ownership rights in respect of Minor Forest Produce (MFP), including *tendu patta*, on all those people from the weaker sections who work in the forests.

It also said, "eviction of tribal communities and other forest-dwelling communities from forest areas will be discontinued[6]". The need for a legislation was felt in the ensuing discussions in the National Advisory Council (NAC) and the Prime Minister's

[6] The National Common Minimum Programme, UPA (2004-2009). Other promises included taking "all measures to reconcile the objectives of economic growth and environmental conservation, particularly as far as tribal communities dependent on forests are concerned; Cooperation of these communities will be sought for protecting forests and for undertaking social afforestation; and, the rights of tribal communities over mineral resources, water sources, etc**.,** as laid down by law will be fully safeguarded."

Office (PMO) as mere abidance of the 1990 guidelines (as argued for by the CSD initially) might not address the need to settle rights of forest-dwelling communities. The following commentary on the Prime Minister's January 19, 2001, meeting is instructive.

> "It called the guidelines by the Ministry of Environment and Forests (MoEF) little more a band-aid, saying: The real solution to both the issue of settling occupation prior to 1980 and conversion of forest villages is to formulate a comprehensive legislation to give due recognition to the forest rights of tribal communities and forest dwellers in the form of a Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act. Such an Act would also "prevent further procedural wrangles with the court. And, finally, that such a bill could be created by either the MoTA or MoEF.[7]"

The first draft of the Bill emerged from discussions between the NAC and the CSD. In this draft, there were no separate categories for STs and OTFDs. As the CSD is an umbrella organisation consisting of different groups and peoples' movements working with a multiplicity of forest dependent communities, this diversity enabled a complex understanding of the need of an expansive scope of the Bill. Their understanding

[7] Rajshekhar, M *"The Act that Disagreed with its Preamble: The Drafting of the "Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006,"* (2012) Unpublished paper. Last accessed: January 07, 2016.

for the need of this Bill was to provide a protective legal framework, which would prevent the relocation and displacement of forest-dwelling communities and regularise their rights over forestland.

In a meeting held by the Prime Minister with the Ministry of Environment and Forests issues relating to the implementation of the 1990 guidelines were discussed. R. Gopalakrishnan, who was Joint Secretary to the Prime Minister, insisted that if the drafting of the Bill rested with the MoEF it would dilute the interests of tribal communities and advocated that the Bill be drafted by the MoTA with the support of a Technical Support Group.

This was a critical juncture in the drafting of the FRA for two reasons. First, the existing turf war between the MoEF and MoTA on the management and control of forest areas was heightened as this Act seeks to alter drastically the management and conservation paradigm of forest areas with increased control to forest-dwelling communities. The second reason is in the context of the vantage point of the MoTA in the making of this Act.

The MoTA was established in 1999 to provide focused efforts on the integrated socio-economic development of STs. The

Ministry is primarily concerned with the interests of STs and this paved the way for the prioritisation of interests of STs while formulating the FRA. A briefing note by MoTA, *Issues/concerns, which need to be considered in the proposed 'Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill'* argued that the Bill should focus only on forest dwelling scheduled tribes (FDSTs) as they are the ones affected by the historic injustice. Further, the Ministry argued, there was strong documentary evidence to back its claims. These documents, prepared when scheduled areas and scheduled tribes were being identified, included working plans of the forest department, and documents recording traditional rights like *nistar*. The MoTA also argued that there is an inherent danger in recognising the rights of everyone, including non-STs, through local committees as these would struggle to reject anybody's claims.

In addition, the Ministry argued that claims by non-tribals could be processed through the 1990 guidelines, and contended that this Bill should be used only as positive discrimination in favour of tribals.[8] In its briefing note it constructs a narrative of exclusion marked by a lack of legal protection of forest dwelling

[8] Rajshekhar, M 2012. "The Act that Disagreed with its Preamble: The Drafting of the "Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006," Unpublished paper.

scheduled tribes, which establishes the need for positive discrimination. This specificity describing STs as being more vulnerable and in need of protection, as well as the perception that they have been subject to such historical injustice as opposed to other forest-dwelling communities like Dalits becomes a point for further inquiry.

Multiple factors have been attributed to this perception of vulnerability and protection of STs. One such instance is the process of creation of the MoTA. In 1999, the Ministry of Social Welfare was bifurcated in 1999 to focus exclusively their efforts on the social and economic development of STs. This was seen as a method to ensure that their developmental needs were met and the MoTA has since then been administering schemes, laws and programmes that are addressed to Scheduled Tribes.

This idea of vulnerability is also based on socio-economic realities. The National Commission for Scheduled Castes and Scheduled Tribes, Government of India, in its Sixth Report (2001-02) pointed out that:

> "…the tribals are living in remote, inaccessible conditions, suffering from hunger and malnutrition and starvation deaths, particularly among the children, in some of the tribal pockets and require better

> attention to provide food security, at least in vulnerable seasons… The condition of landless tribals is far worse as they are more vulnerable due to lack of employment and poverty. The problem of landowning tribals is also not much different because of the small size of the holdings. A large number of the tribals have to migrate to other areas/cities due to a lack of jobs in their own areas."

Persistent poverty and lack of access to resources had rendered the tribal population vulnerable. Gang, Sen and Yun (2008) highlight the fact that "the incidence of poverty in SC and ST households is much higher than among non-scheduled households." [9]

Dubey (2009) observes:

> "…While most of the STs have remained outside the purview of rigid Hindu hierarchical social structure, in terms of the welfare indicators, they are on the average lower than even the SCs. Though scattered over the geographical of India, there are regions where STs have very high to moderate concentration. Their exclusion is a consequence of geographical isolation as these inhabit hills and forest areas that have been considered remote and not easily accessible."[10]

These realities allow for the understanding of STs as being more vulnerable though it does not proclaim that Scheduled Tribes

[9] Bose, Indranil, 2010. 'How did the Indian FRA, emerge?', Discussion Paper Series, Thirty Nine. Last accessed January 07, 2016.
[10] Ibid.

have exclusively experienced the historical injustice of displacement, relocation and lack of access to forest resources, which have affected all forest dependent communities.

The question then is to understand if this is the first instance of such *othering* of other traditional forest dwellers. A scrutiny of forest policies reveals that this is not so. The passing of constitutional protections for Scheduled Tribes through Scheduled Areas, and the Panchayat (Extension of Scheduled Areas) Act, (PESA) 1996, were previous instances where the interests of Scheduled Tribes were exclusively protected.

The criteria followed for being considered as a Scheduled Tribe are:

i. Indications of primitive traits;
ii. Distinctive culture;
iii. Shyness of contact with the community at large;
iv. Geographical isolation; and
v. Backwardness.

These criteria have come from definitions contained in the 1931 census, the Kelkar Committee report and the Lokur Committee report[11]. They highlight the perception of Scheduled Tribes as those who have been isolated from the mainstream society and

[11] The Kelkar Committee report and The Lokur Committee report.

need to be treated separately with the state taking a paternalistic approach to their governance. This historical process in the construction of state perception of these communities has allowed for the prioritisation of the interests of Scheduled Tribes in the making of the FRA.

It is interesting to note that this othering of non-ST and non-tribal forest-dwelling communities can also be located in the environmental discourse around conservation. In its briefing note, the MoTA describes the cultural inclination among Scheduled Tribes to conserve as follows:

> [I]t is well known that the forest dwelling scheduled tribes are residing on their ancestral lands and their habitat for generations and from times immemorial and there exists a spatial relationship between the forest dwelling scheduled tribes and the biological resources in India. They are integral to the very survival and sustainability of the forest eco systems, including wildlife. In fact, the tribal people are inseparable with the ecosystem, including wildlife, and cannot survive in isolation.[12]

Though the understanding of the MoTA is limited to forest dwelling scheduled tribes, there seems to be a similar narrative that has developed from the discourse around community-based conservation, which has focused more on Adivasi

[12] Draft Act by the Ministry of Tribal Affairs, No.17014/4/2005-S&M (Pt.) obtained through an RTI application.

communities. This perpetuates an understanding that Adivasi communities are more culturally attuned to conserve than other traditional forest dwellers. The validity of this assertion is yet to be studied, as there has not been ample research on conservation practices of other forest dependent communities, particularly forest dwelling Dalit communities. This reinforces the analysis made earlier of "environmental blindness" of forest dwelling Dalit communities.

This exclusivity of the Bill's focus on Scheduled Tribes was opposed by the people's movements and CSD. Yet, CSD took a strategic call to continue to engage in the process with the government in its efforts to continue to be involved in the drafting process and to influence it.[13]

This created fissures within the movement. In an interview, senior leaders from the National Forum for Forest People and Forest Workers pointed out that this was a departure from the initial objective of the struggle for this Act of correcting historical injustice. Moreover, a sense of uneasiness prevailed among organisations working with non-ST forest dwellers as

[13] Interview by the author with Ashok Chaudhury, May 2015.

they were being excluded from a struggle in which they had an equal stake.

The conservationist perspective of the FRA is captured in an advertisement by Vanashakti, a non-profit organisation working towards the protection of forest areas. The advertisement shows a child is at a busy road junction in Mumbai city holding a placard that reads, "we need to do something before we lose our forests" implying that the passing of the FRA will result in rapid deforestation. The wildlifers or conservationists have been against the FRA, and Wildlife First, an NGO based in Bengaluru, among others have filed a Public Interest Litigation challenging the constitutionality of the FRA.

The conservationists involved in the making of the FRA tried to limit the scope of the Bill in two ways: First, by preventing it from becoming applicable in protected areas[14] and second, by incorporating OTFDs. In an interview, a noted conservationist actively involved in opposing the FRA pointed out that it was seen as a way of opening the floodgates, as claiming land rights over forestland would increase with the potential for misuse of the Act. The initial scope of the Bill, confining it to Scheduled

[14] Protected areas refer to areas categorized as sanctuaries, national parks or critical tiger habitat under the Wildlife protection Act, 1972. Reserve and protected forests under the Indian Forest Act, 1927.

Tribes, would have restricted the claims and would not result in what was referred to as fragmentation of forestland. At one level, this is a numerical argument where the restricted scope of the Bill will not result in large number of claims leading to what is perceived as loss of forestland. At another level, it is seen as a preventive measure against false claims or misuse of the Act. This understanding of misuse was reflected in in the making of the Act by introduction of a rigid filtration process in the making and granting of claims, especially in terms of the evidence needed to process a claim.

In what can be considered a slight twist in the narrative of the making of this law. The MoEF in its suggestions to an alternative Act called the Forest Rights Recognition and Vesting Bill, 2005, wanted the Bill to include FDSTs and OTFDs. It argued that most villages in and around forests are mixed villages; that there is no difference in patterns of resource extraction between the two; that, as it were, the line differentiating tribals and non-tribals is notoriously fuzzy.

For all these reasons, if only the tribals were given land, social conflict might ensue[15]. This was seen as a ploy by the Ministry to gain control on the drafting of the Act as it was previously noted that it would be adversarial to tribal interests if drafted by the environment ministry. In an interview, a senior forest officer emphasised that the administrative burden of management of social conflict in forest areas was to some degree vested with the forest department, which is the administrative arm of the Ministry of Environment, Forests and Climate Change [which is the new name for the MoEF]. In order to counter this, the suggestion was made to include non-ST forest dwellers.

Thus, the politics of inclusion and exclusion of non-ST forest dwellers and the process of their othering can be seen through these multiple layers. The FRA made it to Parliament through a Joint Parliamentary Committee headed by Kishore Chandra Deo, MP from which the Indian National Congress. The minutes of the JPC reveal that extensive consultations were held with researchers, NGOs, peoples' movements and other ministries. It is pertinent to note that through the entire process of making of this law an exclusive Dalit perspective did not

[15] Rajshekhar, M. 2012. "The Act that Disagreed with its Preamble: The Drafting of the "Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006," Unpublished paper.

emerge, but it was merged with that of other traditional forest dwellers.

An exclusive Dalit perspective emerged later, through consultations with the Ministry of Social Justice and Empowerment, which argued for a more expansive scope of the Bill to include SC and OBC communities. Another representation was made by Shamar Singh, a retired IAS officer, who posed the question of issues of SCs and other disadvantaged categories of people residing in forests and their rights. Most of the representations made before the JPC spoke in favour of the expansion of the scope of the Bill to include all forest-dwelling communities, the Left parties specifically played a key role in enabling this.

The Left, as an ally of the ruling Indian National Congress and with an expansive view of the Bill to include all forest dwellers, influenced the drafting process with Brinda Karat, MP from the Indian Communist Party [Marxist], as a member of the JPC. Eventually the Act created two beneficiaries STs and OTFDs.

The Act went on to define OTFD as

> [A]ny community or member who has for at least three generations prior to December 13, 2005, primarily

> resided in and who depended on the forest or forest land for *bona fide* livelihood needs.

This need to have primarily resided for at least three generations paved the way for the evidentiary barrier of 75 years. In an interview, a Dalit forest dweller and activist in Sonbhadra said that this barrier was merely symbolic. He described it as a strategic attempt towards symbolic inclusion with a filtration process that ensures exclusion. This definition of OTFDs was opposed by the CSD with protests in 2007.

Evidentiary bias

This Report attempts to build on a theory of evidentiary bias. Often legal evidence is seen as a barrier to access rights. In court cases, evidence becomes the basis of establishing legally relevant facts. Evidence can be a tricky aspect of law, and requires a relationship with the state and the existing legal order to be able to allow the evidence to be valid, particularly in cases of land rights. The purpose of legal evidence is to guarantee the authenticity to a claim for a right and takes several forms. Procedurally, the Rules of Evidence are placed in the Indian Evidence Act, 1971. It is far more detailed on the process, spelling out where and how evidence can be introduced if a case is before the court. Though it is specific to courts, it sheds light on the rigid notions of what constitutes good or valid evidence.

In the case of the FRA, a procedural innovation has taken place as most STs and OTFDs do not have access to evidence such as *pattas* or historical documents needed to claim forest rights. In order to ease the burden on these communities, as the onus of providing evidence is on them, the FRA made exceptions to traditional rules of evidence. Rule 13 of the FRA rules, amended in 2012, prescribes the following as admissible evidence for claiming individual forest rights.

The nature of evidence that has been provided is as follows:

a. public documents, Government records such as Gazetteers, Census, survey and settlement reports, maps, satellite imagery, working plans, management plans, microplans,
b. forest enquiry reports, other forest records, record of rights by whatever name called, *pattas* or leases , reports of committees and commissions constituted by the
c. Government, Government orders, notifications, circulars, resolutions
d. Government authorised documents such as voter identity card, ration card, passport, house tax receipts, domicile certificates;
e. physical attributes such as house, huts and permanent improvements made to land including levelling, bunds, check dams and the like;
f. quasi-judicial and judicial records including court orders and judgments;
g. research studies, documentation of customs and traditions that illustrate the enjoyment of any forest

rights and having the force of customary law, by reputed institutions, such as Anthropological Survey of India;

h. any record including maps, record of rights, privileges, concessions, favours, from erstwhile princely States or provinces or other such intermediaries;
i. traditional structures establishing antiquity such as wells, burial grounds, sacred places;
j. genealogy tracing ancestry to individuals mentioned in earlier land records or recognized as having been legitimate resident of the village at an earlier period of time; and
k. Statement of elders other than claimants, reduced in writing.[16]

However, whether such evidence will provide the sufficient details of existence in the area for 75 years is yet to be seen. In an interview, a senior forest officer in Uttar Pradesh stated that the ambiguity in most cases becomes the basis for rejection of claims as such evidence can be seen as vague and misleading or to locate such evidence as proof of 75 years becomes a separate investigative process.

In the process of claiming Individual Forest Rights, those from STs only need to provide a certificate authenticating their status, but OTFDs have to provide the evidence stated above.

[16] Rule 13 of the Forests Rights Act Rules as amended in 2012.

The theory of evidentiary bias refers to a peculiar situation wherein accessing the same rights which are naturally vested in both legal subjects there are differentiated degrees of evidence needed to claim those rights and both legal subjects are unable to produce such legal evidence due to multiple factors. In the FRA, this can be seen in the access to individual forest rights. Such evidentiary bias creates an uneven field for those staking a claim to these rights, as, one beneficiary of the right is seen as a legitimate claimant, but another has to earn such legitimacy through the process of evidentiary proof. If both beneficiaries to such a right in the discourse of natural rights are equally legitimate, it creates an artificial barrier in the process of accessing such rights.

The differentiated degrees of evidence are based on the principles of positive discrimination [17]towards STs and to protect their lands from being acquired from other communities, which has been historically taking place. The other aspect for such differentiated degrees of evidence is that STs historically have been documented by the relevant State authorities and there is sufficient evidence to their vulnerability

[17] Hayer Judith and Gopal Niraja, 2009. "Challenge of Positive Discrimination in India", CRISE working paper, 55.

and need for such rights. The OTFDs do not necessarily comply with that narrative.

The politics of being included in the scheduled list appears to be dependent on certain criteria. The basis for granting forest rights is where communities who are forest dependent for their *bona fide* livelihood needs is based on a certain perception of Adivasi culture and indigeneity. Though in India the term indigenous people is constantly mooted, it can be seen that certain underpinnings of the discourse around indigeneity have seeped into the law and the state's perception of STs. An important feature of indigeneity in most definitions is the permanent attachment of a group of people to a fixed area of land in a way that marks them as culturally distinct.[18] This has created an avenue for such evidentiary bias to prevail.

[18] Li, Tanya Murray, 2010. "Indigeneity, Capitalism and the Management of Dispossession", *Current Anthropology*, Volume 51 Number 3, pp. 385-414. Last accessed January 07, 2016.

III. SCRIPTS OF RESISTANCE

The implementation of the FRA saw new conflicts arising between STs and OTFDs because of evidentiary bias. However, there are also instances when these groups collaborated strategically to overcome this evidentiary barrier. The relationship between Adivasis and Dalit forest-dwelling communities is a complicated one. It is a relationship of interdependence and cultural understanding. However, this relationship has altered over time, due to other external forces like industries and religion.

This section examines the scripts of resistance towards this evidentiary barrier against the backdrop of the local influences in Chitrakoot, Sonbhadra, and Chandauli in UP, and Kandhamal in Odisha.

Land reclamation

Land reclamation refers to a process where there is forceful clearing of forestland, which historically and customarily belonged to the community. The process of identifying such land is a clinical one where a community mapping process is undertaken and community members are consulted. Once they

are clearly able to demarcate the area, flags are placed across the borders and the community accompanied by other members of the All India Union of Forest Working People – a group of forest dependent community members who work towards the recognition of forest rights and access to resources – to clear the forest and reclaim the land.

This is similar to the land reclamation underway in Chile by the Mapuche community claiming their ancestral land back from farmhouses. This is seen as a method of reclaiming the lost physical and political space.[19] This process results in violent confrontations within the community on the one hand, and with the forest and police departments on the other.

In the context of the FRA, this territorial-marking process precedes the filing of claims under the FRA. The understanding among the Adivasi and Dalit communities in Chitrakoot is that once the land is reclaimed it will be farmed. This farmland and proof of its use will form the legal evidence for the claiming of land. In an interview, a Dalit forest dweller from Kubri village in Chitrakoot, emphasised that there is a need to provide tangible evidence of occupation. He also highlighted that

[19] Nick Miroff, 2014. 'Land Reclamation campaign by Indigenous Mapuches scorches Southern Chile', *The Washington Post*, June 8. Last accessed January 9, 2016.

though their claims were a democratic assertion within the realm of the law, this reclamation process will enable the realisation of their rights.

This notion is similar to what triggered forceful acquisition of land in Narayanpatna in Odisha, where after claims based on the Orissa Transfer of Scheduled Area Act yielded no result, forest-dwelling communities used force[20].

In the case of Chitrakoot cited above, attempts to use the law were considered, but the burden of proof of providing evidence under the Act pushed them away from calling upon the law and instead the use of force seemed more pragmatic. The narrative of historical injustice that supports the land reclamation process is based on the understanding of the struggle for forest rights as a struggle against land appropriation by the state.

The struggle for land reclamation in Chitrakoot is driven by the National Forum for Forest People and Forest Workers (NFFPW), which has now been reformulated as the All India Union of Forest Working People. The NFFPW is union of

[20] Sanjana, 2009. "The After Kill of Narayanpatna", *Tehelka Magazine*, Vol 6, Issue 51, December 26. Last accessed January 9, 2016.

forest dependent communities across nine States. The NFFPW was formed in September 1998 at a meeting organised in Ranchi, attended by 120 representatives of organisations working with forest workers from nine States (Uttar Pradesh, Jharkhand, Chhattisgarh, Uttarakhand, Madhya Pradesh, Bihar, Gujarat, Maharashtra and Karnataka), and intellectuals such as Dr. B.K. Roy Burman and Dr. Ram Dayal Munda[21]. It was formed with the intention of providing a platform for the unorganised workers and saw that forest dependent communities would qualify as forest workers. Forest workers were defined as

> [A]ny worker who depends on forests for livelihood or is exploited in any manner by the forest department, forest corporation or contractors, or collects minor forest produce or cultivates the so–called forest land for a living, or is pastoralist depended on the forest, shall be called a forest worker[22].

This definition of forest workers created an inclusive understanding of forest-dependent communities and enabled a diverse set of interests to engage with the struggle. The idea of forest workers also paved the way for involving strategies

[21] Choudhury, Ashok and Malik, Roma. 2009. "A Case study of the national forum of forest people and forest workers' (NFFPFW) struggle for rights of forest workers", September. Last accessed January 09, 2016.
[22] Choudhury, Ashok and Malik, Roma, 2011. "*Commons, Communities and State Appropriation*" in Vocabulary of Commons, First Edition.

adopted by labour movement in forest areas and ensuring the applicability of labour laws to forest workers. The union model of collective bargaining to represent the interests of workers formed a dominant strategy within the *sangathan* (federation) to represent the challenges of forest workers with the use of force when needed.

In the land reclamation process, collective bargaining reflects a forceful strategy, as it seen as a method of assertion as opposed to mere negotiation. The community members from across the area believe in the strength of numbers as the primary technique of regaining lost land. Another marker of this movement is that there is an emphasis on women leading the struggle as they are seen as being most impacted by the exploitation by the forest department while collecting and using resources.

The struggle for forest rights is seen as a struggle for land rights. This historical narrative steers the land reclamation process where the historical injustice of these communities is closely linked with the history of land ownership. According to the NFFPW, before an effective Land Reforms Act was enacted, vast tracts of forest vested with the erstwhile Princely States, *zamindars* and *talukdars* were transferred to the Forest Department. These included huge tracts of commons that were

annexed by the Forest Department without any process for settlement of rights. Those who lived in the forests were ignored and their activities and presence became 'illegal[23]. The Forest Department was viewed by the communities in these areas as 'landlords'. According to an article by NFFPW:

> It soon became [the] biggest landlord in the country, much against the spirit of the Constitution enshrined in Article 31–A, the object of which is to facilitate agrarian reforms providing for acquisition for any *'estate or any right therein, extinguishment or modification of any such rights, shall be deemed to be void on the ground that list is inconsistent with or takes away or abridges any of the rights conferred by Articles 14 to 19 of the Constitution".* [Emphasis original]

This image of the Forest Department as a 'landlord', propelled the initiative 'to reclaim the land that was wrongfully taken away in the guise of protection, and reserve forests'. The process of declaration of reserve forests and sanctuaries was seen as one of land acquisition. The land reclamation process is also seen as a means to challenge the principle of eminent domain where the state can acquire land for public purpose – in this case conservation.

[23] Choudhury, Ashok and Malik, Roma, 2011. "*Commons, Communities and State Appropriation*" in Vocabulary of Commons, First Edition.

Chitrakoot is a district bordering Madhya Pradesh and is enveloped by the northern Vindhya hill range. Until 1998, when it was carved out as a district, it was a part of the Banda district. The formation of the Ranipur Wildlife Sanctuary in 1977 sets the context for the struggle for forest rights in Chitrakoot. . Though the area was a game reserve even during the colonial period, the process of declaring it as a sanctuary in 1977 was a violent one. In interviews with the researcher, Dalit and Adivasi forest dwellers allude to forceful evictions from the villages within the sanctuary. They said that they were subject to a hostile environment in which they were not allowed to collect minor forest produce or firewood from the forest area. In many cases, they were accused of forest offences under the Indian Forest Act, 1927, and the Wildlife Protection Act, 1972. This hostility was part of the experiences of both Adivasi and Dalit forest-dwelling communities in the area.

In 1999, the National Forum united the communities that were vulnerable to exploitation by the Forest Department. This, coupled with the idea of land appropriation formed the basis for adopting land reclamation as a strategy to gain their rights over lost forestland. This struggle, however, was stalled by the efforts to push for a legislation that grants such rights. The

passing of the FRA in 2006, and its enactment in 2008, was seen as a key victory. In an interview, a Dalit activist in the area described this as "the journey from being seen as illegal settlers in our own land to one of citizenship and dignity".

This victory however according to most residents was short lived, as none of the communities surrounding Chitrakoot mainly Kol adivasis, and Dalits (who include *chamars*, *musahars* and *bansals*) were categorised as SC, and unable to provide evidence of 75 years to put forth a legitimate claim over their land.

The idea of claiming community forest rights was seen as the next step in efforts by the NFFW to use the FRA. However, the evidence needed was inaccessible as it entailed costs of filing an RTI application and doing the rounds of the offices of the local *patwari* (village accountant) and the Forest Department.

This evidentiary barrier fed into a belief that only forceful reclamation would ensure that the Forest Department respects their rights. The other technical barrier in procuring such evidence was the issue of what many community members in Chitrakoot referred to as "double entry" where land in this area when categorised as forestland was denotified as revenue land, yet this process has not been fully completed. Leaving such

categorisation in a grey area has also prevented them from understanding the applicability of the FRA.

It was decided that a massive land reclamation effort would commence in the month of *Ashad,* 2012. [Ashad is the fourth month of the Hindu lunar calendar falling roughly between June and July in the Gregorian calendar.] This was a violent conflict, which injured many women and men including Forest and Police department personnel. This use of force to assert their rights had had the effect of pushing away the Forest Department from the area. This strategy had many repercussions. A number of cases of forest offences were registered against the residents in the area, who are constantly required to appear before the district court, which is cost-intensive and affects their livelihood. Despite these odds, the community members in Chitrakoot firmly believe that this has given them more security by giving them access to resources without experiencing the exploitation of forest guards.

The Adivasi and Dalit communities in this context have historically enjoyed an interdependent relationship. Though there are instances of untouchability by some families belonging to the Yadav or Pandit communities, the Adivasis in the area do not practice untouchability. The definition of forest workers

allowed for the seamless inclusion of forest-dwelling Dalit communities who get marginalised in an exclusively Adivasi-led forest rights movement.

The FRA did not create fissures between the Kol adivasis and Dalits as both have been categorised as SCs, and both experience the evidentiary barrier while embedded in a historical relationship marked by interdependence and alliance. The situation with *atti* Dalits or *maha* Dalits (greater Dalits) is different where they are marginalised in the entire process of land reclamation and forest rights struggles though they are forest dependent. The contours of this exclusion will be elaborated in the section on caste and the FRA.

Violence and the FRA - inside and outside the law

Chandauli, a district close to Varanasi, has seen a rise in the number of cases of atrocities against SCs and STs since 2012. These atrocities take the form of burning of houses to prevent the resident Dalit and Kol Adivasi communities from enjoying their land rights, cutting down of trees, and causing damage to their property. This violence is being meted out by the

neighbouring Yadav community.[24,25] The dynamics of this violence can be seen as a forceful acquisition of forestland belonging to the SCs in the area.

To an extent, this violence is triggered by the recent spate of claims made by Dalit and Adivasi women in the area under the FRA. In interviews, Dalit and Adivasi women claim that the violence has increased since 2012 after the change in government replacing the one led by Mayawati, a prominent Dalit leader.

This violence is also influenced by inclusion and exclusion from the law. This conflict is further configured by the violent imaginaries (Appadurai, 1998) of caste that are located in a certain power structure defined by ownership and access to resources in forest areas.

Though the FRA does not exclude Yadavs – categorised as OBCs – from the scope of the Act, the implementation of the Act at the local level has taken place to the exclusion of the

[24] The Yadav community is an Indian pastoral caste, which occupies a higher position in the caste ladder compared with Dalits. This violence by a higher caste community towards a lower caste or Dalits amounts to an atrocity and the use of violence as a tool to reassert caste hierarchy.
[25] Based on interviews undertaken on May 21, 2015 in Chandauli district in UP.

Yadav community. The exclusion was deliberate by the Dalit and Adivasi communities who have been subject to forceful evictions by the Yadav community. The strategy that was adopted by the communities in Chandauli was to use the security of tenure under the Act to prevent further violence and conflict from the Yadav community. This was couched in the notion that the State authorities, particularly the Forest and Police departments that have been working in collusion with the Yadav community in the area, would defend the Dalit and Adivasi communities since they had the force of law to protect them. [26]

This script of resistance can be seen as a product of operating within and outside the law. The claims have been filed, yet there has not been any progress beyond the district level committee. The women suspect that the lack of evidence might be the potential reason for the rejection of the claim. In an elaborate interview, a Yadav community member in the neighbouring village reveals that the land belonged to their village and that they were preventing Dalit and Adivasi women from wrongfully claiming it under the FRA, which specifically protects their rights. Local interpretations of beneficiaries of

[26] Based on an analysis of semi-structured interviews undertaken between May 20 and May 25, 2015 in Chandauli and Sonbhadra districts of Uttar Pradesh.

what is perceived as a land rights legislation resulted in such violence being seen as a method to protect existing resources, as an expression of power of belonging to a higher caste, and ensuring that such hierarchy is reflected in the ownership and access to resources.

Dalit women in the area refer to the act of claiming rights under the FRA as a means of challenging the caste structure, which had rendered them landless. This access to land rights ensures that the marker of being landless is eliminated and Dalit community members can access resources in peace under the shield of legal protection. The burning of houses and the continuous onslaught by the Yadav community has been occurring since the claims have been filed and they suspect that the situation will continue until the claims are passed.[27] The Dalit and Adivasi communities have filed several cases under the Scheduled Caste and Scheduled Tribe Prevention of Atrocities Act reporting these instances of violence and no action is alleged to have been taken.

As the claims over forest rights continue to be stalled, Dalit women in Chandauli remain sceptical of the process and have

[27] As stated by a Dalit woman in an interview on May 21, 2015, in Chandauli district in Uttar Pradesh.

since been protecting themselves from such violence through militant use of *dandas* (large sticks fashioned like a baton, which is used to strike). When probed, the narrative is one of failed legal protection and resorting to violence to resolve the competing interests over resources. This failure of the legal protection mechanism has pushed communities to operate outside the contours of law and adopt violence as the modality for negotiating their rights over land and resources.

In a candid interview, a Dalit rights activist stated that the absence of law governing forest rights in the area has perpetuated caste-based control of resources. The FRA has the potential to break this by challenging the caste structure and enabling equitable distribution of forestland and resources, if implemented appropriately. Violence has presently replaced the language of rights, as its ability to protect is perceived by the victims to be stronger. The section on Caste and Forest Rights Act will explore the potential for the FRA to challenge caste-based control over resources and amendments to the SC and ST atrocities act to be read with the FRA to improve legal responsiveness to such blatant use of violence.

Environmentalism

> Who owns this land? Who owns its rivers? Its forests? Its fish? These are huge questions. They are being

> taken hugely seriously by the state. They are being answered in one voice by every institution at its command - the army, the police, the bureaucracy, and the courts. And not just answered, but answered unambiguously, in bitter, brutal ways.
>
> –Arundhati Roy in *The Greater Common Good*.[28]

Kanahar valley is located in Dudhi Tehsil of Sonbhadra District in UP. The construction of dam of the Kanhar to provide irrigation in the nearby areas, submerging 4,131.5 hectares of land in the States of UP, Chhattisgarh and Jharkhand, is seen as affecting mainly Adivasis, Dalit and forest dependent communities . These communities, under a movement called Kanahar Bachao Andolan (KBA) opposed the dam to conserve the Kanahar Valley and to retain their customary rights in the area. The KBA, an organised effort to articulate the resistance against the dam, was formed in 2002. It is led by Dalit and Adivasi community leaders.

The Kanhar dam project had obtained forest and environmental clearances, but these were challenged in 2015 by the KBA before the National Green Tribunal. The Tribunal stayed its construction in December 25, 2012, on grounds that

[28] Arundhati Roy, 1999. "The Greater Common Good", April. Last accessed January 9, 2016.

the previous clearance would not hold. Despite the stay order the construction continued. The community members in their efforts to prevent the construction of the dam began the process of filing claims for community forest rights under the FRA.

Movements against the construction of dams have shaped India's environmental discourse. The resistance has stemmed from the idea of environmentalism of the poor. Environmentalism of the poor was the southern response to the western notion that environmental issues were only of concern to the emerging middle class. In India and other southern countries, the narrative was different where resource-dependent communities, many of them poor, were the drivers of environmental protection.

David Cleary writes 'reality is a seamless web of social and environmental constraints which it makes little sense to atomise into mutually exclusive categories'[29]. What it achieves here is to combine the concern for the environment with a more visible concern for social justice.[30] This was essentially an aspect of environmentalism that came to occupy primary space with the

[29] Guha, Ramachandra: "Environmentalism a Global History" New York: Longman, 2000.
[30] Guha, Ramachandra: "Environmentalism a Global History" New York: Longman, 2000.

Chipko movement and the Narmada Bachao Andolan. The anti-dam movement in India was seen as a movement not just to ensure social justice, but also to secure the cultural rights of Adivasi communities in India. This particular segment of the large mosaic of the anti-dam movement becomes interesting to explore as it alludes to the reason for the environmental blindness of Dalit communities.

Dalit communities have both been impacted and participated in most anti-dam movements. Conversations on the impact of dams on cultural rights, however, are confined to Adivasi communities alone, though increasingly these are being broadened to include local communities or affected communities. It is understood that the impact on culture and its link to land and resources is an isolated experience of Adivasi communities and does not extend to other communities. This goes back to an earlier discussion on the politics of indigeneity.

Before we unpack the Kanhar movement, it will be important to bring out the tenets of its resistance and compare it with other anti-dam movements in the country. In their petition against the construction of the dam, the KBA speaks about the following:

- Destruction of their right to livelihood

- Loss of land,
- Loss of biodiversity
- Conservation of the Vindhya hills
- The dame will further industrial interests at the cost of adivasis and Dalits.
- Illegal, as they have a prior right over land, resources and water in the area under the forest rights act, 2006, and,
- Loss of cultural rights of all communities living in the area.

These tenets of resistance mirror most anti-dam movements, but there are distinguishing features that make Kanhar's struggle unique.

- The impact of the dam will be felt across three States
- A diverse local community is protesting against its construction.
- This diversity resulted in opening up the discourse around cultural rights, normally restricted to Adivasis in most movements, to include Dalit and Muslim communities in the area.

In an interview, a Dalit leader stated that the local community, though diverse, shares a similar relationship with their resources. It is a cohesive cultural milieu, which they would like to use as the basis to protect their cultural rights. "Our festivals

and beliefs may be different but our cultural desire to protect the resources and our link to it is very similar," he pointed out.

This opening up of the discourse around cultural rights can now be seen in law through the provision of community forest rights in the FRA. Community forest rights broadly include rights over minor forest produce, the right to manage and conserve community forest resources, and rights to biodiversity and traditional knowledge. The Kanhar movement is claiming community forest rights on the evidence of customary use of land and resources and cultural right to manage and conserve the area. This process overcomes the evidentiary barrier as the community need not provide evidence of having been there for 75 years, and evidence of customary use of the area would be sufficient to file the claim. The Kanhar movement is an instance of strategic Dalit inclusion in the using of the FRA. This was made possible because of the natural alliance that developed between the communities to be impacted by the dam as well as the historical relationship shared between the communities.

Community forest rights acts as a window for Dalit inclusion in the FRA. They can overcome the evidentiary bias as presence of 75 years is not necessary to claim such rights and it acts as an avenue to revisit the notion of cultural rights in relationship to

resources and open it up beyond it being merely an Adivasi discourse to a discourse of multiplicity of cultural relationships to resources. This will occur as an element of the process of claiming community forest rights as the community will have to put forth the nature and extent of rights over resources and the mechanism and traditional knowledge to be used for the conservation of such resources. These discussions and legal process will allow for a more inclusive understanding of traditional knowledge and cultural rights and bring to the fore a Dalit forest dwellers perspective on questions seldom captured in the existing environmental discourse.

Shifting identities

Kandhamal is a district nestled in the Eastern Ghats and 66 per cent of its land is dense forest. The history of Kandhamal is influenced by a combination of influences and events - religion and Naxalism being the important ones. Christian missionaries are said to have entered Kandhamal in 1883. The population in Kandhamal is predominantly tribal with the Kondhs forming a majority of the population and the Pano Dalits account for one fifth of the population in the district. A majority of the Christians in the area are Dalits. Threatened by the increasing Christian influence in the area the Vishwa Hindu Parishad (VHP) had entered the area through the Vanvasi Kalyan

Ashram in 1987[31]. The Vanvasi Kalyan Ashram is closely linked with the Rashtriya Swayamsevak Sangh (RSS) and the other groups of the Sangh *parivar* with the objective to protect the interests and ensure the welfare of *vanvasis*. This influence of religion was coupled with the entrance of Naxal forces in the area in 2004 after the merger of the Peoples War Group and the Maoist Communist Centre to form the Communist Party India (Maoist).[32] The Naxal forces threatened the influence of the forest department in this area and competed with the religious bodies for the interests and engagement of the local population.

This combination of forces in the district provides the backdrop for the tensions between the local ST (Kondh) and SC (Pano Dalit) community. Before the advent of these forces, the conflict between these communities was based on land. Walter Fernandes states that the conflict is related to land alienation and marketing of ginger and turmeric of which Kandhamal is one of the biggest producers in India. This

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[31] Chatterjee, Anjana*, 2008. "Hindutva's violent history", Tehelka Magazine, Vol 5, Issue 36, September 13.*

[32] The Communist Party of India (Maoist) is a party formed to reflect the communist insurgent interests. It was formed through the merger of the Peoples War Group, Communist Party of India (Marxist-Leninist) and Maoist Communist Centre of India.

conflict over land was given a communal dimension with the entry of religious entities in the area. Land alienation in the area is experienced widely by the Pano Dalit community due to the combination of factors of it being a Scheduled area in a district with a tribal majority, and the implementation of the Panchayat Extension of Scheduled Areas Act of 1996. These legal mechanisms strengthened the prevention of tribal land from being sold or alienated to non-tribals. This method of protection resulted in the marginalisation of the Dalit community over access to land and resources in Kandhamal.

Several interviews reflect the view that the Pano Dalits believed that the Kondh Adivasis in the area had assumed a higher social status. This sentiment was fermented by the efforts of Swami Laxmanand Saraswati, who described Adivasis as the original inhabitants and caretakers of the area and that their conversion to Christianity would do away this cultural trait. The communal riots in 2008 saw a spate of violence. The conflict was primarily between the Hindus and the Christians in the area. However, it is pertinent to note that interviews undertaken for this report revealed another that layer to this conflict was between the Kondha adivasis and the Pano Dalits in the area, who were mostly Christian. This further alienated Pano Dalits from their land and many fled from their native villages to settle elsewhere.

This FRA began to be implemented after the backdrop of this conflict-ridden history.

Though the Pano Dalits who converted to Christianity have been denied their Scheduled Caste certificates, the Adivasis still have access to their certificates, despite changing their religious status. This coupled with the legal regime which is protecting Adivasis in the area has propelled the Pano Dalits to claim ST status on the basis that they speak the Kui language and have historically lived in the area. This demand was made from the 1980s. Initially it was status-related and was not related to land, but the implementation of the FRA within a Scheduled Area has strongly brought in land rights as an incentive for changing their status.

The incentive of land rights is located in a broader set of local barriers in the implementation of the FRA. The change in status will allow them to overcome the evidentiary barrier within the law yet what are stronger barriers propelling this desire for a change in legal identity is an unwritten order that has permeated through the different administrative levels and local bodies. The unwritten norm is that individual forest rights will first be given to the ST in the area and then to the other forest-dwelling communities. This is creating an uneven experience of justice

and increasing conflict between the two communities. The other factor driving this shift in identity is that with the application of PESA, Adivasis are adequately represented in the local institutions, which are marginalising the Dalits in the area. The change in status would allow them to enjoy adequate representation of their interests in the local institutions.

The Vanvasi Kalyan Ashram is playing a pivotal role in communicating a particular perception of the FRA where Adivasis have prior claim over the land than Dalits. This further generates a divide as most of the members of the Forest Rights Committee, which decides the nature and extent of the claims, are Adivasis and this excludes Pano Dalits from putting forth their claims over land. The change in status to Scheduled Tribe will create an avenue for claiming their rights along with the Kondhs. The Odisha State government has also contributed to this by introducing the FRA as a land rights legislation rather than as one that seeks to correct multiple facets of historical injustice experienced by these communities.

This change in status is seen by the Kondhs in Kandhamal as a challenge to their status as the original inhabitants and as a way of grabbing their ancestral land. There were protests by the Kondhs opposing the application by the Pano Dalit community for ST status. This politics of claims to being Adivasi are ways

of being seen as vulnerable by the state. This vulnerability brings with it legal protection and rights over land and resources.

In an interview, a Dalit politician vehemently argued that moving outside the Hindu fold does not transform caste identity but changes the religious basis of discrimination, as landlessness and poverty continue to act as markers of being Dalit. The constant threat of land grabbing by the Scheduled Tribes in the Scheduled Areas has perpetuated the landlessness of Dalits in Kandhamal. The change in status is not to be viewed as one of washing away Dalit identity but as claiming rights which is presently restricted to Scheduled Tribes.

IV. DALIT EXCLUSION AND THE FRA

Caste and its relationship to resources is a narrative of lack of access and exclusion. The Mahad Sathyagraha by B.R. Ambedkar is seen by forest dwelling Dalit communities as an attempt to reclaim rights over resources through unrestricted access to water. Caste-based control of resources is particularly captured in the Dalit land rights movement where landlessness as a marker of Dalit identity is being challenged. There is a significant overlap in the Dalit struggle for land rights and the Adivasi movement for forest rights. It is a demand for unrestricted access and use of resources, which have been historically denied. Yet there is a departure in these two movements. While the historical narrative of injustice Dalit communities is one of constant denial of access to resources based on identity, in the case of Adivasi communities it is that of the extinguishing of existing rights due to Colonial forest policies.

The key difference to note is that Adivasi communities enjoyed rights over resources while Dalit forest-dwelling communities were denied rights of ownership and access based on their identity. This denial was not necessarily practised by Adivasi communities but by higher caste communities in the forest

areas. This challenges the understanding of historical injustice as perceived by the FRA.

The social practice of untouchability manifests itself in the relationship with resources as well in the form of curtailing access. An interview with Dalit forest-dwelling communities in Badkya village, which was affected by the communal riots in 2008, brought out the contours of untouchability had broadened to include access to resources. The forest rights movement in this area was influenced by the tribal majority and the Vanvasi Kalyan Ashram claiming prior right of the Adivasis to the land and resources in the area, to the exclusion of Dalit communities and their claims to rights over resources. This resulted in denying access of forest dwelling Dalit communities to commons and access to firewood and other minor forest produce. The Dalit communities access such resources by night when they will not be stopped by the Adivasi communities who have converted to Hinduism.

Similar instances of the expanding reach of untouchability were found in villages where Adivasis in Kandhamal had converted to Hinduism. Adivasis, who historically did not practise untouchability now began to do so in a manner that forest dwelling Dalit communities were losing rights over land and

other resources that they laid claim to prior to such conversion. This has also been accompanied by the strengthening of legal protection of rights of STs over resources in the area.

The FRA, in particular, acted as the legal basis for such untouchability as individual forest rights are being claimed by the STs and community forest rights is taking place in a context where the Forest Rights Committee (FRC) is primarily composed of STs to the exclusion of the Dalit forest-dwelling communities. A critical understanding of the intersection of FRA and untouchability will expose the need for protection of Dalit forest-dwelling communities by ensuring adequate representation in the FRC and other committees to ensure that the claim can be processed to challenge such caste based denial of access to resources.

There is a definitive link between the Dalit struggle for access to resources and caste based atrocities. In Chandauli, this was evident from the burning of houses and in Sonbhadra; the following case of Shobha explicitly highlighted this link. Shobha, a local Dalit community leader fighting for her rights under the FRA, has been living on forest land located in the fringes of the forest area by the side of highway. As result of the changing political economy in Sonbhadra with increased

industrialisation, her battle for rights is contextualised by the presence of a local land mafia and increasing demand for land.

As she continues to fight for land, her family and she were subject to sexual harassment and violence by the local land mafia. This is one instance, but Dalit women are subject to violence and atrocities as understood by Section 3 of the SC and ST Atrocities Act by the forest guards as they challenge for rights over resources.

This nexus gets complicated in Kandhamal where such caste-based atrocities are practiced by the local Adivasi population. However, the SC and ST Atrocities Act recognises only discrimination committed against these two categories of marginalised communities, but not the possibility of horizontal discrimination, (i.e.) where such atrocities are committed by the ST against SCs or *vice versa*. Kandhamal provides a valid case for horizontal discrimination to be taken cognisance of by the Act. This link also highlights the need to incorporate the amendment to the SC and ST Act in 2012, under which hindrance in the recognition and practice of forest rights, read with the FRA, can act as a protective shield to forest dwelling Dalit communities.

The situation of Maha or Atti Dalits is another instance of Dalit exclusion. In Kubri village in Chitrakoot a community of

bamboo basket weavers called the Bansal community were categorised within the village as Maha or Atti Dalits. They are assumed to occupy the lowest rung in the caste ladder and in Kubri village, the entire process of filing claims under the FRA and land reclamation excluded them. They were unaware of the rights vested under the Act and the FRC that had been formed did not involve them. The caste basis of exclusion was practiced by other Dalit forest-dwelling communities and Adivasis in the village. Their dependence on the forest for their livelihood accompanied by their extreme vulnerability in these areas complicates the simple narrative of mere Dalit exclusion and need for protection. There is a need for relevant amendments within the FRA to comprehend these multiple layers of Dalit exclusion and its tenets.

V. POLICY RECOMMENDATIONS AND CONCLUSION

The Report indicates several barriers for Dalit communities to access forest rights enshrined in the FRA. These barriers can be categorised as follows:

- **Evidentiary Barrier:** This refers to the need for OTFDs to provide evidence of having lived within the forest area for a period of 75 years or three generations. In order to claim their individual forest rights.

- **Lack of adequate representation in the process of recognition of forest rights:** The FRC, which is formed by the *gram sabha* (village council) to initiate the process of recognition of forest rights does not provide for adequate representation for Scheduled Caste in the committee.

- **The use of violence to restrict access to forest rights:** Another key barrier is the use of violence[33] by other community members towards Dalit forest-dwelling communities to prevent them from claiming their forest rights under the FRA.

The Report has identified these barriers and outlined the strategies used by communities to overcome them.

This chapter seeks to highlight some suggested amendments and legal strategies that can be adopted to overcome these barriers. The amendments proposed are in relation to the FRA and the laws that are in conflict with it.

Amendments to the Forest Rights Act, 2006

Section 2(o) of the Act defines other traditional forest dweller as "any member or community who has for at least three generations prior to 13th day of December, 2005 has primarily resided in and who depend on forest or forest land for their *bona fide* livelihood needs". Here a generation is to be understood as 25 years.

[33] Violence here refers to a range of actions taken by community members towards Dalit forest-dwelling communities, which take the form of burning of houses, sexual abuse of women and assault among others.

This othering between Scheduled Tribes and OTFDs results in the creation of this evidentiary barrier. Most Dalit communities interviewed for this Report were unable to produce evidence that confirmed their occupation and dependence on forestland for a period of 75 years. In order to ease this burden of producing evidence, an amendment was brought to the Forest Rights Rules in 2012 through rule 13, which lists the nature of evidence that can be produced included statements by village elders reduced to writing. This was a way to ease the burden of evidence on OTFDs to enable them access rights based on a simpler standard of evidence.

However, the loosening of these standards did not make the rights more accessible. The barrier there was conflicting understanding of evidence within the *gram sabha* and the district level committee that reviews the applications for forest rights.

The *gram sabha* believed that hard evidence was needed and a statement of an elder did not amount to such evidence. This has led to marginalising OTFDs in the process of recognition and implementation of individual forest rights. A suggested amendment to accompany this would be to sensitise the members of the different committees on the accepted forms of evidence.

Another suggested amendment would be to exclude Scheduled Castes from the ambit of OTFDs and include them in a similar category as Scheduled Tribes. The reason for proposing such an amendment is that the Dalit forest-dwelling communities that were interviewed in Uttar Pradesh and Odisha are largely landless and to provide evidence, which is interpreted as hard evidence by the *gram sabha* and other committees is an impossible task. Drawing from the notion of evidentiary bias discussed earlier, this can be corrected by reducing the category of OTFDs systematically by excluding communities who are unable to provide such evidence.

The FRA establishes the FRC at the *gram sabha* level for the initial verification and identification of forest rights claims. The composition of the FRC has been provided in Rule 3 of the amended Forest Rights rules. It consists of 15 members of which two-thirds are reserved for STs and one-third for women. Reserving a maximum of one-third of the composition of FRCs for from the SC communities will make the decision-making process of this committee sensitive to the concerns of SCs.

Admittedly, the extent of reservation requires more analyses, but in areas where Dalit forest-dwelling communities account for a substantial proportion of the population, there is a need

for a mechanism to ensure that they are adequately represented in the process of filing individual forest rights claims.

Amendments to the Indian Forest Act, 1927, and Wildlife Protection Act, 1972: The FRA came into being at a time when there were provisions in the Indian Forest Act, 1927, and the Wildlife Protection Act, which criminalised these rights. It fell within a category referred to as forest offences. These offences referred to activities, which were restricted within protected areas.

Protected areas refer to different categorisations of forests to include reserve forests, protected forests, sanctuaries and national parks. Each of these categories came with different degrees of protection and restriction in the exercise of forest rights. The 2013 report by the National Crime Records Bureau showed a 215.6 per cent increase in the occurrence of forest offences. This is despite the fact that these rights, which were previously restricted in protected areas, are presently recognised as legitimate rights within the FRA.

The Indian Forest Act and Wildlife Protection Act were not amended to harmonise the interpretation of these laws. This has resulted in the use of forest offences as a threat and interference in the enjoyment of forest rights.

In an interview, a Dalit community member living near the Ranipur wildlife sanctuary narrated the number of forest offence cases that were filed in her village, which prevented them from going to the forest areas to collect minor forest produce. Though the FRA negates what was previously recognised as offences, a grey area remains as to whether community members can be arrested for forest offences during the process of recognition of such forest rights. There is a need to examine the relationship between these conflicting laws and the impact it has on the local forest-dwelling communities. Forest offences can be seen as an instrument of control used by the forest department to restrict the exercise of forest rights and this is a particular issue with Dalit forest-dwelling communities who are forest dependent.

Another area of conflict between these laws remains: Though forest rights have been granted and there is a change in the status of the forest area, the nature of the rights settlement process has not been elaborated. For instance, in Ranipur Wildlife Sanctuary in Uttar Pradesh there have been conversations to change the status of the forest area to a national park. This brings with it further restrictions on the exercise of forest rights. Once forest rights are recognised in a

sanctuary, the impact of a change in status remains an ambiguous area.

The FRA makes it clear that forest rights will be recognised in all areas except 'critical wildlife habitats'[34] which are areas part of national parks and sanctuaries, specifically and clearly established on the basis of scientific and objective criteria. The declaration of critical wildlife habitats is presently under process in different States. Though this is an explicit criterion, there has been an extension of this meaning to include critical tiger habitats. There is a need to reconcile the restrictions imposed in the Indian Forest Act and Wildlife Protection Act with the scope and applicability of rights recognised in the FRA.

Potential legal strategies

On December 21, 2015, the Rajya Sabha unanimously passed The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Bill (SC/ST Amendment Bill), 2014, without any debate based on an agreement reached in an all-party meeting. The SC/ST Amendment Bill brings with it some landmark changes that strengthens the legal protection for

[34] Critical Wildlife Habitat has been defined in Section 2(b) of the FRA as areas within national parks and sanctuaries where the areas will remain inviolate or free from human interference wherein the FRA will not apply

SC/ST communities against atrocities. It has expanded the legal contours of what amounts to an atrocity.

This expansion has brought with it one key addition. Section 3 (g) of the amended Act recognised the wrongful dispossession of a scheduled caste or scheduled tribe from their land or interference with the enjoyment of their rights which includes forest rights. The Act describes 'wrongfully', as against the persons will or without the person's consent. These amendments come at a critical juncture when there are proposed dilutions to the FRA, *vide* the order by the Ministry of Environment, Forests and Climate Change in October 2014, where the power of the Gram Sabha to consent for the diversion of forestland for development was removed. In addition, attempts by state governments presently for the removal of the consent provision in the right to fair compensation and transparency in land acquisition Act 2013 with the objective of introducing an ease of doing business.

This particular provision brings with it some needed legal opportunities to challenge potential land acquisition for development which occurs without the consent of the Scheduled caste or scheduled tribe communities. As under Section 3 (g), it can be claimed as an atrocity by scheduled caste

and scheduled tribe communities who have been wrongfully disposed of their land.

The other pertinent legal opportunity it presents is to challenge the interference in the enjoyment of forest rights. Forest rights here represent the 13 rights enshrined in the FRA. Since its inception, the Act faced several barriers in the process of implementation. The law does not define interference, which allows for the inclusion of different barriers as a form of interference in the enjoyment of forest rights. Two such barriers that can potentially be seen as interfering with the enjoyment of forest rights is the diversion of forestlands towards development projects particularly mining and the continuous threat of forest offences.

Diversion of forestland: According to a recent report by the Forest Survey of India, there has been a net loss of 2,511 square kilometres of dense and mid-dense of forest cover, which have been declared as non-forest areas in 2013. Such loss of forest cover is caused by the diversion of forestland for development projects, among other factors. Such depletion of forest cover brings with it loss of livelihood and displacement of forest-dwelling communities. The present government's slogans of fast-paced growth and 'ease of doing business' increases the

threat both to the existing forest cover and to forest-dwelling communities. This amendment serves an essential purpose of strengthening the legal mechanism to challenge such diversion by the need for consent as well as an interference in the enjoyment of forest rights.

Forest offences: The forest department continues to charge forest-dwelling communities with forest offences. A forest offence is an offence under the Indian Forest Act, 1927. The recent report by the National Crime Records Bureau in 2013 shows an increase by 215.6 per cent over 2012. This is after the passing of the FRA, which recognises the rights of forest-dwelling communities to tenure, grazing and collection of minor forest produce. However, these new rights continue to be considered as offences under the Indian Forest Act, 1927.

The FRA brought with it provisions that are in conflict with the Indian Forest Act and Wildlife Protection Act, these laws were not harmonised through statutory amendments. Instead, certain provisions within the FRA served as a few ways to resolve this conflict. For instance, the FRA is said to be applicable in critical wildlife habitats, national parks as well as reserve and protected forests thus the previous restrictions on forest rights are negated. Though these are now legal rights enshrined in the FRA, forest offences continue to be charged

against forest dwelling scheduled caste and tribes. To challenge this use of forest offences by the forest department as an atrocity and interference in the enjoyment of forest rights can potentially address this existing conflict.

Despite these potential possibilities there continues to remain ambiguity as to what stage of the forest rights process would such interference be considered an atrocity? It says the enjoyment of forest rights but the process of recognition of forest rights is a prolonged one with challenges experienced in the course of the claiming process. There is lack of clarity as to whether the legal protection under 'atrocity' apply only to the recognition of the forest rights, or also to the interference that occurs during the process of filing a claim. Another limitation of this provision is its restricted scope to SC and ST communities while the social composition of forest areas are diverse, this legal protection excludes other traditional forest dwellers who face similar atrocities in the recognition and enjoyment of forest rights.

The SC/ST Amendment Act recognises atrocities committed by members not belonging to a scheduled tribe or caste against SCs and STs. There have been instances where atrocities are committed within the caste hierarchy between communities

categorised as SCs or between SCs and STs. Though these instances are rare, atrocities between vulnerable communities should be provided legal protection. There is a need for the SC/ST atrocities act to recognise the tenets of horizontal discrimination.

Use of community forest rights provisions

The report on the status of implementation of the FRA, published in October 2015, shows that 44,05,395 claims have been made of which 42,91,472 are individual forest rights claims and 1,09,026 are community forest rights claims.

These statistics indicate that the claims being made in the different parts of the country lay more emphasis on individual forest rights as opposed to community forest rights. Community forest rights include the right to use and collect minor forest produce, grazing, fishing as well as the right to conserve the area. These rights bring with them a pertinent right, which is the rights over commons. Commons here being referred to areas where communities share rights over resource use and collection. It also brings with it the right to manage and control the area, which comes within the ambit of a community right granted under the FRA.

The evidentiary barrier can be overcome, as the claiming of community forest rights does not require OTDFs, including Dalit communities, to provide evidence that they have resided in the area for a period of 75 years. The claim is made by the community as a whole within an area, and can be a more inclusive process. There is a need for communities and organisations working with communities to shift the emphasis towards community forest rights in order to enjoy the multitude of rights being granted within the FRA. This will also counter the common narrative of the FRA being a land rights legislation as it goes beyond mere granting of land rights. This will address the issue of the evidentiary barrier being experienced by Dalit forest-dwelling communities.

Conclusion

There are three main findings based on interviews conducted with Dalit forest-dwelling communities, Adivasis, forest officials and members from the movement involved in the making of the FRA.

Firstly, the question of caste was not adequately considered in the making of the FRA. This was on account of factors like the lack of mobilisation of Dalits on the issue of forest rights, the understanding that forest rights was framed more as an issue

concerning Adivasis, which is backed by the lack of data on the number of Dalit forest-dwelling communities. Within this finding a larger question remains to be explored, which is the intersection of Dalits, untouchability and environmental justice movements in India. This Report seeks to explore this intersection in the area of forest rights.

Secondly, understanding the nexus between untouchability, atrocities and assertion of forest rights, opens up a new area of legally challenging injustices meted out to Dalits in forest areas. The reading of the FRA with the recent amendment to the SC/ST amendment Bill creates alternative legal strategies in the struggle for land and forest rights.

Thirdly, this initial research work makes the point that narratives of Dalit exclusion in the forest areas are complex and configured by the politics of the forest space, which is impacted by forces like extractive industries, development projects to right-wing Hindu outfits. There is a need to explore systematically these narratives in the myriad of contexts to be able to develop a comprehensive understanding of Dalits in forest areas.

This Report initially sought to understand how Dalit interests were represented in the making of the FRA, as well as

experience of Dalit forest-dwelling communities in the implementation of the Act. The Report succeeded to the extent that it captured narratives of Dalit interests in the making of the FRA and in its implementation, but there are areas that still need further exploration. These areas include understanding how the question of caste is being addressed in environmental justice movements in India. This Report is restricted to the understanding of forest rights but there is a need to explore it within the larger discourse of environmental justice and explore the dimensions of environmental casteism. There is a need to understand the intersection between untouchability, Dalit rights to resources and disproportionate impact experienced from development projects.

Another area that the Report leaves unexplored is developing a clear understanding of the relationship between Adivasis and Dalits in forest areas. In the fieldwork conducted for this Report, narratives of an alliance as well as conflict were seen, yet there is a need to understand the relationship between these communities historically to be able to frame the historical injustice that Dalit communities have faced in forest areas. There has been considerable research done in different contexts but to study this relationship in areas where right-wing Hindu outfits have been active becomes important to chronicle

prevent fissures being created on cultural grounds as has occurred in Kandhamal.

In conclusion, this Report is an attempt to grapple with the question of Dalit forest-dwelling communities, forest rights and the FRA. The Report suggests amendments and strategies that can pave the way for more caste sensitive approaches to the recognition and enjoyment of forest rights.

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