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Forest Rights Act Dispute Raises Questions over Gram Sabha Consent, Tribal Rights and Delays in Critical Infrastructure Projects

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Recent Developments:

- The **Ministry of Tribal Affairs (MoTA)** has clarified that the **Forest Rights Act, 2006 (FRA)** and its Rules do not contain a specific provision requiring **Gram Sabha consent for Stage-II forest clearance**, and stated that matters concerning such consent do not fall within its purview. The clarification followed discussions with the Ministry of Power over delays affecting infrastructure projects.
- The issue emerged after the **Parliamentary Standing Committee on Public Undertakings** examined delays faced by **NHPC Limited**. The Committee recorded that forest clearance for under-construction hydropower projects takes an average of **106 months**, and identified the requirement for consent from all concerned Gram Sabhas as a major bottleneck.
- The Committee examined NHPC's proposal for a **70–75% qualified super-majority** of affected Gram Sabhas for large hydropower projects of national importance, while also recommending safeguards for Gram Sabha interests and earlier FRA compliance during the project-preparation stage.

Understanding the Forest Rights Act, 2006:

Objectives and Significance:

- The **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006** was enacted to address the historical injustice faced by forest-dwelling Scheduled Tribes and other traditional forest dwellers whose customary rights had not been adequately recognised under earlier forest governance regimes.
- The Act recognises a range of **individual and community forest rights**, including rights relating to self-cultivation, habitation, grazing, fishing, access to water bodies, biodiversity, traditional knowledge and **Community Forest Resource management**. It also seeks to strengthen the participation of rights-holders in forest conservation.
- The **Gram Sabha** occupies a central position because it initiates the process of determining the nature and extent of individual and community forest rights and performs important functions in verification, recognition and protection of such rights.

Nodal Ministry and Implementation:

- The **Ministry of Tribal Affairs** is the nodal Union Ministry for the implementation framework of the FRA, while actual implementation is substantially undertaken by **State Governments and Union Territory administrations**.
- The Ministry has itself stated that implementation of the FRA lies with States and Union Territories, which creates an important distinction between **Union-level policy coordination** and **ground-level implementation**.

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Gram Sabha Consent and Forest Diversion:

The Legal Distinction:

- A crucial distinction must be maintained between the **FRA, 2006**, which primarily recognises forest rights, and the statutory regime governing **diversion of forest land for non-forest purposes**, historically associated with the **Forest (Conservation) Act, 1980** and its subsequent regulatory framework.
- The FRA does not expressly state that every forest-diversion proposal requires Gram Sabha consent as a standalone statutory condition for Stage-II forest clearance. However, Government procedures and guidelines concerning forest diversion have linked forest clearance with completion of the FRA-related process.

How the Consent Procedure Emerged:

- The relevant administrative framework has required authorities to establish that FRA processes have been addressed before forest land is diverted. This has involved:
- Identification of potential **FRA rights-holders**;
- Recognition of eligible forest rights;
- Vesting of recognised rights; and
- Obtaining the required **Gram Sabha certification or no-objection** in the applicable diversion process.
- Consequently, the practical requirement of Gram Sabha consent became closely associated with forest-diversion clearances even though the precise legal source of the requirement is distinct from the substantive provisions of the FRA itself. The Ministry of Tribal Affairs maintains that the FRA and its Rules do not themselves prescribe such consent for Stage-II clearance.

Why the Issue Matters for Hydropower Development:

Infrastructure and Development Concerns:

- The Parliamentary Committee's finding of an average **106-month forest-clearance period** highlights the substantial economic consequences of prolonged regulatory processes, including cost escalation, delayed power generation, inefficient utilisation of public capital and uncertainty for project planning.
- Hydropower projects frequently operate in ecologically sensitive and forested regions, particularly in the **Himalayan and North-Eastern areas**, where forest rights, tribal livelihoods, biodiversity and infrastructure development often overlap.
- The **Teesta-IV Hydroelectric Project** has been cited in the parliamentary deliberations as an example of a project affected by pending Gram Sabha-related consent issues. Government records also identify Teesta-IV as a 520 MW NHPC project in Sikkim whose forest clearance had remained an important issue.

Super-Majority Proposal:

- The proposed **70–75% qualified super-majority** would represent a major shift from an arrangement in which objections from individual affected Gram Sabhas can potentially prevent project progression.
- Supporters may argue that such a threshold could prevent nationally important projects from being indefinitely stalled by limited dissent while retaining a significant degree of community participation.
- Critics, however, argue that **majority voting cannot automatically extinguish legally recognised individual or community rights**. Affected rights-holders may belong to vulnerable communities for whom loss of land or forest resources can have irreversible livelihood and cultural consequences.

Constitutional and Legal Context:

PESA and Constitutional Safeguards:

- The **Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA)** strengthens the role of Gram Sabhas in Scheduled Areas and reflects the constitutional commitment to participatory tribal self-governance.

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- The **Fifth Schedule** provides a special administrative framework for Scheduled Areas, while the **Sixth Schedule** provides autonomous institutional arrangements for specified tribal areas in the North-Eastern States.
- These provisions demonstrate that tribal governance is not merely an administrative question but is linked to **constitutional protection, decentralisation, community participation and socio-economic justice**.

Judicial Recognition of Community Rights:

- The Supreme Court's **Samatha judgment, 1997**, emphasised constitutional safeguards against exploitation of tribal communities and recognised the protective significance of the Fifth Schedule in relation to tribal land and resources.
- In the **Orissa Mining Corporation v. Ministry of Environment and Forests judgment, 2013**, concerning the **Niyamgiri Hills**, the Supreme Court recognised the central role of Gram Sabhas in determining questions affecting the religious, cultural and community rights of tribal communities.
- Therefore, any reform of the consent framework must be assessed against the wider constitutional and judicial architecture rather than through the text of the FRA alone.

Core Governance Challenges:

Rights versus Development:

- The controversy represents a broader governance dilemma between **rapid infrastructure development** and **rights-based environmental governance**.
- Delayed clearances can undermine energy security and infrastructure creation, but weakening community participation can produce displacement, livelihood insecurity, social conflict and litigation.

Institutional Ambiguity:

- The latest inter-ministerial disagreement also exposes a potential **institutional coordination gap**. If the Ministry of Tribal Affairs is the nodal ministry for FRA implementation but disputes concerning Gram Sabha consent are treated as outside its jurisdiction, responsibility for resolving such disputes requires clearer allocation.
- Such ambiguity can increase administrative delays because project authorities may be uncertain about the appropriate ministry, legal instrument or procedure through which disputes should be resolved.

Way Forward:

Complete FRA Processes at the Initial Stage:

- FRA-related verification and recognition should begin during the **pre-feasibility and project-planning stage**, rather than becoming a late-stage clearance requirement. The parliamentary recommendations have also supported initiating FRA compliance earlier in the project cycle.

Strengthen State-Level Capacity:

- Since implementation substantially rests with States and Union Territories, dedicated personnel, digital records, training and time-bound procedures should be developed for **forest-right recognition and Gram Sabha processes**.

Improve Quality of Consultation:

- Genuine consultation should involve **prior information, accessible project details, participation of affected rights-holders, transparent documentation and credible rehabilitation and benefit-sharing**

mechanisms.

Protect Rights while Reducing Delay:

- Instead of mechanically replacing unanimity with a super-majority, the Government could consider safeguards such as **project-specific social-impact assessment, protection of individual recognised rights, independent review of objections and enhanced rehabilitation measures.**
- A differentiated framework could also be examined for nationally important projects, provided that constitutional protections and legally recognised forest rights are not diluted.

Clarify the Legal Framework:

- The Union Government should clearly distinguish between the **substantive rights recognised under the FRA** and the **procedural requirements governing forest diversion**, thereby eliminating ambiguity regarding the legal basis of Gram Sabha certification or consent.

Conclusion:

- The Forest Rights Act represents a shift from a purely administrative model of forest governance towards a **rights-based and participatory framework**. The present controversy should therefore not be reduced to a choice between development and tribal rights.
- The objective should be to create a **predictable, time-bound and legally coherent clearance system** in which infrastructure projects can proceed efficiently while recognised forest rights, constitutional protections and meaningful Gram Sabha participation remain safeguarded.

Value Addition for UPSC:

Prelims Pointers:

- **FRA, 2006:** Recognises individual and community forest rights of Scheduled Tribes and other traditional forest dwellers.
- **Gram Sabha:** Central authority in initiating the process for determining forest rights under the FRA.
- **PESA, 1996:** Extends Panchayati Raj provisions to Scheduled Areas with enhanced Gram Sabha powers.
- **Fifth Schedule:** Constitutional framework for administration and control of Scheduled Areas and Scheduled Tribes.
- **Sixth Schedule:** Provides autonomous governance arrangements for specified tribal areas in the North-East.
- **Samatha judgment, 1997:** Important for constitutional protection of tribal land and resources.
- **Orissa Mining Corporation judgment, 2013:** Significant for Gram Sabha authority concerning tribal cultural and community rights in the Niyamgiri context.