

# Forest Rights Act, 2006 in Protected Areas of Odisha, India: Contextualising the Conflict between Conservation and Livelihood

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# **Forest Rights Act, 2006 in Protected Areas of Odisha, India: Contextualising the Conflict between Conservation and Livelihood**

## **ABSTRACT**

In protected areas, natural resources support the livelihood needs of local communities, but human activity affects wildlife survival and biodiversity conservation, and leads to serious human–animal conflict, such as crop raiding, livestock predation, and loss of human life. Therefore, the future of wildlife is always in conflict with the livelihood of communities. The Forest Rights Act, 2006 recognises the basic livelihood rights of forest dwellers, but its implementation is besieged with several problems at various institutional levels. With special reference to the implementation of the Forest Rights Act in protected areas of Odisha, this paper discusses the conflict between concepts of conservation and livelihood of people, and suggests some ways to strengthen livelihoods.

**Keywords:** Forest, livelihoods, protected areas, rights, tribals

**JEL Codes:** Q 23, Q 24, Q 28



## 1 INTRODUCTION

Worldwide, and increasingly, the links between the realisation of forest rights and the conservation of natural resources and biodiversity are receiving attention, and ecological conservation is being recognised as essential for human wellbeing. This concern is incorporated in both global development targets, such as the Millennium Development Goals (MDG),<sup>1</sup> and global environmental targets, such as the Convention on Biological Diversity (CBD). Consequently, concerted efforts have increased the number of protected areas worldwide and the area under protection (Naidu 2013). Wildlife conservation advocates view any human activity in protected areas as an obstacle to conservation efforts. On the other hand, critiques have been developed of top-down conservation models, and there is significant support for 'people-centred conservation' (Brandon and Wells 1992; Hayes 2006). The lack of resolution over an appropriate model for protected areas is reflected in the mosaic of property and access regimes in countries like India. In India, despite the acceptance of community involvement in forest management and in the governance of nationalised forests, forest policies continue to suffer from a colonial hangover, and restrictive access regimes continue to be the dominant conservation strategy (Chhatre and Saberwal 2006; Gadgil and Guha 1995; Rajan 1998; Sundar 2000). Worldwide, despite numerous innovations in conservation design over the past two decades, the protected area model, designed to promote conservation through territorialised restrictions on human use and access, remains the chief strategy for biodiversity conservation, and constitutes a distinct form of resource governance (Persna et al. 2010).

National parks and protected areas have been recognised as playing a crucial role in conserving biodiversity. However, the integrity of many of these areas is at serious risk, because of the hardship these impose on local communities (Wells and Brandon 1992). In developing countries, the establishment of protected areas has placed a particularly heavy burden on local communities, and proven to be a barrier to effective conservation (Wells 1992). Any attempt at wildlife conservation has to accept the harsh reality of rapidly increasing human populations living below the poverty line. When wildlife conservation competes against the livelihood of local communities, the latter usually loses. Local communities complain that their interests and values are pushed aside and preference is given to wildlife protection (Nepal and Weber 1995). Machlis and Tichnell (1985) and McNeeley (1989) also identify various conflicts giving rise to specific threats to national parks.

The main issue in these conflicts is the exercise of the customary rights of local people to park resources, which raises fundamental questions about the survival of local communities and achieving park objectives (Neuman and Machlis 1989). In protected areas, the forest is an

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<sup>1</sup> See MDG 6: Environmental Sustainability.

important natural resource, on which most poor local communities depend for their livelihood. Conflicts are inevitable, because there are multiple stakeholders with different perceptions and values, and because the Wildlife Protection Act, 1972 increased restrictions against community use of forest resources, which the authorities of protected areas implement and enforce. It was enacted to prevent the loss of biodiversity and extinction of species. The Act protects a range of animal species and their habitats, and notifies national parks and wildlife sanctuaries, but lacks a long-term programme for assessing, monitoring, and recovering threatened species or habitats (Planning Commission 2011). In the absence of adequate resource endowments (such as land, human capital, and access to the service sector), the forest plays a crucial role in the livelihood strategies of many rural households (Sarap and Sarangi 2009). In India, around 275 million people living in rural areas depend on forests for their livelihoods (World Bank 2006). Historically, rural communities dependent on forest resources also managed the forests on their own; but, under colonial forest policy, which was geared towards commercial exploitation, valuable forests were notified as reserve forests and rural commons were often declared as state forests (Sarin 2010). After independence, large areas of forest land of the princely states and *zamindars* (landlord), including village commons, were notified as protected forests, disenfranchising forest dwellers of their customary rights. The rights of local communities continue to be ignored—forest-dwelling communities have lost their customary rights in national parks and have had their rights severely restricted in sanctuaries. In many states, they have been classified as encroachers and evicted (Springate-Baginski et al. 2009).

In Odisha, protected areas cover around 5.35 per cent of the total geographical area and 14.33 per cent of the total forest area. There are 19 sanctuaries and two national parks in the state; most are in Schedule V Areas, or where the tribal population is predominant. Further, the Government of Odisha has notified three protected areas as critical wildlife habitats (Simlipal, Sunabeda, and Satkosia), as per the provision of the 2006 Amendment to the Wildlife Protection Act, 1972 (Sarangi 2013; Sarap et al. 2013). More than 300,000 people<sup>2</sup> live in protected areas, and eke out a subsistence livelihood from these ecosystems in terms of agriculture, fishery, and non-timber forest produce (NTFP). The Wildlife Protection Act imposed restrictions on the collection of NTFP, grazing of cattle, and trading of forest produce. Vasundhara (2004), a state-level, Bhubaneswar-based NGO that works on natural resource management, assesses the loss of livelihood in the Satkosia wildlife sanctuary after the restriction of livelihood activities. This study points out that before protection, households earned a substantial Rs 5,000 (from sources like bamboo trading; collection of *kendu* and *sal* leaves and mushroom; wage labour; and agriculture). Immediately after restriction, the income dropped to Rs 2,250; also, the sources changed to daily wage labour, illegal trading of *sal* and *kendu* leaves, and agriculture. Members of some households, particularly children,

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<sup>2</sup> These figures are estimated based on Census data. The actual number is higher.

were working as bonded labourers in villages and towns nearby. Most people who live in sanctuaries have no rights over agricultural lands, pasture fields, fish ponds, or other common property resources (CPR). In the government record, their land is classified as forest land, and they are considered encroachers. Also, the government does not recognise community rights over this land (5,000–37,000 sq km), which is used for shifting cultivation.

To reduce anthropogenic pressure and human–animal conflict, people were relocated from some areas, like Chandaka and Simlipal, but not all households were relocated from the sanctuary area. For instance, between 1994 and 2004, only 85 of 483 households in Chandaka wildlife sanctuary were resettled (Vasundhara 2004). These households resettled voluntarily, as the government promised facilities like cash compensation, housing, drinking water, fertile land, schooling, etc. However, after the households resettled, the government did not keep its promise, citing paucity of funds. Barren lands were distributed to some habitats, but these people, who previously earned a substantial part of their income from vegetable cultivation, cannot cultivate that land. Later, the forest department reoccupied the land for plantation. For most forest dwelling households, the collection of NTFP contributes 50–60 per cent of the household's income; for nomadic tribes, it contributes 100 per cent (Vasundhara 1998). Therefore, the sudden restriction made them vulnerable. For instance, the tribals in Sunabeda sanctuary cannot any more make the Rs 350,000 they used to earn every year (Prajatantra 2002). Similarly, in the Badrama wildlife sanctuary, residents of 27 villages, of which most are revenue villages, suffer from the loss of livelihood. Injustice to tribals is found also in the Wildlife (Amendment) Act, 2002, which deprives people of basic needs like all-weather roads, primary health centres, schooling, etc. These people are also deprived of the benefits of social security programmes like Indira Awas Yojana, Integrated Child Development Scheme, Jawahar Gram Samridhi Yojana, Food for Work Programme, Public Distribution Scheme, etc.

## **1.1 Context**

In Odisha, as elsewhere in the country, the approach to biodiversity conservation has entailed the creation of exclusionary reserves for wildlife conservation, or protected areas. In the past few years, the state government has proposed to increase the area under protection, but it has not attempted to provide restitution to the people living there. The present conservation paradigm, which is based on the principle of exclusion, hampers the livelihood of people living in protected areas, by restricting their access to forest and forest-based resources. Simultaneously, threats from activities like mining are increasing rapidly. In these circumstances, local communities cannot be sure about their lives or livelihood.

Two laws have been implemented to change the pattern of forest governance: the Panchayat (Extension to Scheduled Areas) Act, 1996; and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. However, their



achievements so far are limited, especially in protected areas. Various studies show that the Panchayat (Extension to Scheduled Areas) Act, 1996 has failed to support the sustainable use and management of forest resources (especially NTFP) for the livelihood of rural communities (Saxena 2003).

The more recently enacted Forest Rights Act, 2006, in effect since 2008, aspires to 'undo historical injustice'. The Act defines 'community forest resources' to mean customary forest land within traditional or customary village boundaries, or the seasonal use of landscape in the case of pastoral communities, including reserve forests, protected forests, and protected areas, to which the community has traditionally had access. The Act is a significant step towards recognising the pre-eminent rights of tribals on forest land but, in most cases, it does not yet harmonise well with forestry, wildlife, or environmental laws. As a result, forest dwellers, formerly communal owners, end up as 'encroachers' in protected areas. An inclusive growth programme is about building such alternative paths, for both their intrinsic and instrumental worth—intrinsic, because exclusion is, in a manner, the denial of basic rights; and instrumental, since exclusion leads to poverty and creates obstacles to achieving the MDGs. As part of developing an alternative path, it is important to strengthen the existing livelihood of forest dwellers, by implementing provisions of the Act properly.

It is difficult to know the exact status of the implementation of the Forest Rights Act in protected areas, as official reports are not available yet. The Ministry of Tribal Affairs (MoTA) at the centre or the state government department has not reported it separately for the various protected areas in Odisha. At the ground level, it is possible to get information only through civil society organisations (CSO), researchers, and the communities engaged in facilitating the process of the Act. These unofficial reports are disappointing. In implementing the Act in Odisha, including in Simlipal Tiger Reserve, certain provisions have been violated. The forest department has reallocated several villages without completing the implementation of the Act (Kalpavrikha 2011). Along with the options for relocation, communities should be given the option (as per the Act) of being able to stay within the protected area with relevant rights and responsibilities, and mutually agreed modification of rights where necessary. A few sanctuaries have been declared critical wildlife habitats, without implementing the provisions of wildlife habitats as amended under the Forest Rights Act, and without consulting the communities living there for a long time. Declaring these sanctuaries critical wildlife habitats has severely affected the livelihood of communities staying there for a long time. In certain cases, people have been reallocated without any recognition of rights (GoI 2010). Such reallocation has adversely affected the administration of forest rights in that area (Bijoy 2011). In fact, the Ministry of Environment and Forests (MoEF) was inclined to exclude protected areas from the purview of the Act (Bijoy 2010).

It is necessary to balance conservation and livelihoods; therefore, it is important to tackle the key threats to conservation. This is the motivation for the current study, based on intensive fieldwork, to know the exact situation of the conflict between people and wildlife in protected

areas in Odisha, the actual process of implementation in the context of protected areas, and problems associated with implementation at various institutional levels.

## **1.2 Objective, Database, and Methodology**

The main objective of this paper is to understand the process of the implementation of the Forest Rights Act, 2006 in protected areas of Odisha, by examining the role of different institutions and implementing agencies in recognising forest rights. The paper also contextualises the conflict between conservation and livelihood. This paper uses both primary and secondary information, but most of the analysis is based on information collected through an extensive field survey conducted in selected villages in protected areas in Odisha.

The primary data pertaining to the implementation of the Act, and its impact on livelihood, was collected from villagers living in the Badrama Wildlife Sanctuary in the Sambalpur district of Odisha between July and October of 2014. The secondary information was collected based on a desk review of available documents, such as government and NGO reports, village micro plans, and research publications. The collections of primary data involved focus group discussions, village meetings, site-level observations, and in-depth discussions with key members of the staff of implementing agencies at various levels and other concerned stakeholders. Field visits covered a cross section of the core, buffer, and fringe regions of the sanctuary, to cover different components of the Act, such as conservation and livelihood.

Participatory Rural Appraisal methods (PRA) were used to collect socioeconomic data. These included field observations, general, and focus group discussions with members of the community to obtain information on specific issues. Discussions were also held with some key informants such as the village headman/chief, elders, and different gender groups to obtain detailed information on certain topics. A meeting was set up with the village headman/chief and forest officers; the discussion focused on general information on the settlement, such as demography, administration, infrastructure, occupational structure, socioeconomic issues, and how residents perceive and use forest resources. The relationships between the forest and the residents were also documented. During the meeting, community members spoke of their socioeconomic and general environmental management needs, and of how they have been living in the forest, and using its resources, for a long time.

## **2 REGULATIONS/LAWS RELATING TO PROTECTED AREAS**

Protected areas are constituted and governed under the provisions of the Wildlife (Protection) Act, 1972. This Act has been amended periodically, to reflect the changing ground realities concerning wildlife crime control and management of protected areas. The implementation of this Act is complemented by other Acts (Table 1). Laws, policies, and programmes abound, but are almost always poorly implemented. They are also sometimes in conflict with, or

contradiction to, each other. Similarly, judicial intervention and civil society action have served to put things in their perspective in some places, but it is not a sustainable practice in India to do things right (CSE 2014).

**Table 1** Provisions in different forest laws concerning protected areas

Law/Act	Provisions
Indian Forest Act, 1927	This Act was an extended draft of the (earlier) Forest Act, 1878, which strengthened its provisions. The Indian Forest Act, 1927 continues to be in force, and defines the procedure for declaring an area a reserved forest, protected forest, or village forest. The prohibition of any human activities has been envisaged until special permission is granted by the Government of India.
Wildlife (Protection) Act, 1972	This Act is a strong regulatory statute that restricts almost all activities inside protected areas. Its wildlife policies impact the lives and livelihoods of poor tribal and other marginalised communities living in and around protected areas. It also provides for a process of settlement of rights of such people, continuance of some rights in the case of sanctuaries, and due compensation where rights are extinguished. The process for settlement of rights for national parks and wildlife sanctuaries is provided in Sections 19–25.
Wildlife (Amendment) Act, 2002	The Wildlife (Amendment) Act, 1991 allowed for the continuance of rights in sanctuaries. But this Amendment made such rights less possible, by prohibiting all activities that are not 'beneficial' to wildlife (including those that may be neutral in their impact), by committing state governments to provide alternatives for all rights as soon as intention was declared to notify a sanctuary, and by prohibiting any commercial activity.
Forest Conservation Act, 1980	It regulates the diversion of forest land for non-forest use.
Environment (Protection) Act, 1986	Its Section 3(2)(v) empowers the MoEF to take all measures necessary for protecting the environment, improving its quality, and preventing and controlling environmental pollution. To meet this objective, the MoEF can restrict areas in which industries, operations, or processes (or a class of industries, operations, or processes) may (or may not) be carried out, subject to certain safeguards.
Biological Diversity Act, 2002	This Act came into being to fulfil India's commitment as a signatory to the international Convention on Biological Diversity (CBD). It is intended to regulate the conservation and use of biological resources and access to these. The BDA mandates the creation of Biodiversity Management Committees (BMCs) at village level, State Biodiversity Boards (SBBs) above them, and a top-level National Biodiversity Authority (NBA). It also provides for the declaration of areas being conserved for agricultural or wildlife biodiversity as Biodiversity Heritage Sites (BHS).
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006	Section 2(b) of the Forest Rights Act defines the meaning of 'critical wildlife habitat' as national parks and sanctuaries where it has been specifically and clearly established, case by case, on the basis of scientific and objective criteria, that such areas are required to be kept as inviolate for the purposes of wildlife conservation as may be determined and notified by the MoEF of the central government after an open process of consultation by an Expert Committee, which includes experts from the locality appointed by that government wherein a representative of the MoTA shall also be included, in determining such areas according to the procedural requirements arising from sub-sections (1) and (2) of section 4;

### 3 HISTORY OF PROTECTED AREAS IN INDIA

The current Indian park network has its foundation in the reserved forests established by the British and in the former hunting grounds of the princes (Rangarajan 1996). Various scholars (Guha 1989; Gadgil and Guha 1992; Buchy 1996; Rangarajan 1996) have discussed the details of this reservation process and its implications. Briefly, the Indian Forest Act, 1878 (succeeded by the Indian Forest Act, 1927) established reserved and protected forests under state control. A forest department was established, and tasked with producing timber, establishing conservations and plantations to secure future timber supplies, and, generally to a lesser extent, providing for villagers' subsistence needs. State ownership and control of forests fundamentally altered local access and rights to forest areas, with reserved forests being the most restricted, and protected and village forests successively allowing freer access. The system of ownership, access, and management rights in contemporary parks stems from these colonial interventions, although management objectives emphasise protection most strongly, notwithstanding contemporary pressures for industrial exploitation and increased resource demands on these areas from populations in surrounding areas.

**Table 2** Growth of protected area network in India (1988–2014)

Category	1988			2014			Percentage Increase		
	Number	Area (km <sup>2</sup> )	Percentage	Number	Area (km <sup>2</sup> )	Percentage	Number	Area (km <sup>2</sup> )	Increase in Net area (km <sup>2</sup> )
National park	54	21,003	0.64	102	40,074	1.22	89	91	19,072
Wildlife sanctuary	373	88,649	2.7	527	124,738	3.78	41	40	36,089
Conservation reserve	--	--	--	57	2,018	0.06	--	--	21
Community reserve	--	--	--	04	21	00	--	--	2,018
Protected area	427	109,652	3.34	690	166,851	5.07	62	52	57,199

Source: Wildlife Institute of India 2014

Property regimes that determine forest rights are specific to historical, political, and social processes and conditions. The federal system in India deems forests as part of what is known as a Concurrent List. This means that while the central government makes broad recommendations and formulates overarching policies, the implementation of these policies is at the discretion of individual states (Naidu 2013). Thus, the implementation of a local population's forest rights is subject to the legacy of the different colonial land tenure systems in different states and regions, and to the exigencies of the local polity (Rangarajan 1996).

In India, 60 per cent of national parks and 62 per cent of wildlife sanctuaries have not settled the land and forest rights of forest dwellers (Springate-Baginski et al. 2009; also see Upadhyya and Sane 2009). It is very important to understand the difference between 'rights'

and 'access' (Ribot and Peluso 2003). While rights correspond to legal or customary claims, access refers to institutions and socioeconomic factors that enable users to benefit from the right. Despite the existence of rights to forest benefits (or their lack), the ability to benefit from those rights depends on private assets and resources (economic, social, and political) under the command of individuals and households, and how these could be used to influence institutions. These assets influence the ability to extract; implement and formulate rules; and the ability to overcome legal exclusions and affect coping strategies (see, for example, Baland and Platteau 2003). In other words, these can be used to mitigate state control over forest resources; alternatively, these also offer access to different, and possibly more lucrative, opportunities. The heterogeneity that exists in the possession of these private resources and assets thus could contribute to differences in forest benefits and overall livelihood strategies among forest residents (see, for example, Adhikari 2005; Adhikari et al. 2004; Naidu 2011; Vedeld et al. 2007).

### **3.1 Forest Policies and Rights Deprivation in Odisha**

Institutional theory tells us that social, political, and economic institutions—both formal and informal—shape behaviour and opportunities, define rights, and distribute power. This function has major implications for poverty and its alleviation. Institutional reforms are hard to bring about, partly because the apparently 'bad' policies, including the colonial laws, often reflect the preferences of national elites who benefit from resource extraction (Ascher 1999). Historically, forest dwelling populations in India have been subjected to a range of deprivations that have affected their livelihood adversely. In pre-independent India, forest policies focused mostly on generating revenue for the state, and also restricted the access of tribals to forests. These policies continued in independent India and, in the late 1970s, were followed by concern for the environment. The state, which had the monopoly over most forest products, gave private traders the rights for buying NTFP during the 1970s. The traders exploited forest communities by paying very low prices. In the 1980s, forest-related institutions emerged around these policies, and adversely affected tribal livelihoods (Sarap and Sarangi 2010b). It was only since 2000 that the provision of control of giving licensing power to *panchayati raj* institutions (PRIs) to the traders was started. But panchayats lack capacity, so traders continue to dominate in the purchase of forest products. However, the state still controls major forest products (such as *kendu* leaves, bamboo, and *sal* seeds) (see Mahanty 2014).

Since the late 1980s, under the state-sponsored joint forest management (JFM) programme, forest policies have undergone some changes, towards participatory forest management. The JFM programme promised to improve the income of forest dwellers through the sale of NTFP, but it has not been working properly in Odisha, and impacted tribal

livelihoods only marginally (Sarap and Sarangi 2009; Sarap, Sarangi and Naik 2013). Another programme not implemented properly in the state is the Panchayat (Extension to Scheduled Areas) Act, 1996, which gives *gram sabhas* special powers to increase the voice of tribal communities in development, including management and mining leases and infrastructural development. The Act has not been functioning satisfactorily; and tribal participation in decision making on natural resource development and management is perfunctory, because of the unequal power relations of the Scheduled Castes and Scheduled Tribes with other groups (Khosla 2010; see also Ramakrisnan and Mahaprashasta 2013). A pivotal role in the legislation of the Forest Rights Act has been played by organisations spearheading the cause of tribal uplift, like the Campaign for Survival and Dignity (CSD), who feel that tribals and forest dwellers have been victims of 'historic injustice', and cannot be sacrificed at the altar of development.

### **3.2 Overview of Protected Areas in Odisha, India**

India has one of the world's most extensive network of protected areas—520 wildlife sanctuaries and national parks over 121,980 sq km, or 3.71 per cent of its geographical area (National Wildlife Database, February 2013). This network has helped to conserve a significant part of India's biodiversity, but at the cost of severe conflicts between local communities and managers of protected areas over restrictions against resource use (Kothari 1997). The first national park was established in 1935, which is now famous as the Corbett National Park. Since then, and after the Wildlife Protection Act, 1972 came into force, the number of protected areas, national parks, and wildlife sanctuaries has risen steadily. In 1988, there were 54 national parks and 372 sanctuaries, over 109,652 sq km. By 2000, this number had increased to 566, over 153,000 sq km, or 4.66 per cent of India's geographical area. There are currently 512 wildlife sanctuaries, 93 national parks, and 63 zoos over 161,221 sq km. Protected areas are categorised as national parks, wildlife sanctuaries, conservation reserves, and community reserves. Apart from the protected areas system mandated under the Wildlife Protection Act, 1972, certain areas have been declared as biosphere reserves by the Government of India, to conserve *in situ* all forms of life, along with its support system, in totality, so that it could serve as a referral system for monitoring and evaluating changes in natural ecosystems. In 1973, the Government of India launched Project Tiger to save the endangered species of the tiger. In 1973–74, there were nine reserves in the country; there are now 41. Project Tiger now cover 49,112 sq km, which is 1.49 per cent of the total geographical area of the country.

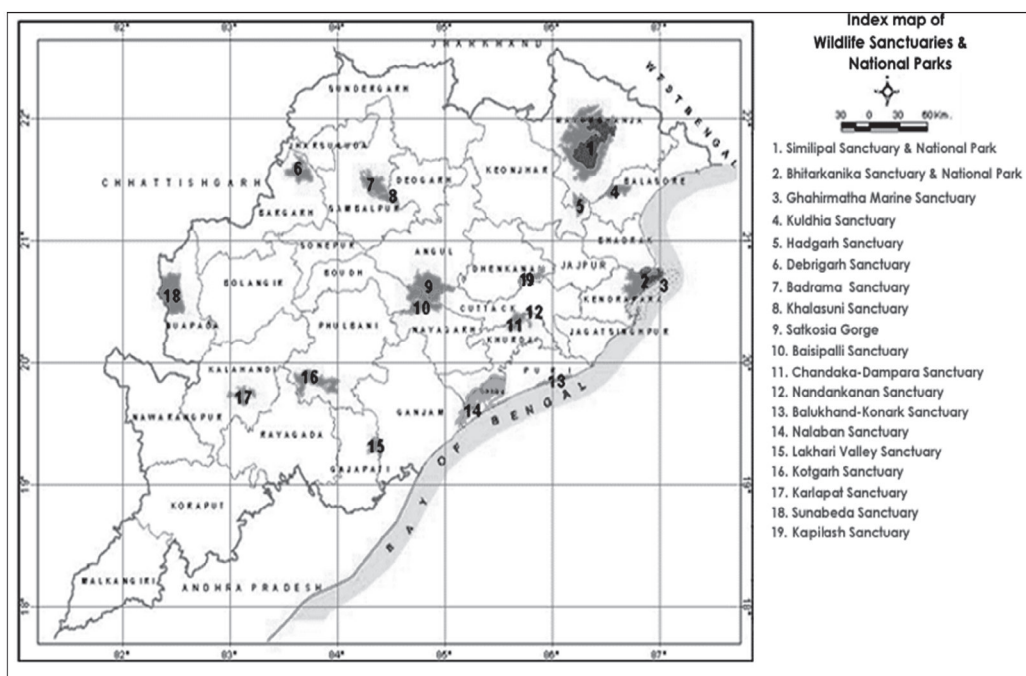
**Table 3** Status of protected areas in Odisha

No.	Type	Number / Area
1	National park (Bhitarkanika)	1
2	Proposed national park (Simlipal)	1
3	Wildlife sanctuary	19
4	Total protected area (sq km)	8333.61
5	Proportion of protected area to total geographical area (%)	5.35
6	Proportion of protected area to total forest area (%)	14.33
7	Tiger reserve	2

Source: Wild Odisha 2013

In Odisha, there are 19 sanctuaries and two national parks, over 5.35 per cent (8333.61 sq km) of the total geographical area and 14.33 per cent of the total forest area. Most of the protected area is in Schedule V Areas, where the population is predominantly tribal. The two national parks cover 990.70 sq km, or 0.64 per cent of the geographical area of the state. The two tiger reserves in Odisha cover an area of 3713.87 sq km.

**Map 1** Protected areas in Odisha



Source: Office of the Chief Wildlife Warden, Odisha

## 4 FOREST RIGHTS ACT, 2006: UNDOING HISTORICAL INJUSTICE

*The passing of the Forest Rights Act, 2006 undoubtedly represents a seminal moment in India's highly contested forest politics. For the first time, an Act recognised the historical injustice perpetrated by the state. '...The forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers ...' (FRA 2006).*

### Box 1 Entitlement to Households under the Forest Rights Act, 2006

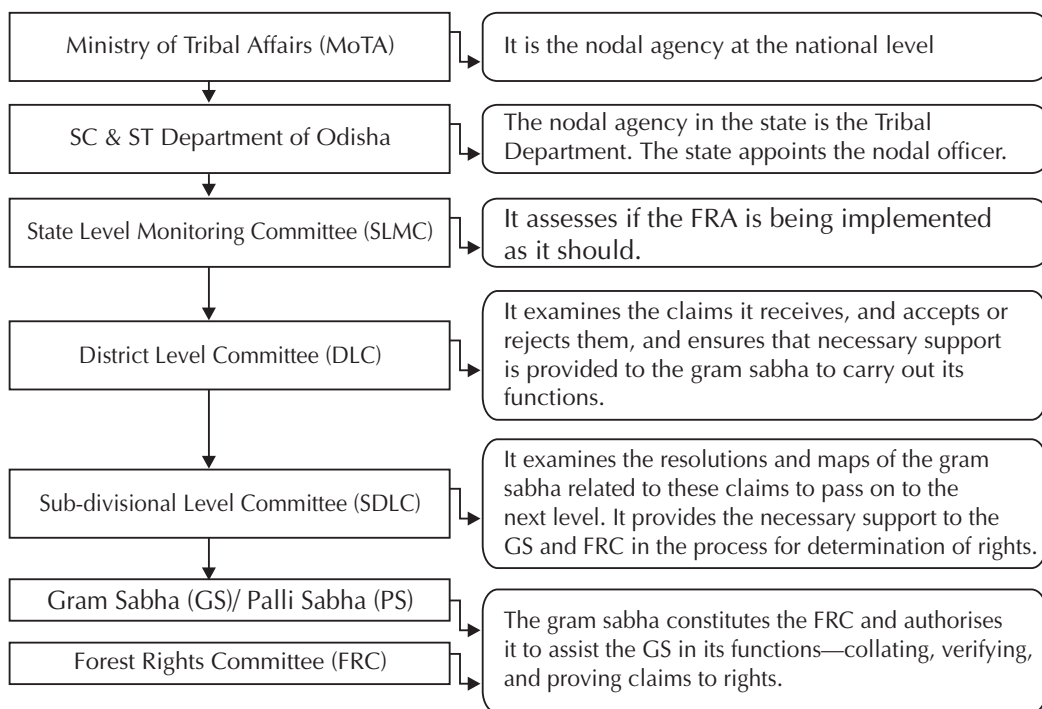
Proper implementation of the Forest Rights Act, 2006 will give claimants several entitlements. These are listed below.

- Ownership rights on forest land (subject to a maximum of four hectares) under possession (up to 13 December 2005) by the claimants such as tribals and Other Traditional Forest Dwellers (OTFDs).
- The people who have constructed small houses on forest land and are living there would get the right to dwell perpetually on the land.
- Right to settlement of old habitations and un-surveyed villages.
- Right to habitat and habitation for primitive tribes.
- Right to conversion of forest villages into revenue villages.
- Right for conversion of *patta* (record of land) or lease or grants issued by the state government on forest land to titles.
- Right to rehabilitation of illegal eviction or forced displacement.
- Right to ownership of, and access to collect and dispose of, minor forest products, which have been traditionally collected within or outside village boundaries, and grazing rights.
- Right to protect, regenerate, conserve, or manage any community forest resources. The community forest resources may be in reserved forests, protected forests, and protected areas, such as sanctuaries and national parks, to which the community has access.
- Community rights to intellectual property related to forest diversity, cultural diversity, and any other traditional right customarily enjoyed by forest dwelling communities, excluding the right to hunt.
- Other community rights for use or entitlements, such as fish and other products of water bodies, grazing, and traditional seasonal resource access for nomadic or pastoralist communities.
- Vested forest rights are heritable, but not alienable or transferable.

<sup>3</sup> Presently, households in forest villages are deprived of several benefits under anti-poverty programmes including monetary assistance under the Indira Awas Yojana.



**Figure 1** Role of institutions in implementing the Forest Rights Act



Source: The Gazette of India Extraordinary (2007 and 2008).

While the Act provides for the restitution of rights to forest-dependent households, it is only an enabling legislation; the actual allocation of rights at the local level depends on the way it is implemented.

#### **4.1. Conservation Vs Livelihood: Implementation of the Forest Rights Act in Badrama Wildlife Sanctuary**

Badrama Wildlife Sanctuary, also known as Ushakothi, was constituted in 1987 in the Bamra Wildlife Division of Sambalpur district. Badrama is located about 48 km from Sambalpur town on the NH-6. The sanctuary has mostly hilly terrain, and is contiguous with Khalasuni sanctuary to the south. The sanctuary covers an area of 304.03 sq km, including the core area of 31.28 sq km. As in other protected areas in Odisha, people in Badrama Sanctuary are living a life of deprivation owing to the exploitative and exclusionary conservation practices employed by the state, such as restrictive sanctuary laws in general and the Supreme Court ban on collecting NTFP.

## 4.2 Forest Rights and Livelihoods in Badrama Wildlife Sanctuary

According to official sources, there are 27 villages in the sanctuary. Collecting NTFP (particularly, *kendu* leaf, bamboo, *sal* seeds, and *mahua*) is the only source of livelihood for residents, but the forest department prevents them from doing so. The restriction has caused serious economic dislocation, and popular resentment often leads to minor scuffles and pitched battles. The residents of Sarada *panchayat* are some of the worst victims. The *panchayat* comprises six villages, and sits on a hilly tract; it has no communication. The area used to be one of the largest producers of *kendu* leaf in Odisha. In 1998, after repeated demands from the public, two new *phadis*<sup>4</sup> (Pathuria and Tileimal) were opened on the condition that it would produce at least 30 quintals of leaves per year. The *phadis* produced 58 quintals in 1998, and an all-time high of 72 quintals in 1999. That year, all the *phadis* were closed down, including those operational since the nationalisation of the *kendu* leaf trade. Since then, production has dropped very sharply; an unconfirmed report put it at 10–12 quintals. As plucking is banned inside the sanctuary, people live in constant fear of the forest department. Also, irrespective of the quantity they can pluck, villagers have to walk down 15 km to deposit it, as there is no *phadi* closer by.

Bamboo and related products constitute a key source of income for three communities: the Turi, Dom, and Kondh. The Turi and Dom are Scheduled Castes. The Kondh are a Scheduled Tribe. These three communities live in Sarada, Sodo, Badrama, and Kulundi *panchayats*, located in the sanctuary. Traditionally, they have made products out of bamboo and eked out a living from selling those. Close on the heels of the nationalisation of bamboo, and more particularly after 1999, forest department officials intensified their assault on these people.

It is alleged that officials also demand bribes. The collection of *sal* seeds has also gone down drastically, because the forest department has stepped up vigil. In 2003, there was a bumper crop of *sal* seeds, but the Odisha Forest Development Corporation (OFDC) and Tribal Development Cooperative Corporation (TDCC) refused to purchase it, as their deadline had expired. Huge quantities of the produce were lying unsold, so people resorted to agitation. Finally, the government agreed to procure the harvest. But, even now, the OFDC owes payments to primary gatherers. Reportedly, middlemen have siphoned off the payments.

As in other forest areas of the state, the livelihoods of these forest dwellers have been severely disrupted, because the law does not recognise their right to access common forest and land resources. Youth from villages in the sanctuary formed a people's organisation called the Badrama Abhayaranya Vikas Parishad (BAVP) to develop a framework to balance conservation and livelihoods (Dash 2009). The BAVP works on issues like non-settlement of

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<sup>4</sup> Storehouse for NTFP set up by the Odisha Forest Development Corporation (OFDC).

rights of tribal communities, restrictions on collection of minor forest produce, recognition of community conservation initiatives, and participatory management of protected areas.

## **Box 2** Admitted rights and concessions

Erstwhile, the entire area inside the sanctuary was under the control of Bamra ex state. The Bamra Forest Rule gives local communities the following rights.

People have no rights to 'A' class reserve forests.

Tenants paying *nistar*<sup>5</sup> are allowed to collect forest produce in coupe areas of 'B' class reserve forests, but for consumption only, and not sale or barter.

Cattle grazing is allowed on payment of certain fees inside parts of the reserve forest (excluding the areas closed for grazing). People residing nearby may collect MFP (edible roots, leaves, fruits, flowers, and grasses) for bona fide purposes. Lac cultivation, especially on *kusum* trees, is permitted, and tenants may extract bamboo to meet their domestic needs.

Primitive tribes like the *Juang* may collect bamboo without cost or permission, and may process and sell it for their livelihood.

*Source:* Report of the Forest Enquiry Committee of Orissa 1959, pp 124–25

The Forest Rights Act has created an opportunity for local communities to secure the right to access forests, and to set out a rights-based framework for conservation and natural resource governance. Under the aegis of the BAVP, people from all the sanctuary villages actively involved in the protection of forests and wildlife have used the Act to strengthen their conservation initiatives. Already, the villages have forest protection groups, and well developed rules and regulations for protecting forests and using resources sustainably. The rights determination process has gone hand in hand with the process of setting up conservation and development committees in each village, under Section 5 of the Act. This section empowers the *gram sabha* and community to protect, conserve, and manage community forest resources, and to stop activities detrimental to local resources. They also plan to chalk out community biodiversity management plans to protect and use forest resources and biodiversity sustainably. These plans will be based on the existing traditional practices, knowledge, rules, and regulations on conservation developed by each community.

When the plans are developed, the BAVP hopes to advocate for mainstreaming them in the management of the sanctuary and adjoining areas. This will necessitate changes in the existing management and working plans formulated by government conservation agencies. To strengthen community conservation initiatives and make productive use of community forest resources, the BAVP also aims to explore how the Forest Rights Act can be used with other provisions of the law. These provisions include the Panchayat Extension to Scheduled Areas Act, Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA),

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<sup>5</sup> Nistar is the concession granted for removal of specified forest produce from forest coupes for bona fide domestic use on payment at stipulated rates, but not for barter or sale. The forest department fixes the nistar rate for specified forest produce in consultation with the District Collector. The rates so fixed may not exceed 50 per cent of the market rate.

Biological Diversity Act (BDA), and government watershed and soil conservation programmes. For example, volunteers from village level committees are involved in fire management work during the summer season. They are now demanding that conservation-related work, such as forest fire management, be included in the MGNREGS, so that productive work can be generated from the conservation process, which, in turn, could provide the local community an incentive to participate in the community conservation process. Such integration could also lead to the realisation of the ecological objectives of the MGNREGA that are neglected in the implementation plan and programmes. In addition, the organisation will try to influence PRIs to integrate community-based resource management plans with the local governance agenda.

For many people who live in the sanctuary and depend on the forest, livelihood security has always been a major issue. People in this area mainly depend upon minor forest produce and subsistence cultivation as their major source of livelihood and to a small extent on animal husbandry. Restriction imposed by the conservation regime on the rights, reduced access and control over forest resources, non-implementation of development and poverty alleviation programs, and absence of basic facilities like health and education have driven people into abject poverty and deprivation.

### **4.3 Process and Outcome of Implementation of Forest Rights Act in Badrama Wildlife Sanctuary**

The people living in the sanctuary are mostly poor and below the poverty line. Among them, the Oram, Munda, Khadia, Gond, Kandha, Kisan etc. are the predominant tribes and Gouda, Routia, Agharia, Chamar, Dhoba, Lohar, Keuta etc. belong to other castes. For their livelihood, these people depend mainly upon minor forest produce (MFP) and subsistence cultivation and, to a small extent, on animal husbandry. During the monsoon, they till the land, which ensures their livelihood for six months. For the next six months, they work as labourers in nearby towns, and collect MFP (*mahua, char, kendu, kendu leaf, fuelwood* etc.) for their own consumption. The process initiated in Badrama is a bottom-up approach, where civil society groups have played a major role in the claim facilitation process of the Forest Rights Act, with the involvement of the community.

#### **4.3.1 Formation of the Forest Rights Committee**

In the initial phase in 2008, on 16 February and 23 March, forest rights committees were constituted only in revenue villages, as per the instruction of the state government, without going through the proper process of the implementation of the Forest Rights Act. When the process was initiated in the field, it was noticed that people did not know of the roles and responsibilities of the committee. Then, it was reconstituted as per the norms and conditions of the Act, and civil society groups were actively involved in the process of its implementation. After lobbying by civil society groups, the ST and SC development departments of Odisha issued circulars to constitute such committees at the hamlet level and, accordingly, such committees were constituted. In the Amendment of 2012, there was a slight

change in the quorum of the gram sabha, and in the ratio of tribals and non-tribals in the committee. The process of reconstitution has been initiated in the sanctuary through district administration and civil society groups.

#### 4.3.2 Recognition of Individual Rights

Section 3 (1) of the Act provides for the grant of several heritable, inalienable, and non-transferable forest rights to forest dwelling Scheduled Tribes (FDST) and other traditional forest dwellers (OTFD). It recognises the right of FDSTs and OTFDs to hold and live in forest land under individual or common occupation for habitation or for self-cultivation for livelihood. Individuals belonging to FDSTs in possession of forest land for the above purposes before 13 December 2005 can claim recognition of such rights following due procedure. For OTFDs, residency has to be for three generations, that is 75 years prior to 13 December 2005. The law also recognises rights for conversion of *patta* (lease or grant) issued by any local authority or state government on forest land to titles. The amendments made in September 2012 to the rules expand the scope of self-cultivation to include activities allied with or incidental to agriculture, such as rearing cattle, harvesting yards, etc. It widens the definition of bona fide livelihood needs to include the sale of surplus produce.

In most protected areas, civil society groups initiated the claim making process. Many potential claimants have not been able to file claims, due to their lack of awareness. In addition, there are those whose claims have not been entertained, for arbitrary reasons. As reported, in most protected areas, the recognition of the extent of individual rights is less than the claimed area. The claims of Other Traditional Forest Dwellers (OTFD) have not been entertained until date.

#### 4.3.3 Claim Verification Process

In Badrama, the forest and revenue departments conducted field verification together.

**Table 4** Status of Forest Rights Act in Badrama Wildlife Sanctuary

Title Type	No. of Claims Received by FRC	No. of Claims Approved by GS and sent to SDLC	No. of Claims Approved by SDLC and Sent to DLC	No. of Claims Approved by DLC for Title distribution	No. of Titles Distributed	Area (in Acre)	Avg. Area (in Acre)
Individual	700	524	348	343	343	432.47	1.26
Community	27	27	03	03	00	--	--

Source: Badrama Abhayaranya Vikash Parishad 2014

In Badrama, 1314 individual claims were received from 41 villages (both core and periphery), which were facilitated by the BAVP with the support of Vasundhara. Of these, 700 claims were from the 27 villages of the sanctuary area. Of these 700 claims, the gram sabha

approved 524 claims and sent these to the SDLC, which approved 348 claims and sent these to the DLC for approval. Finally, the DLC approved 343 claims over an area of 432.47 acres. The area approved per beneficiary in Badrama is 1.26 acre on average, less than the state average (1.6 acre). The minimum area recognised in individual claims is 0.52 acres, and the maximum is 3.59 acres.

#### 4.3.4 Status of Rejection

Due to lack of awareness, communities claimed their rights even in non-forest land, which is not under the purview of the Forest Rights Act. The OTFDs were discouraged from filing claims; many of their claims were rejected by the gram sabha. The main reasons for rejection are as follows.

1. *Non-forest land*: Claims were submitted on non-forest land.
2. *Other Traditional Forest Dwellers*: Most claims rejected were from OTFDs, because they could not prove they have had possession of the land for 75 years.
3. *Disputed Land*: Most claims have been rejected because the land is disputed.

#### 4.3.5 Status of Remand

In Badrama, the SDLC remanded 11 individual claims to the gram sabha. Of these, five claims are from Cheptamb and Kureibahal, three from Odsing, and three from Tansara village. The claimants appealed against the SDLC to the DLC on 19 October 2009, but they did not take steps to address the issues. Communities claimed their rights (nistar, grazing, and MFP) over the forest, prepared a rough map without mentioning the area, passed a resolution, and sent it to the SDLC for verification. After verification, a map was prepared. In total, 27 community claims were submitted to the SDLC. Of these, verification was completed in three villages: Kutab (1666.089 acres), Gantab (1166.089 acre), and Tansara (1696.140 acres). The SDLC and DLC approved three community rights, and the district prepared titles. However, as the forest area is huge, the district administration is reluctant to give the community titles, and so had not issued these on the date of the survey.

#### 4.3.6 Conversion of Forest Village to Revenue village

Khuntiam, a forest village in Badrama, is under Chakuliabahal Gram Panchayat. In 2011, a proposal was made through the BAVP to the Sub-collector of Kuchinda for converting the status of Khuntiam to a revenue village under Section (3) of Sub-section (1) (h) of the Forest Rights Act. But the district administration has not yet responded to this appeal.

#### 4.3.7 Status of Convergence

The nature of convergence includes land development, irrigation ponds, stone bonding,

Indira Awas Yojana, horticulture activities, rubber plantation, coffee plantation etc. which is routed through Integrated Tribal Development Agency. Soon, under the MGNREGS, individual title holders under the Forest Rights Act may expect to receive Rs 50,000 for land development work (levelling and land bounding work). In most protected areas, the forest department has carried out plantation programmes where individuals got their rights through Eco Development Club. Apart from this, assistance for housing under the Indira Awas Yojana has been given to 102 claimants under the Forest Rights Act.

#### 4.3.8 Increasing Man–Animal Conflict

Crop depredation by wild elephants is growing, and has emerged as a serious problem in all villages—at the core and periphery. During harvesting season, elephant herds intrude into paddy fields with increasing frequency, and destroy much standing crop. But reporting of crop damage is only partial, as the procedure for claiming compensation is lengthy and complicated. Local communities can contribute to conservation with justice if they are consulted and are allowed to participate in decision making on activities, programmes, and policies that affect them or their surroundings.

### 5 CONFLICT OF INTEREST IN IMPLEMENTING THE FOREST RIGHTS ACT

The Forest Rights Act is the most recent manifestation of conflicts. The intense struggle over it from 2005 onwards allows us to map the social forces involved. The actors in this struggle can broadly be categorised into three groups. The first, and the most vocal in the English language press, is the forest bureaucracy and its handful of very visible allies among hardline wildlife conservationists. This group, which defends centralisation, autocracy, and the enclosure system of the forest bureaucracy as the *sine qua non* of wildlife conservation, attacked the Forest Rights Act head on and aimed to destroy it (Gopalkrishnan 2010).

It is common to assume that all other actors can be classed together as supporters of the law. But there is a fundamental distinction within this group as well, understanding which is crucial to understanding the way the struggle around the Act was, and is still being, shaped. Thus, one group of 'supporters', comprising much of the non-forest state bureaucracy, some NGOs, and progressive elements in the forest bureaucracy, saw the forest rights struggle as legitimate but limited. To this group, the key purpose of any move on forest rights was to mitigate conflicts, recognise people's lands and homes, and address the immediate critical problems of the *adivasi* in particular, so that forest areas could cease to be a cauldron of violence and impoverishment. This could be done through a clear, well-designed, and 'focused' legislative effort to correct the historical injustice of the past. The other group of supporters—including most movements of forest dwellers and tribals, and certain elements in the Left parties, the Congress, and other political parties—argued the Act would address the deeper reality of a system of resource control, which is inherently extractive and exploitative,

and which would not allow a 'simple', straightforward rights recording exercise to ever take place. For the movements in particular, this issue was not an end in itself, but an entry point into a deeper, wider political struggle over resources.

It is important to note that this broad sketch does not concern merely different points of view, but also different social forces. Each of these actors occupied a socio-political position determined by the material basis of their action—the forest bureaucracy, NGOs, etc., attempting to protect and promote stability in the face of one of the country's most severe internal conflicts; and the movements and sections of political parties, attempting to bring about a more fundamental change to empower their mass bases. The struggle over the law and its meaning has been shaped at each stage by the question as to which force dominated the political space in question. In considering the politics of institutional reform in forest governance, we see numerous stakes and conflicts of interest in the implementation process, and in the ideological background of the major political parties, in the state (Sundar 2012).

The major political parties in Odisha have not taken up the issues relating to the improvement of the livelihood of tribals and other forest dwelling communities, except for forest conservation. It was left to the bureaucrats and some civil society groups to raise these issues. But there are differences among and between these groups, too; for instance, some NGOs are more interested in protecting wild animals and biodiversity and for that, letting forests grow, than the plight of tribals. In such a situation, the interpretation of the Forest Rights Act in the context of 'critical wildlife habitat' as no claim area to keep the tribals out of the area is crucial. Given that 11 percent of the forest area in Odisha is in national parks and sanctuaries, and more is in the pipeline, where many tribal hamlets are located, it is doubtful about the proper interpretation of the Act in such areas for the benefit of tribals. Third party intervention on behalf of tribals is necessary for proper implementation of the Act in these areas (Sarangi 2013).

The forest bureaucracy in the state has been a very strong influence on forest policies. Even though two other important departments (revenue and tribal welfare) are involved in the process of implementation of FRA, information on forest land by the forest officials at the lower level is crucial. The revenue officials such as the *patwari*, who actually do the survey work at village level is also important. However, they take it routinely. In such situation, the forest officials play an important role in deciding the forest land under possession by the claimants. Given their attitude, they would try to be conservative in the decision to allocate forest land. It has been observed in some study villages that the claims forms of some claimants were rejected because at the time of verification, it was found that the plot under consideration was not located at a place where it was mentioned in the claim but cultivating forest land in another site of the village (see Sarap, Sarangi, and Naik 2013). There can be several such cases in which the forms will be rejected at the preliminary level by the committee.



## 5.1. Future of Protected Areas in Odisha

Among the 690-odd protected areas in India, only a few are well known and regularly highlighted, namely those that have large mega-vertebrates and/or high profile visitors. Even amongst them, tiger reserves receive most of the funding. The rest remain in neglect and oblivion, except perhaps those that are locally known. These neglected protected areas are generally resented by politicians, administrators, and villagers due to the restrictions placed on extraction of natural resources from them. They are also under-staffed and under-funded. They come to the attention of the MoEF and the National Board for Wildlife, dominated by the tiger lobby, only when a forest village road has to be repaired or a pipeline has to be laid. The media pays attention only when predators kill a villager or poachers are caught (Rahmani 2013). In Odisha, only three of the 19 protected areas (Bhitarkanika, Satkosia, and Simlipal), which are internationally recognised, are taken care of properly; the rest get hardly any attention from the government. If this scenario does not change, the future of protected areas in Odisha is bleak.

## 6 CONCLUSIONS AND WAY FORWARD

The enactment of the Forest Rights Act, 2006 recognised the basic livelihood rights of forest dwellers living in protected areas. In protected areas in Odisha, there are many villages—both revenue and forest. Most protected areas support the livelihood needs of local communities. While human activity affects wildlife survival, habitat protection, and overall biodiversity conservation, communities often face serious human–animal conflict, such as crop raiding, livestock predation, and loss of human life. Both the central government and the state governments recognise the legitimacy of forest dwellers' claims, but they must also strive to conserve biodiversity.

In protected areas like the Badrama Wildlife Sanctuary, both individual households and the community have been claiming their rights within their traditional boundary since 2010. Both the forest and revenue departments have completed the process of verification and delineation of areas, and the DLC has approved the distribution of final titles. About half the individual titles have been distributed until date. However, the district administration is reluctant to distribute community rights over a vast forest area, and community titles are pending at the district.

Based on its findings, the study strongly recommends that the state government of Odisha implement the Forest Rights Act properly in protected areas, as that will provide stable property rights on forest land and also enforce the entitlement of forest dwellers on forest produce such as NTFP.

Finally, it will reduce the conflict between conservation and livelihood in protected areas. Again, if the Act is properly implemented in conjunction with the MGNREGS, it will

lead to land, forest, and watershed development in the villages in protected areas; the mere grant of legal ownership of land is going to make hardly any difference in the lives of the communities, as the quality of land is very poor. Hence, implementing MGNREGS along with the FRA seems to be the only way to maximise the impact of both these landmark legislations on livelihoods as far as they apply to forest dwellers. Land improvement and soil conservation activities in line with watershed principles can be implemented under the MGNREGA, which would eventually improve the productivity of the land claimed under the FRA. However, this further needs inter-departmental coordination at various institutional levels.

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