
An Assessment of the Indian Forest Rights Act 2006 in Assam

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Abstract: *The implementation of the Forest Rights Act (FRA) 2006 in January 2008 is considered as significant landmark legislation in the history of forest management in India. It is committed to undo the historical injustice done to the forest dwelling communities whose rights could not be recorded at the time of reservation of forests. Unlike other parts, Assam, located in the northeastern part of India, represents a uniquely diverse history of man-forest interface which is at variance with the all India perspective. Its unique history of land alienation among the indigenous peasants and their migration into the forests in search of land and livelihoods form an intrinsic part of the discourse of man-forest relationship in the state. This article explicates the nature of conflict that arose with the implementation of the FRA in Assam. Some of its crucial provisions do not match with the existing local realities of the region. The Report of the Review Committee on the FRA too suggests that urgent amendments of its certain provisions are necessary to bring about a new sustainable forest conservation regime in the state.*

Keywords: FRA 2006, Conservation, Forest dwellers, Forest, Assam.

1. Theoretical Understanding

After a long sustained struggle by forest dwellers and forest rights activists for justice and restoration of traditional rights over forests the FRA 2006, came into force on 1 January 2008 (Upadhaya 2009; Aiyar 2008: 5-6; Kothari 2008: 138; Ramakrishnan 2008: 4). Crucially, the Act for the first time acknowledges the 'historic injustice' done to the tribals and other forest dwelling communities (Kothari 2008: 138; Updahyay 2008: 14). Most of the customary rights of the local communities were ignored at the time of declaring many forests in the country as protected areas (PAs) initially by the colonial government and later by the post-colonial Indian state (Aiyar 2008: 5).

In India, the failure of the 'exclusionary model' of forest conservation through the creation of 'people free zone' in and around the PAs has eventually resulted in the promulgation of the Act. The man-forest debate has long dominated the conservation discourses in India. The traditional wildlife conservationists aim to protect forests by creating 'people-free zones' in and around them, considering humans as outsiders to the natural ecosystem. It holds that virtually any form of sustained human activity results in serious modifications of the natural environment (Thapar and Manfredi, 1995, p. 28). The formation of national parks and sanctuaries aiming to preserve wildlife and biodiversity by the colonial and post-colonial Indian state reflects this view. It upholds a conservation regime which believes in protecting forests and wildlife by excluding the local forest-dwellers through 'fences and fines' or 'guns-and-guards' approach (Kothari, 2003, p. 2).

Contrarily, the other group of conservationists argues that people must be considered integral to the conservation process. Saberwal et al. (2001) suggest that the crisis with the Indian conservation scene today is located within its exclusionary policy. The forests across India have remained the habitats for a large number of indigenous communities for ages. These forest dwellers evolved certain practices with regard to the use of land and other resources within forests for their survival. Alienation and lack of access to forest resources for livelihood in the post-Independence has resulted in local hostilities to conservation strategies and regular clash with the forest officials. Smuggling and poaching in the PAs have increased. Archana Prasad also explains how forests have become a site of conflict between the forest-dwellers and the existing conservation regime premised on its monopoly control of the forests since the nineteenth century (2004, p. 58).

Indeed, it all began with the British colonial regime's ever-increasing interventions with the forest dwellers' livelihood practices which considerably curtailed their customary rights over the forest resources. In the colonial period itself the discriminatory practices of the state have perpetuated the marginalisation the forest dwellers from their forests.

Perhaps the most serious consequences of colonial forestry were the decline of traditional conservation and the systems of forest management. Over a period of centuries, forests, water and other such natural resources controlled by the local (forest) dwellers were thus converted into the property of the state. The system of Common Resource Property (CRP) was completely shattered with the coming of the British. Gadgil and Guha rightly contend “(I)t was the emergence of timber as an important commodity that led to a qualitative change in the patterns of harvesting and utilisation of forests. Thus, when the colonial state asserted control over woodland earlier controlled by local communities, and proceeded to work these forests for commercial timber production, it represented an intervention in the day-to-day life of the Indian villagers which was unprecedented in its scope. Second, the colonial state radically redefined property rights, imposing on the forest a system of management and control whose priorities sharply conflicted with earlier systems of local use and control. Significantly, the species promoted by colonial foresters-teak, pine and deodar in different ecological zones- were invariably of very little use to rural populations, while the species they replaced (e.g. oak, terminalia) were intensively used for fuel, fodder, leaf manure and small timber” (2000/2010, p. 147). The most vivid descriptions of the transformation in the ecological landscape were wrought by the railways. Great chunks of forests were destroyed to meet the demand for railway sleepers without any supervision exercised over the felling operations. The process was intensified in the early years of building of railway network about after 1853 (Ibid, pp. 120-121). Timber requirements for railway were the first and the most formidable forces resulting in thinning Indian forests (Ibid, pp. 120-121).

The end of British rule in 1947 did not bring an abrupt break in the administration of India’s forests (Tucker, 2012, p. 105). The new government under Prime Minister Jawaharlal Nehru was committed to rapid industrialisation and agricultural expansion (Ibid, p. 107). The concern for the livelihood needs of the forest dwellers were completely sidelined in the process of nation-building. The post-colonial Indian state too continued with the British policy of forest

management. As a result, forests are increasingly becoming more intense site of conflict between the forest dwellers and the state. The presence of human settlements is seen as an intrusion to the process of conservation. Informed by such an approach, over the years the people living in the forests for generations have become strangers in their own land. Their occupations on the forest land have thus become similar to that of encroachers, since they do not possess any legal documents to prove their rights over the forest land (Aiyar, 2008, p. 6). The PAs in the recent times depict an awful case of man-forest conflict (Ibid, p. 5).

In that context, the implementation of FRA 2006 is seen by many as a saviour of forest dwelling communities which is hailed as a historic endeavour to 'undo' the wrongs committed against them, providing rights to land and resources within the forests. This Act has been described as a significant piece of legislation for it goes beyond the 'exclusivist view'.¹ Nonetheless, right from the promulgation of this Act, it has been facing a lot of contestations centering round a range of its positive and negative impacts (Kothari, 2008, p. 138). Noticeably, a number of questions could be raised about the efficacy of this 'landmark legislation' as to what extent this Act would succeed in bringing about democracy in India's forest governance and how far the Act will be able to bring about a halt to the indiscriminate destruction of the forest resources and make the forest dwellers genuine partners in conservation.

2. History of Man-Forest Interface in Assam

The ecological history of Assam² vis-à-vis its man-forest-interface is unique compared to an all-India perspective. People, forest and land, indeed become an important part of the discourses in Assam throughout different historical periods. In order to understand the contemporary man-forest interface, one has to go back to the pre-colonial and colonial

¹ It implies a conservation regime which solely believes in protecting forests and wildlife by excluding the local forest-dwellers through fences and fines. But such a conservation move is unrealistic in Indian context where protected areas are inhabited by forest-dwellers from ages.

² Assam is a North-Eastern state of India

land policies in the state. In the medieval times, though land appeared to be abundant in the Assam valley, it was rather limited for the surplus-yielding wet rice cultivation. It necessitated a major drive by the medieval semi-tribal Ahom¹ state to reclaim agricultural land from the existing wastelands and forests and such lands were considered the most valuable lands in the state. Further, the peasants could supplement their subsistence with various products from forests and wastelands which interspersed the landscape of the contemporary Assam. These forests and wasteland served as village commons relatively free from state interventions (Sharma, 2010).

However, the landscape of Assam valley underwent a drastic change with the advent of the British colonial rule in the early part of the nineteenth century. Assam's dense belt has been under siege since the early nineteenth century (Tucker, 2012, p. 256). With the introduction of the tea plantations in the upper and central Assam in mid-nineteenth century, a different kind of situation was unfolding for the traditionally land abundant region. The development of tea industry in Assam is a classic case of a foreign dominated plantation economy that controlled a colony's land use patterns and was highly sensitive to markets in the industrialised world (Ibid, p. 158). The process of transformation of the 'jungles' and 'forests' to (tea) 'gardens' usurped into a large quantity of village commons or community forest lands from 1850s to 1880s. In the process, the system of CPRs of the native population came under severe attack. The CPRs such as forests, forest products, rivulets, grazing lands, etc were brought under the control of the colonial administrations. The politics for revenue maximisation added greater vulnerability to the forests and the people in the region. The colonial policies thus, brought about tremendous changes in the indigenous social structure. The local peasantry suffered in the process of reservation of forests, since they were alienated from land and resources. The colonial forest policy introduced elements

¹ The Ahoms ruled Assam for six hundred years from 1228 to 1826 when the administration of the Assam went into the hands of the British.

of exclusion of the local people to the areas under the control of the FD. All these posed a serious challenge to the future expansion of the Assamese peasant economy as the available land was shrinking very fast.

Until 1859, the colonial administration did not have any guidelines for conservation of forests in Assam. The provincial forest department (FD) was established only in the year 1874. Under the Bengal Forest Act, 1865, forests of Assam were classified into two major categories: the Reserved Forests and Open Forests or Protected Forests. In the former, the FD enjoyed the entire responsibility of administration and control over the forests and its products. While in the later category, control and rights of the department were confined to specific reserved trees. The main interest behind the reservation of forests was to secure monopoly control over the commercial value of the forests (Saikia, 2011 a, pp. 69-70). A new category of forests known as the Unclassed State Forests (USFs) was created under the Assam Forest Regulation (AFR) of 1891 which came to incorporate the Open Forests. This made more space available for commercial exploitation of forests. Constituted mainly of the grassland forests, the areas under USFs had historically been targets for land reclamation for agriculture. But the colonial regime kept on arbitrarily bringing vast amount of land under this category without any consideration for the history of land use in the region so that at the time of independence the volumes of such forests far exceeded the reserved forests.

In Assam, extensive tracts containing valuable forests were reserved under the Bengal Forest Act, 1865. Interestingly, it is the colonial administration itself which started the process of settling marginal peasants in the forest areas and they were allowed to practice agriculture therein in exchange of their labour for collecting forest resources, mainly timbers, and other activities to the colonial FD. It framed rules under the AFR of 1891 so that the labourers could be pulled from the peasant society. Accordingly, each adult member of the forest villages (FV) was required to render 20 days of physical labour annually to the FD at the prevailing local ordinary wages. This system

was locally known as '*begar*'. In return for their work, the forest villagers were allowed to collect thatch, firewood, cane, etc. from the forest. Apart from this, they were also allowed to collect sufficient timber to build and maintain their houses. Further, each family was entitled for ten cartloads of fuel wood every year in return for another ten days of labour (Saikia, 2011 a, p. 102). For this they allowed the formation of human settlements in the vicinities of the declared reserved forest areas. Thus, the creation of FVs, like rest of India, was a part of colonial forest management. The colonial FD had to meet the demand of large-scale timber extractions from the forests for railway expansion and had to accumulate more revenue to support the British imperial government. The villages thus settled were known as 'forest villages' (*bon gaon*). Similarly, the people practicing shifting cultivation were allowed to settle in and use forestland for a temporary period until they shift to another place. Such temporary villages were known as '*taungya*¹ villages'. The inhabitants of the *taungya* villages also had to render manual services to the FD. The process of setting up *taungya* and FVs was undertaken in Assam for an assured supply of labour for the FD. The rights and privileges of the forest villagers were also informed by colonial biases.

Since, the early twentieth century the government saw the possibility of opening up the swampy wastelands of Assam for jute cultivation. The colonial regime opened up the wastelands of central and lower Assam for the poor, landless peasantry from the erstwhile East Bengal. Furthermore, the colonial regime adopted the policy of opening up more wastelands for agricultural production with a view to generating more revenue (Sharma, 2001). Tucker observes "(W)asteland, a term generally designated land not under settled agriculture or forest reserve, was a great opportunity for settling immigration peasants. In Assam the Revenue Department, for whom 'nonproductive' land was truly a

¹ *Taungya*, believed to have been developed by the British in Burma during the nineteenth century, is a system of forest management in which land is cleared and planted initially to produce food crops. Seedlings of desirable tree species are then planted on the same plot, leading in time to a harvestable stand of timber.

waste because it produced no taxes, consistently pressed for opening more land to plow. The FD acquiesced on the principle that peasants' need for land could be terraced for wet rice and other grains should take first priority in land allocation. The foresters were as oriented to development as their confreres in other agencies. They would not disagree with the government's 1938 report, which stressed - that indigenous people alone would be unable, without the aid of immigrant settlers, to develop the province's enormous wasteland resources within a reasonable period" (2012, p. 159).

All these seriously restricted the access of the local peasantry, tribal and non-tribal, to the land resources. Over and above, the two great earthquakes of 1897 and 1950 also had a cataclysmic effect on the topography of Assam exacerbating the incidences of flood and erosion and thus loss of land among the indigenous peasantry (Sharma, 2010). This resulted in acute shortage of land at the place of origin thus forced the people migrate to different places in the state in search of secured land. They were motivated by the hope of securing a better livelihood compared to the one at the place of their origin with insufficient homestead or cultivable land. In the absence of any other land, the forests became their main targets. The arrival of more peasants subsequently resulted in the growth of villages and clearance of more 'jungles' facilitating agricultural expansion. There were number of reserves throughout Assam where human settlements came up only with the migration of landless peasants. However, it may also be noted that there were already existing human settlements in various forest areas of Assam from ages. Most of the forested tracts were brought under the control of the colonial FD by creating the reserved forests. In the process, these settlements were, thus converted into FVs. Post-1950 years witnessed large-scale migration of Assamese peasantry in search of agricultural land to different parts of Assam. The available wastelands including forest reserves, grazing land, etc became their main target. This flow of peasants continued as the problem of landlessness only accentuated over time. All these have resulted in serious crisis of land among the local peasantry (Ibid, 2010).

With this background, the essay tries to examine the significance of various provisions of the FRA 2006 and its implications in Assam. It also makes an attempt to analyse the potentials of the Act in making conservation work and rendering of social justice and livelihood security to the poor forest dwellers of the state.

3. Rights Over Land and the FRA in Assam

The promulgation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, briefly the Forest Rights Act (FRA) 2006 created new possibilities of entitlements in so far as the right of the forest dwelling communities on their land and forest is concerned. The Act broadly aims to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded.

One of the most significant provisions of the FRA recognises the “rights of settlement and conversion of all forest villages, old habitation unsurveyed villages and other villages in forest, whether recorded, notified, or not, into revenue villages.”¹ The Act brought new rays of hope to the forest villages when initiatives for its implementation in the state were undertaken in December 2008. In Nameri National Park (NNP)², for instance, it appears that the villagers were happy that the Act would provide them permanent *pattas* on their land and that they would no longer have to live under the control of the forest department. Locally, the FRA came to be known as *Maati Patta Aain* (Land Rights Act).

¹ Section 3 (h) of FRA

² Nameri National Park (declared as such in 1998) is the third National Park of Assam located in the Sonitpur district of the state. The state Government of Assam constituted and notified the Nameri Tiger Reserve in 2000. Nameri is surrounded by several fringe villages.

The coming of the FRA has created an atmosphere of uncertainties in Assam. It is found that certain important provisions of the Act have elicited criticism. The specific local realities of the region as discussed above thus hindered the smooth implementation of the Act. It is found that the national forest policies and conservation measures implemented so far, have failed to come into grip with the local realities of the region. For so long, the government sought to conserve the PAs in the state by ignoring both local specificities and the survival needs of the local forest-dwellers. The government has been imposing these policies on the forest-dwellers without understanding local needs and proper enforcement. Apparently, the forest dwellers are unable to comprehend the importance of their role in forest conservation. That is why, conservation policies have failed to develop latter's stake at conservation who feel that the FD has only snatched away their agricultural lands in the name of conservation. At the same time, it is also undeniable that forest covers and wildlife habitats have shrunk to a great deal in the state owing to excessive human pressures. The forest dwellers in the state are primarily agriculturalists with minimal dependence on forests for subsistence needs. This also applies to all other FVs, tribal and non-tribal, in Assam. Over the years, the increasing population pressures and their agrarian practices have emerged as a threat to the very existence of forests. In the absence of any alternative livelihood sources, the pressure on forest land is mounting owing to the expanding agrarian frontier.

In the present times, increasing anthropogenic pressures on forest lands, illegal activities such as poaching, timber trade, encroachments, etc have emerged as serious threats to the wildlife. There has been widespread depletion of forest cover, erosion of rich biodiversity, fragmentation and shrinkage of animal habitats, and the near extinction of a variety of rare species of animals. Besides, man-animal conflict has alarmingly increased in recent years in many PAs. The PAs are facing increasing environmental stress because deforestation and expanding human populations. Needless to mention encroachment on forest lands is a major challenge to conservation.

In Assam, the problem is more acute. For example, the case of encroachment of immigrant Muslim settlers into the buffer areas of the Kaziranga National Park (KNP) and the Bodo tribal inhabitants into some other reserves of the state may be mentioned which are also pointers to the political dynamics behind such encroachments. The migrants from East Bengal have encroached forest lands in many reserves of the state such as KNP, Pabitara Wildlife Sanctuary, Laokhowa Burachapori Wildlife Sanctuary, and others. They have migrated in search of secured land and livelihoods due to acute persistence of poverty at the place of origin. In the absence of available revenue land, the forests became their main target of settlement. On the other hand, it is worth mentioning that recent spurt of ethnic homeland politics posed a serious challenge to the forests in Assam. The Bodo homeland movement since 1990s to create a contiguous Bodo-inhabited territory in the northern Assam brought a huge influx of people to different forest reserves of the state. The settlers had migrated from different parts of Assam. Although political motivation was the major driver, settlers were additionally motivated by the hope of more secured land and livelihoods. Lack of available revenue land meant that the settlers had to clear and occupy land in the forest areas (Bose, 2009). In the process, forests were indiscriminately destroyed to make way for human settlements. Such strategic usurpation of forest land adds a new dimension not only to the ecological conservation but also to the socio-political landscape of the state.

4. The Problems of Implementing the FRA in Assam

It is true that most of the rights and privileges addressed in the FRA are ground-breaking. Yet, it is undeniable that some of its provisions do not match with the existing ground realities in Assam. For example, the use of the phrase the 'other traditional forest dwellers' (OTFD) in the Act is a vexed one. Section 2 (o) of the Act defines OTFD as any member or community who has primarily resided in and depended on the forest or forest land for *bona fide* livelihood needs (Upadhyay, 2009, p. 31). This definition holds true for a

large number of tribal forest-dwellers in residing most of the PAs in India for ages. They are not settled agriculturalists, but ‘gatherers’ who live in close proximity to forests, and most of them have a long tradition of forest use for sustenance (Lele, 2011, p. 96).

The existing ground realities in Assam, however, are at variance with the definition of OTFD as used in FRA. In Assam, the forest dwellers cannot be termed as the ‘traditional dwellers’ because they are neither the traditional inhabitants of forests nor intrinsically dependent on forest produces for their livelihood. Only circumstances and natural calamities forced these indigenous poor peasants to move into forests areas in search of land and livelihood. One also does not witness any sacred grove or explicit history of forest protection among the villagers. In other words, the history of man-forest relations in the area has its own specificity and varies from the all-India perspective that informed the FRA which in its present form bodes adverse implications, especially in the light of a hostile state government, for the non-tribal forest dwellers of Assam.

However, my own fieldwork in NNP shows that a number of the tribal forest villages have recently got land ownership certificates (*patta*) under the FRA. Earlier the villagers were not allowed to collect Non Timber Forest Products (NTFPs) other than firewood, thatch, fodder, etc. Now, they can collect all NTFPs. But that is almost irrelevant for the forest villagers in Nameri as its forests now hardly have any worthwhile NTFPs except firewood which the villagers anyway collect from the fringes of the forest. Further, there have been several lapses in the process of providing land rights to the tribal forest dwellers too. One glaring lapse is the non-constitution of *Gram Sabhas*¹.

Table 1: Important Development Related to the FRA 2006 in Assam

¹ According to Section 2 (g) of the FRA 2006, “Gram Sabha means a village assembly which shall consists of all adult members of a village and in case of States having no Panchayats, Padas, Tolas and other traditional village institutions and elected village committees, with full and unrestricted participation of women.”

IMPORTANT DATES	ACTION
31 December 2006	Passing of the Act by the Indian Parliament
1 January 2008	Enactment of the Act in the country
December 2008	The Assam government orders to implement the Act in the forest villages.
28 February 2009	Deadline for submission of claims for tenurial Land rights by the forest villagers.
7 April 2009	Deadline extended
11-14 July 2010	Public Consultations conducted by the National Forest Rights Act Committee.

The inadequacies in the FRA have also created problems in recognising the rights of the forest dwellers in different states of India. The protests and concerns expressed by the affected people and the forest right activists led the government to review the Act by a committee known as the National Forest Rights Act Committee.¹ The committee submitted its report after holding public consultations in various parts of the country. In Assam, too such consultations were carried out in different PAs.

In Assam the scope and nature of the definition of 'forests' has been grossly misinterpreted by the state government officials leading to non-implementation of the FRA in areas where the definitions of 'forests' has strong implication. The fact that the state underwent through different stages of evolution of modern legal meaning of 'forests', also adds to the problem. Moreover, the Committee of the Union Ministry of Environment and Forest (MoEF) and the Ministry of Tribal Affairs (MoTA) on the implementation of the FRA in its report on Assam prepared after its consultations with the concerned public and the government officials notes that like

¹ The two ministries of Environment and Forest and the Tribal Affairs of Government of India constituted a joint Committee on April 2010 to comprehensively review the implementation FRA, 2006. The Committee members were selected from wide spectrum of retired civil servants, forest officers, tribal department officers and representatives of civil society organisations and NGOs.

the rest of India, the concerned Assam government officials are also found to be either extremely critical or indifferent to the FRA. Often they are unaware of the provisions of the Act and indulge in misinterpretation.

The Committee finds that the state government is especially critical of the section 3 (h) of the FRA which makes provision for conversion of FVs to revenue villages. The Gauhati High Court ruling in 2009 stating that there are no traditional forest dwellers in Assam has also become a handy tool for the state government for not implementing the Act although scope of FRA is much larger. Moreover, this ruling despite being factually true clearly has glossed over the specific historical processes of land use and alienation among the local communities and their relationship with forest land and other resources. Interestingly, the Assam chief secretary stated before the Committee that the state government would give rights to the tribals but not to the non-tribals as most of them were encroachers. The Committee also notes that while the government has apparently prioritised the forest villagers and Scheduled Tribe (ST) populations to be given land rights amongst all other claimants there has been complete lack of entertaining the claims of OTFDs except those areas where there are strong and vested political interests (Kiro et al., 2010). The government is reluctant to process the claims of the OTFDs and it states that if the Act is to be implemented there will be no forest coverage left in the state (AITPN Report, 2012, p. 16).

In the state, these consultations took place during 11 to 14 July 2010 in some select areas.¹ However, NNP was not included in the list. In addition to the public consultations, the committee also carried out discussions with the officials of the state, forest and civil administration as well as with the local communities. The consultations with the concerned people revealed various procedural lapses during the implementation of the FRA. The conditions of forest-dwellers

¹ Implementation of Forest Rights Act in Assam, Report of Field Visit, 11-14 July, 2010, MoEF/MoTA Committee on Forest Rights Act.

residing in different National Parks, Sanctuaries and RF areas of Assam also resemble the forest-dwellers of NNP. One recurring issue in these consultations had been the case of the non-recognition of rights of OTFDs under FRA as already pointed out above.

Indeed, the resistance to the implementation of the Act is rooted in various political reasons. The FRA is not welcomed by the state government in Assam in its full spirit and there has been little willingness to implement it. It has been received with mixed responses as well as contemptuous criticisms from different groups of wildlife conservationists, activists, forest villagers and so on. For the poor forest villagers, the Act brought a lot of hopes for getting their due rights over the land. The forest rights activists have also been concerned with the tenurial rights for the people living in the forest lands. For them, the FRA opens up avenues for conservation in true sense. The FRA provides the communities rights to lands and forest and making them partners in the task of forest management.

The consultation report and my own discussions with the top-ranked bureaucrats and officials (both at the state level and FD) revealed their cavalier attitudes towards the implementation of the Act. It is found that there has been lack of awareness about the provisions of the Act even among the officials of both civil and forest administration. Awareness campaigns pertaining to the local people's rights and privileges as per the Act also have not been carried out. As a result, people hardly know about the major empowerments and responsibilities towards forest conservation conferred on them by the Act. The only thing they know is that the Act is implemented to provide them tenurial land security.

Moreover, there is poor flow of information among various implementing agencies such as Forest Rights Committees, FD, Sub-Divisional Level Committee (SLDC) and District Level Committee (DLC). The FD also seems to presume that granting of tenurial land rights will only encourage more encroachment leading to more deforestation. As pointed out earlier, the OTFDs are facing resistance from the state

government in getting tenurial land rights under the FRA. The prevailing opinion is that the OTFDs are encroachers on forest lands and hence they are not entitled for land *pattas*. Moreover, the question of three generations for them to be able to claim their rights on forest land has become a 'death-knell' for them. For instance, the case of the OTFDs in Nameri resembles other areas in the state. My own fieldwork in the FVs of NNP reveals that the OTFDs do not have evidences to support their three generations habitation in the forest lands. The forest villagers have many crucial information and strong oral history supporting their stay in these forest areas for more than three generations (or 75 years) now. But the FD is not recognising them as eligible to get land titles under the Act. Amazingly, the FD has also failed to keep those records which would have otherwise proved critical in ascertaining their rights. There have been widespread rejections of claims at the level of SDLC or the DLC. Most cases of rejection are not reported.

In NNP and other PAs of the state, the process of entitlements over the community forest resources has not dealt with as per the provisions of the Act. The community forest resources means customary common forest land within the traditional boundaries of the village including the PAs to which the communities enjoy traditional access. In the FVs of Nameri, discussions with the villagers brought to light that they were asked to claim their rights only over the individual landholdings. The presence of customary rights has been ignored totally by the FD. The lack of proper awareness campaigns and knowledge hindered the villagers to claim their rights over the community resources. The public consultations also state that in the state there has been lack of awareness about the implications of the Common Forest Resources (CFRs). In some PAs, claims over community rights have been filed but the no action is taken by the government till now. The NGOs and concerned agencies must impart awareness to the people on the importance of community resources. Failing to do so would result in illegal seizing of their community lands by the FD.

Another serious violation of procedure under the Act is seen in areas of quick or no mapping and measuring of land

boundaries, improper verification of evidences and so on. For instance in Dharikati tribal FVs¹ in NNP, the process of distribution of land *pattas* were haphazardly and hurriedly completed. The areas of landholdings of each family was not strictly demarcated and measured as laid down in the Act. As a result, each family now own lands over and above the limit (4 hectares) as per the Act.² This is the case with other PAs in the state.

Moreover, the role of the Nodal Agencies in monitoring and pushing the implementation of the FRA is crucial. At the Central level, the MoTA is the nodal agency for the implementation of the Act. The MoTA has also nominated the Secretary in charge of the Tribal Welfare/Social Welfare Departments in the various States to be the nodal agency under section 11 of the FRA for its implementation. In fact, the role of the nodal agencies at the state level is pathetic. Officials are not aware about the provisions of the Act and often misinterpret the Act in order to deny the rights to the tribals/OTFDs. In Assam, the Social Welfare Department's (nodal agency) structure and presence at the field level is very weak. The department had not been able to provide sufficient inputs and support, facilitating filing of form, etc. The senior officials do not cross-check the work being done at the SDLC or at the DLC level (AITPN Report, 2012).

5. Status of Community Forest Resources (CFRs) in different states

All over India, claims over CFRs as laid down in the FRA show abysmal failure due to various vested interests of the state and the FD. In most PAs, the concerned authorities paid greater attention to private/individual land rights while ignoring the community rights. The Act sought to provide equal importance to both individual and community rights over which the forest dwellers have age-old traditional rights. Kothari in this regard mentions, "(S)ection 3(1) of the FRA

¹ It is one of the tribal FV located in the west buffer zone of the Nameri National Park.

² Discussion with the Ranger, Chariduar Range Office.

provides several kinds of rights to communities: traditional use rights such as nistar, right of ownership, that is access, use and disposal of minor forest produce (MFP), rights over products of water bodies and grazing grounds, habitat rights of Primitive Tribal Groups (PTGs), and rights to manage community forest resources, amongst other. Section 5 empowers and enjoins upon communities the duty to protect forests, wildlife and biodiversity, safeguard their habitat and cultural heritage from destructive practices, regulate access to forest resources, and ensure that adjoining catchment areas and water sources are protected. This is so not only where community forest rights are vested, but even where individual rights are recognised. Rules under the Act mandate the gram sabha to set up a committee to take on these functions.” Further he write, the provisions of the FRA has potential to radically transform forest governance in the country. The FRA is a new beginning that challenges the state’s monopoly control over forest and asserts communities’ rights for local governance (2011, pp. 85-86)

The misunderstanding of some of the crucial provisions of the FRA has tends to question the very existence of the Act. As Kothari points out that widespread misinformation about the CFRs have actually resisted the communities to claim these rights. The misinformation is that CFRs do not provide anything more that what communities are already enjoying under the Indian Forest Act (IFA) or under Joint Forest Management (JFM). Another wrong impression is that CFRs cannot be claimed in wildlife protected areas, especially tiger reserves. Whereas FRA does applies to these areas. Apparent lack of understanding or deliberate misunderstanding of the provisions at the official level has failed to create awareness among the communities. However, there still remains a deliberate resistance from the forest bureaucracy which either feels threatened to empower the communities or fear that communities will not be able to ensure the protection of forests (Kothari, 2011, p. 87). Kothari provides a number of examples from the country explaining the scenario of FRA implementation. In several PAs, CFRs have been claimed by the communities such as: Badrama and Karlapat Sanctuary (Orissa), Biligiri Rangaswamy Temple Sanctuary (Karnataka), Shoolpaneshwar Sanctuary (Gujarat), and Mudumalai

Sanctuary (Tamil Nadu), and others. Here, the communities are ready to take their responsibilities of wildlife conservation, on their own or in collaboration with the FD. But in most cases, there are delays and distortions in providing the CFRs. For instance, in Ranpur block of Orissa, where over 100 villages have made claims, several are pending for the last two years. The CFRs are over which rights have been recognised is much less than what the village has been protecting and had claimed. In most states, the FD has deliberately restricted the claims to boundaries set under JFM or related schemes, though the FRA recognises rights over the entire customary use area of a community. This is widespread in Andhra Pradesh as mentioned, in Rajasthan, Chhattisgarh, etc (Kothari, 2011, pp. 88-91).

Kothari further points out another problem being faced by the communities that have received CFR the denial of the FD to issue transit permits for the sale of their produce outside the village. For instance, Mendla-Lekha village in Maharashtra has not been able to sell bamboo for over a year since it received the title to CFR. The states like Orissa and Rajasthan reflect similar situations. The FRA has finally listed bamboo as a 'minor forest produce'. The MoEF issued a circular on 21 March 2011 asking all state governments to facilitate the use and sell of bamboo, and where CFRs are obtained, to allow *gram sabha* to issue transit permits. He strongly believes that the FRA is a step towards new forest governance whereby the forest-dwellers are given a strong role to play in the protection and management of forests. CFR rights are likely to be a powerful tool in the hands of communities to stop unsustainable activities that would be destructive to their forests and heritage. For this, the role of *gram sabha* must be strengthened. It is also important for the communities to continue mobilise to reclaim their rightful role in forest governance (2011, pp. 91-92).

The implementation of this new legislation widely reflects varied responses of governments, communities and other concerned agencies across the country. As discussed above, the over-interference of the FD in different states has threatened the very spirit of the Act. Gopalkrishnan

discusses three-fold problems on the implementation of the Act: large-scale FD interference, Wrong *gram sabha* formation and violation of Community Rights. Across Rajasthan, Madhya Pradesh, Gujarat, Chhattisgarh, Maharashtra and other states, show widespread violation of FRA provisions. The Act specifically provides that *gram sabha* should be called at the level of revenue villages, and in Scheduled Areas, at hamlet level, but never at the panchayat level, where the meetings would be large and make democratic functioning impossible. But in most areas, except where agitations have forced the government to change its stand, *gram sabhas* are being called at the panchayat level (Gopalkrishna, 2010, pp. 66-67). Importantly, as Kothari has also pointed out that the community rights under the FRA have been seriously violated by the FD. Gopalkrishnan further contends, "(T)he truly radical part of the FRA is the provision for recognising community rights and powers over forests. The government has consistently tried to dilute these, first, by insisting that the community's powers of forest protection are 'duties' (whereas the JPC had specifically changed the section to be powers) and second, by ensuring that community rights are neither publicised nor recognised when applied for. The rules also provide no clear procedure for community rights, including property rights such as the rights to minor forest produce, etc...In many area- for example, all parts of Tamil Nadu- rights to minor forest produce have been conferred along with illegal restrictions, such as requirements for Forest Department permission or bans on sale of produce (which constitutes a major source of income for adivasis). Grazing rights and rights to water bodies have been entirely ignored" (Gopalkrishnan, 2010, p. 67).

6. Implication of FRA in Assam

The above discussion focused on how the newly enacted FRA has been a watershed moment in the governance of India's forests (Kothari 2011: 83). For the first time in the history of India's forest governance, the FRA questions the centralised state control over forests. It seeks to protect communities' traditional rights which are considered as crucial incentive to engage them in forest protection.

Nonetheless, the Act has unfolded different ground realities in Assam that have questioned its implications in the state. The coming of the FRA has created an atmosphere of uncertainties in Assam and crucial provisions of the Act have elicited criticism as mentioned above. The findings of the public consultations brought to focus a number of pertinent issues that need careful scrutiny. The contours of the debate over the FRA are determined by conflicting visions about its applicability in the state. Some of the challenges that lie before the FRA are:

Constrictive Definition: The definition of the OTFDs in Assam has been highly contested as being unrealistic. It shrinks the scope of broader definition and states that the OTFDs are those who have been residing in forest land for 75 years. As stated above, this definition has created a situation of chaos over the question of land rights. More importantly, the documentary evidences for the proof of 75 years is a tall order to expect from these illiterate forest villagers. While the FD is the repository of such records, it also denies possessing those. Thus, it excludes a large number of OTFDs through its constrictive definition.

In Assam, both tribals and non-tribals hardly reflect any differences in terms of their economic dependence. They are all peasants and their dependence on forests for survival is minimal. A historian, in this regard comments, “...(T)he Act nowhere suggests that the term ‘forest-dweller’ is equivalent to ‘banavasi’ in the classical anthropological sense. The legal meaning as spelled out in the Act draws our attention to the historically and anthropologically relevant subjects of ‘habitat’ and ‘dependence’. These notions are widely explained keeping in mind the key features of the eastern and northern Indian historical transition. Essentially such explanations skip the nuances of historical transition of societies in Assam. Similarly, no efforts have been made in public or academic debates to explain these issues in the context of Assam” (Saikia, 2011 b).

The Cut-off Date: The FRA stipulates the cut-off date of 13 December 2005 for the consideration of land rights of the STs and the OTFDs. In the context of Assam this cut-off date

cut-off date is unacceptable for it perhaps would pave the way for a large numbers of encroachers to be entitled for land *pattas*. A sizeable number of such illegal occupants in forest lands might well be considered for settlement rights under the preferential treatment of some government quarters. If this happens there would be no forest covers left in the state. As we have already noted that the problem of encroachments is a major challenge in the present times. There is an urgent need to redress and formulate a workable cut-off date so that the only eligible forest dwellers get their long-standing due rights. The AFP 2004 raised the issue of widespread encroachments and also stipulated 1980 as the cut-off date. It committed to recognising rights of people who have come to occupy forest lands before 1980. But the AFP has become redundant now with the coming of the FRA. The 1980 as the cut-off date seems to be more relevant in the context of Assam.

The Question of Unclassed State Forests (USFs) and the dwellers' rights:

As discussed above, how the colonial state had viewed the jungles of Assam in terms of their commercial potentials. Keeping this as the priority, the jungles were thus, converted to forests with the promulgation of strict forest policies. To gain maximum command over the forest land, forests were divided into different categories. The most contested category of forest lands so created was the USFs under the Assam Forest Regulation of 1891. It worked as a mediator of interests between the government, tea-planters, the FD and the agrarian society. Over this category, the RD assisted by the FD was the *de facto* authority in the management of USFs. Historically, the USFs have been the targets for land reclamation for agriculture by native peasants. Since, agriculture was given maximum priority for revenue generation, large tracts of forest lands were thus reclaimed. The selection of USFs was also highly arbitrary. As a result, the area under this category of forest lands increased unabated over the years. At Independence, the volumes of such forests were far more than the RFs (Saikia, 2011 b). Later, these forests accommodated the growing numbers of peasant population. After Independence, population pressures continued to the extent that forests in the state

are now almost saturated.

7. Conclusion

Despite these serious shortcomings of the FRA as discussed, we cannot ignore the progressive steps for forest governance implicit in the Act. The public consultations in Assam also suggest that there is an urgent need to amend some of its provisions taking into consideration the specific history of the region. The FRA in the state is under review now. The necessary amendments have to be made at the earliest in order to create a sustainable forest conservation regime vis-à-vis livelihood needs of the poor forest dwellers. The case of Assam thus, presents a unique history of land and forest use as pointed out above. Any conservation policy for the region must incorporate its local historical and livelihood specificities. The developmental and livelihood needs of the communities have to be reconciled with conservation measures. It is of utmost importance that the FRA 2006 formulates a more practical deadline for providing land rights to the OTFDs in Assam as its present term of 75 years before 13 December, 2005 seems at odd with the reality in the state. Simultaneously, the FD must enforce stringent measures, indeed in collaboration with the forest dwellers, to combat illegal encroachments and commercial activities inside the PAs. Unless these measures are undertaken, any attempt to resolve the conflict between the survival question of forest dwellers and conservation strategies of the FD would remain a futile exercise.

Interestingly, on the basis of the results of public consultations from various parts of the country on the working of FRA, the then Union Minister of State for Environment and Forest, Jairam Ramesh advocated a complete 'paradigm shift' in the management and governance of forests in the country from a model based on the primacy of the state to a three-fold model of state, communities, and partnership between the two (Ramesh, 2011). He called for a three-fold model of state involvement, community engagement and partnership between the two for an effective governance of forests. He further emphasised that for effective implementation of forest policies, different

regions in the country needs diversity of models such as, state-centered model, state-cum-community partnership and community-led model. However, though activists and environmentalists widely welcomed this new official thinking, no action toward bringing this thought into reality has been witnessed ever since. The need of the hour is thus a proactive role on the part of the state toward creating a sustainable forest conservation regime.

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