

The Jurisprudential Recognition Of The Rights Of Forest Dwellers In Assam, India: A Case Study From Six Districts Of Assam

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Abstract

In India traditionally forests were managed as common property resources where local communities enjoyed their rights to manage the forest resources and lands. However, the British Colonial Rulers initiated the commercialization of forests and brought forests under state control, the legacy of which continued even after India gained independence. Further, to tackle the issue of massive deforestation many forest dweller communities were evacuated from the forest lands alleging their presence as the sole reason for such deforestation. However, subsequently to ensure the participation of local communities in sustainable forestry, the Joint Forest Management (JFM) system and for addressing the historical injustice done to the forest dwellers, the Forest Rights Act of 2006 were launched and enacted respectively. These initiatives were adopted in India to match the globally adopted standards for community-inclusive conservation and sustainable utilization of natural resources. However, although the Forest Rights Act, of 2006 became landmark legislation for ensuring a rights-based conservation model, several technicalities remained unsolved. Such lacunas got reflected when recently in Assam, a State of India, the Gauhati High Court held that there are no forest dweller communities in the State that is known for having a huge proportion of land area under forest cover. In such a situation, the rights of these forest-dependent communities become highly vulnerable which demands immediate research. This study was therefore conducted in six districts of Assam where it was concluded that amendments in the Forest Rights Act are necessary considering the unique socio-political situations of the State and also clarity amongst the legally established institutional arrangements is required.

Keywords: Forest Dwellers, Other Forest Dependent Communities, Forest Rights Act, Indian Jurisprudence

Introduction

Assam is a state to the northeast of India having a significant proportion of land area covered by forests with a large stock of biodiversity. However, it has also witnessed a significant rate of deforestation over the years. Initially, the forests of this region were openly available to the local population during the advent of the Atom rulers (Sharma, 2009) but subsequently, after the British invasion, the British-India Government brought forests under state regulation by exercising the doctrine of *Terra Nullius*. The Britishers exploited the forest resources for commercial gain and also initiated massive deforestation for agricultural expansion and for generating land revenue. Although they realized the huge loss of forest resources and considered the conservation of forests as an objective of their policy but such conservation mechanisms were initiated only to preserve the commercial value of the forests and not for preserving the biomass. (Tamuli & Choudhury, 2009) After independence, the legacy of such policies continued but since 1980 there has been a shift from exclusive policy through state regulation to community participation. However, the recent draft of the National Forest Policy of 2018 again intended to shift this approach back from community participation towards productive functions of the forests in India as a whole. (Kukreti, 2019) Therefore, the debate on the rights of local communities over forest resources against the conservation of forests for strengthening the productive functions of the forests got lighted again.

Forests are mostly treated as Common Property Resources (CPR) due to the attributes of indivisibility, subtractability, non-excludability, and concern for the common good amongst the communities managing them. (Tewathia, 2015) However theoretically, after the publication of the essay 'Tragedy of Commons' by Garrett Hardin, state regulation of CPR was felt necessary for preserving such resources. (Hardin, 1974) But, Elinor Ostrom proved that community management of CPR is necessary for better management of those resources. (Ostrom, 1990) Subsequently, community participation in the management of CPR including forests has been globally accepted as a need for sustainable management of such resources. The reasons for such assumption are better livelihood opportunities for the local communities, their access to vital traditional knowledge required for sustainable utilization of such resources, and their historical contribution to the protection and conservation of such resources. Based on such reasons, in India too, the Forest Rights Act 2006 (FRA) was adopted which aimed at eliminating the historical injustice done to the traditional forest dwellers and restoring their ancestral rights over the forest resources along with imposing upon them the duty of protecting such resources. This legislation coupled with the Forest Policy of 1980, which launched the Joint Forest Management (JFM) system in India, is expected to uplift the basic human rights of forest dwellers and forest-dependent communities along with promoting sustainable forestry. (BhartiNandwani, 2022)

However, in Assam, it has been witnessed that many forest dwellers are going to be excluded from such beneficial schemes if they are strictly implemented. (Act, 2010) Further, it becomes important to assess the status of the rights of the forest dwellers in Assam and the implications of FRA after its full implementation. Therefore, this paper will study the implications of FRA on the rights of forest dwellers in Assam. The main objective of this paper is to study the status of the rights enjoyed by the forest dwellers in Assam and the major reasons that are responsible for their present situation.

Methodology

For this study, both doctrinal and non-doctrinal methods of research have been used. Through doctrinal methods, the historical background of the management of forests, the FRA, the forest profile of Assam, and the previous assessment of the status of forest-dwelling communities in Assam have been studied. And the non-doctrinal method has been used for understanding the present status of the forest-dwelling communities in Assam. For the field study samples collected from 6 districts out of 35 districts of Assam have been studied. The districts of Assam are divided into six districts including *Dibrugarh* and *Tinsukia* from Upper Assam, *Nagaon* district from Central Assam, *Kamrup (Metro)* and *Baksa* from Lower Assam, and *Karimganj* district from Barak Valley. The list of samples consists of 20 local forest dwellers from each district selected through snowball sampling technique; one representative each from forest departments, village community headman, or members of local self-governing institutions, Forest Rights Committee (FRC); and members from Non-Governmental Organizations (NGOs) engaged either in the empowerment of the local forest dwellers or conservation of forests have been selected. In addition to these samples, eminent personalities who are experts in the management of forests have also been interviewed which includes; Padmashree Jadav Payang, the Forest Man of India, and Mr. Chandrakanta Basumutary, Former Brand Ambassador of the Assam State Forest Department. Questionnaires were used to survey the samples of the local communities, structured interviews were conducted with the representatives of the above-mentioned stakeholders, and unstructured interviews were conducted with the experts.

Conceptualizing Forest Dwellers

Forest dwellers are generally those people who reside within the vicinities of the forests and are directly dependent on forests for their livelihood. To understand the legal meaning of forest dwellers in India, reference needs to be made to the FRA which was passed to restore the historical injustice done to forest dwellers in India. However, the Act has recognized only two categories of forest dwellers- people belonging to Scheduled Tribes (ST) and Other Traditional Forest Dwellers (OTFD). Forest Dwellers other than ST will have to prove their residence inside the forests and possession of rights over forest resources for more than 75 years or from three generations from the date of December 5, 2005, to qualify for the rights under the FRA. While on the other hand, members belonging to ST are only required to present their caste certificates. (Govt. of India & UNDP, 2014) To understand why this distinction has been made between ST and OTFD, a reference to the origin of the term ST will have to be made.

In India, forests are assumed to be inhabited by the aboriginals. However, in India aboriginals are termed as tribal people. The term 'tribe' has its legacy in the Colonial Period where the economic, political, social, and cultural conditions of certain communities of people were considered while attributing the status of tribal communities and were accordingly classified as such. The picture that was represented by the Colonial administration about these communities indicates poverty, backwardness, primitive culture, unique political identities and pattern of governance, and most importantly their isolation. But it cannot be argued that only the aboriginals of India were having these attributes since many other peoples who were from different races that invaded the territory might have possessed such attributes due to exploitation from their subsequent invaders also it cannot be argued that all the aboriginals today are having these attributes since due to processes like *Sanskritization*, *Hindunization*, Conversion, etc. many such people have surrendered their attributes that were common to tribal peoples and got assimilated with the mainstream population. The Britishers understanding of

Indian history which was not even studied in detail at that time cannot be assumed to be free from uncertainties and ambiguities. India was invaded by Aryans who attained a dominant position across the majority of parts of present-day Indian Territory. The non-Aryans were initially treated as devils and later they were often provided the status of lower reputation and were assigned downgraded tasks by the Aryan folk. (S.R., 2020)

These so-called tribals were referred to as the nation and the people while the tribals referred to themselves as peoples and others as outsiders. The term 'noble savage' was also utilized to demarcate the struggling people. These words defined the economic and political relations between the tribals and the so-called capitalist world. The attributes of food-gathering communities, animists, and shifting cultivators were added to the list of parameters for defining the tribal communities. This entire basis for the classification of the tribals from other people is often alleged to be arbitrary since both tribes and castes are sharing more or less similar attributes. The people that were referred to as tribes in one place were referred to as castes in some other places. Thus, the demarcation between castes and tribes became arbitrary. However, the debates over the administration of these people gained importance only during the end of the Colonial period where one view suggested for isolation of these people allowing them self-autonomy, and the other view suggested for assimilation of these populations. But the Constitution of India after independence was adopted for progressive acculturation of the tribal communities. The Constitution has provided for the determination of certain tribal communities or parts of such communities as Scheduled Tribes whose protection, empowerment, and promotion become the major responsibilities of the State through various special provisions provided by the Constitution itself. The parameters for the determination of Scheduled Tribes include:

- a. The traditional occupation of a geographical area;
- b. A distinctive culture that includes the whole spectrum of the tribal way of life;
- c. Primitive traits depicting occupational pattern, economy, etc. and
- d. Lack of education and techno-economic development.

Jajpal Singh suggested using the term '*Adivasis*' to refer to the tribal communities but it was contradicted by Ambedkar on the ground that the term *Adivasis* is a general term with no *de jure* connotation while the term 'Scheduled Tribes' has a definite meaning and enumerates the tribes. However, as stated earlier all aboriginals are not included in the list of Scheduled Tribes and it is also highly unpredictable to state that all Scheduled Tribes represent aboriginals.

The Constitution has used the term 'scheduled Tribes' to refer to the aboriginals. These tribes are formed by those communities who possess their own lifestyle, old tribal ways; own particular customs, and cultural norms, and most importantly are backward in economic terms. Therefore, it can be argued that the basic characteristics of the tribal peoples of India include their nomadic habits, love for drinking, primitive ways of living, and residence in remote and inaccessible areas. Such people are mostly sheltered in the remote areas of dense forests or the forests of the hilly regions. Many scholars have defined STs as synonymous with aboriginals, for instance: M.P. Jain states that "*Scheduled Tribe (ST) also known as aboriginals are those backward sections of the Indian population who still observe their tribal, their own peculiar customs, and cultural norms.*"

However, in India, although there are many laws and policies adopted for the welfare of the tribal population besides the Constitution, the term 'tribe' has not been defined specifically in any of the laws of the land. Under the Constitution, it is the President who

possesses the power to notify people belonging to certain communities as ST by virtue of Article 342 and certain areas as Scheduled Areas through the procedure mentioned in Para 6 of Schedule 5 of the Constitution. However, before notifying any area as a Scheduled Area, the President is required to consult the respective State Government within whose territorial jurisdiction the concerned area is to be notified. Although the power to notify Scheduled Areas is provided to the President, it's the Parliament that has the power to make addition or alteration in the notified areas. Subsequently, the President has passed several ordinances extending the list of ST and Scheduled Areas. (Pankaj Kumar Sahai v. the S.D.O. Ishlapur, 1996) It was also held by the Supreme Court that even the Courts have no jurisdiction in matters of altering, adding, and excluding any member from the ST or any area from the Scheduled Areas once it has been notified by the President.

It must also be acknowledged that although provisions for recognition of certain tribal communities as Scheduled Tribes and certain areas as Scheduled Areas have been made, the term 'Scheduled Tribe' has not been defined anywhere in the Constitution except Article 366(25) which reads as follows:

“such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribe for this Constitution.”

Even though no fixed criteria for the determination of ST and Scheduled Areas have been provided by the Constitution still it has become well established after recommendations and suggestions made by various commissions and committees constituted on this behalf from time to time. (India, 1931) (Class, 1935) (Lokur, 1965) The matters that are considered for declaration of a Scheduled Area include: the predominance of tribal people; compactness and reasonable size of the area; underdevelopment of the area; and market disparity in economic standards of the people. For the declaration of ST, three characteristics shall be there, - Primitive way of living; nomadic habits; love for drink and dance, and habitation in remote and inaccessible areas. The list of STs differs from state to state and if a member of a particular ST community within a State migrates to another State due to any factor involving employment then the such member will not be included in the list of STs of the State to which (s)he has migrated rather (s)he will retain the status of ST as per his original state of residence.

In Assam, a significant portion was declared to be inhabited by the ST population and therefore Assam was included in Schedule VI of the Constitution which provides for special provisions for States possessing a huge amount of tribal population. Under this Schedule, certain areas are to be declared as Autonomous District Councils (ADCs) that will allow such designated areas to have their own governing institutions according to the traditional patterns of governance followed by the ST population within that territory.

From the above analysis, it becomes clear that in India the concept of Forest Dwellers includes STs who are designated as tribals due to their unique attributes and OTFD who will qualify to be entitled to any rights under FRA only if such OTFD can prove their residence for at least 75 years from December 5, 2005.

Historical Background of Forest Management and Rights of Forest Dwellers in Assam

In Assam, during the time of the Ahom Rule, there was very less habitation in the forest areas. However, the Ahom rulers utilized the forest areas for military engagements and also encouraged the settlement of villagers in the vicinities of the borders for securing the border territories during conflicts with the *Naga* tribes. But subsequently, those areas were again vacated due to frequent conflicts. Later the *Kacharies* started settling in villages in the forest

areas of present-day Assam. They found those areas suitable for cultivation. But again due to tribal conflicts, those areas were vacated and forests got regenerated. There is minimal evidence about the demarcation between settled areas of forests and waste areas. The Ahom Rulers retained authority over the forests while the local population controlled the forest produce and this arrangement was unique compared to the rest of India. Further, the Ahoms favored settled agriculture predominantly rice cultivation over shifting cultivation, and encouraged such cultivation in the plain areas. The reason behind this was the preferable climate and very low human population. (Saikia, 2005)

The British East India Company invaded Assam after the *Yandaboo* treaty of 1826. However, the value of the forest resources in Assam was known to them before. But due to the popularity of tea plantations, the valuation of forest resources remained unnoticed. Still, the value of timbers attracted the Britishers and they established *Goalpara* as the trade corridor for supplying timber to Calcutta. This became the first Colonial intervention in the timber market of Assam which was earlier regulated by the local tribals. Initially, the Company conducted surveys into the forests to determine the soil, climate, and other factors for the expansion of the tea plantation. But during the surveys, the value of timbers was acknowledged by those surveyors and subsequently, John MCoeh who was appointed to survey the value of forest-based timbers of Assam reported 90 valuable species of trees with their scientific names. In 1845 Captain S.F. Hannay inquired into the value of forest timbers and the local people's rights over forests where he discovered that state restrictions were imposed on the utilization of certain forest resources while the knowledge regarding long-distance trade of timbers, shipbuilding, and other utilities of forests declined with the decline of the Ahom Rule. Gradually in the 1850s forest resources started being measured in terms of Revenue since by then the Britishers established firm control over the province of Assam. (Chakrabarty, 2018)

During that time although the local tribals were involved in the timber trade along with the local non-tribal population, they could not benefit much from such trade. One instance where a local Assamese named Bholanath Barua benefited largely from the timber trade as his business spread even outside Assam up to Orissa but after an epidemic, his company also faced severe challenges and ultimately got closed down. It was revealed by Historians that local timber traders faced a shortage of capital and could not survive in the business like the Marwari Companies. On the other hand, the Britishers were constantly facing conflicts over the conservation of forests for better revenue and agricultural expansion. Since then the concept of forest conservation was not known to the locals. Later on, many minerals were discovered within the forests of Assam most prominent being Petroleum and Coal. The Assam Railways and Trade Company (ART) turned this coal industry into a profitable venture similar to that of the tea plantation. Although these minerals were of no value to the natives, the Britishers realized the extent of profit that they can generate from mineral extraction in Assam which even got more encouraged after the establishment of the Geographical Survey of India. Further, the region's potential for producing hydroelectricity was also measured and it was found that Assam has a surplus potential to produce electricity. Gradually, all these reasons marked the beginning of deforestation in Assam. (Saikia, *Forests and Ecological History of Assam* (1826-2000), 2011)

In the mid-19th Century several departments were established by the British Government for better administration and among those departments, the most important was the Public Works Department (PWD) which immediately became the largest consumer of forest timbers to serve the demands of building infrastructure as well as of fuel woods. The Government for the first time started imposing a tax on cutting down trees in the year 1850 in the district of *Kamrup* since a huge pressure on forest timbers arose due to the above-mentioned

reasons and a large number of timbers were destroyed by the Bengal Traders who came in search of timbers for trade. The imposition of the tax was coupled with allowing forest areas on lease to the highest bidder for five years with no restrictions on cutting down trees for that period. Gradually demands for conservation of forests started being raised by Government Officials and restrictions started being imposed on Sawmills and Tea Companies. It was found that the region of Upper Assam was left with no valuable species of timbers. Other conservation activities included the planting of siblings of valuable timber species for forest regeneration. However, opium cultivation, PWD, shifting cultivation, etc. became the major reasons for deforestation causing blanket cutting down of trees. Therefore, Colonel Reid proposed *Nambor* forests to be declared as reserved forests, and subsequently it was declared as such by the Bengal Government in 1862. Through this plan, local people were restricted from getting access to the forests and nurseries were to be maintained. Elephant owners were made liable for the destruction of such nurseries, taxes were imposed on the access of timbers for trade and woods were only allowed to be supplied to the PWD. Moreover, severe restrictions were imposed on shifting cultivation, and instead, the British administration initiated taungya cultivation. (Das & Acharjee, 2013)

One major problem faced by the local villagers was that of wildlife encroachment into their agricultural fields. Due to wild animals' villagers had to lose lives and properties including livestock. Initially, no remedies were granted by the Colonial government but later rewards were announced for the killing of wild animals like tigers and leopards during the 1870s. Further, hunting was launched as a sporting event and present-day parks like *Kaziranga* were declared as Game Reserve. But the popularity of hunting became so high that many species like one-horned rhinos started becoming endangered which forced the government to regulate this sporting event. Seasonal prohibitions were imposed initially but the staffs of FD were not eligible enough to monitor and implement such restrictions. Later, Game Reserves were declared which were further renamed as Game Sanctuaries in 1916 for increasing the level of protection for wildlife. Although this initiative was criticized by the local villagers, this made a shift in the Colonial Ideologies from the conservation of forests for production function to wildlife conservation for the first time.

In 1874 Assam was placed under a separate commissionership and was divided into Upper Assam and Lower Assam where forests of *Goalpara* and *Kamrup* were transferred to Lower Assam and forests of *Sibasagar*, *Lakhimpur*, and *Naga Hills* were transferred to Upper Assam. Subsequently, many surveys were conducted, and based on their reports forests were categorized under multiple categories. These surveys assisted in the economic exploitation of the forests of Assam. Reservation of forests took a new pace after the establishment of Assam Forest Departments (FDs) however the Indian Forest Act of 1878 caused new obstacles in such reservation since it made the FD to publish the declaration of reservation of forests in an official gazette and provide 3 months for settlement of claims. Further in some areas like *Sibasagar*, the FD did not favor the reservation of forests since they did not want to involve in conflicts with the local tribal communities who were practicing shifting cultivation and also because there were no valuable species left. But still reservation of forests continued in areas where species like *Sal*, *Gomari*, etc. were available or could be regenerated. After the implementation of the Assam Forest Regulation of 1891 in 1892, the forests of Assam were categorized into three categories: Reserved Forests, Village Forests, and Unclassed State Forests. The Unclassed State Forests were ready forests stock for either cultivation or declaration of reserved forests. These forests were accessible to local people who were dependent on forest resources for their livelihood. This reservation policy of the FD created resentment amongst the local villagers who were frequently evicted from within the forests declared as reserved forests on

short notice and with no rehabilitation initiatives. These villagers in most cases were not even allowed grazing rights for their livestock inside the forests. The only relief available to these villagers was the Assam Land Revenue Regulations of 1896 which provided certain grazing lands to the villagers and also the right to clear forests for agriculture. But these Regulations were frequently objected to by the FD and even the grazing lands that were allowed to the villagers were surrounded by reserved forests for which their cattle were attacked by wild animals and if such cattle entered the reserved forests and were subsequently caught by the FD, the owners were made to pay fines for release of such cattle. Further, the traditional rights of fishing inside the forests were also restricted and such water bodies were sold to private owners who were mostly outsiders. Moreover, their access to wildlife was also prohibited. In short, the process of reservation of forests ended almost all the traditional institutions of community management of forests in Assam. For instance, the practice where a small amount of fee called *murung* was paid to the Garo headman known as *lashkars* for praising the deities that were believed to be responsible for protecting the *sal* trees also came to an end due to the control of FD. These practices defined the culture of the local communities and also protected the forests from excessive damage. Protests against these restrictions were made by the peasants starting from criticisms made by an Assamese Weekly named *Assamese Mihir* in 1873 where the weekly criticized the role of the FD in restricting the peasants from cutting trees from the forests and then followed by the first-ever organized protests by *Golaghat Hitasadhir Sabha* who opposed the policy of interfering with the traditional rights of the local peasants. (Saikia, *Jungles, Reserves, Wildlife: A History of Forests in Assam*, 2005)

Later with the popularization of jute cultivation, grazing reserves were cleared. However, the local peasants were found inefficient in expanding jute cultivation. Therefore, peasants who were majority Muslims were brought from East Bengal due to increasing pressures from landless peasants in the districts of East Bengal and were made to settle in the Brahmaputra Valley. However, these newly brought peasants entered the reserved forests due to a lack of land, and subsequently, they were held as encroachers. On the other hand, FD required labor for commercial exploitation of the reserved forests and initially, they granted certain privileges to the local villagers and also they introduced the concept of *beggar* under which villagers were allowed certain rights within the reserved forests in return for labor from them. But these initiatives proved to be insufficient. So Henry Cotton, the then Commissioner in 1900 made certain changes in the rules and introduced the concept of forest villages where the first forest village that was created was *Kachugaon* in the then district of *Goalpara*. These forest villages were allowed certain rights in exchange for their labor inside the forests including rights of settlement. But subsequently, these rights started decreasing for which this settlement also suffered from several obstacles, and later on, in 1932 these villages were declared as Unclassed State Forests. (Saikia, *Jungles, Reserves, Wildlife: A History of Forests in Assam*, 2005)

Besides these reserved forests, another category of forests existed known as Open Forests which were classified as Protected Forests, and certain trees were reserved within such forests. These protected forests were placed under the jurisdiction of the Civil Administration and the local governments were given the power to restrict access to such areas along with regulating the access. However, increasing pressure from landless peasants from East Bengal and constant leasing out of those areas caused severe deforestation of those areas. Further, local communities were also encouraged to agricultural expansion in those areas for increasing the revenue from agricultural lands. These created concerns amongst the FD and they started imposing restrictions on access to such areas. But the civil administration was the *de facto* authority over such areas. Therefore, these restrictions caused departmental conflicts.

Moreover, local peasants also started protesting against these restrictions. Gradually FD started concentrating on the revenue from the forest produce and they started losing control over the reserved forests also. Subsequently, the issues of forests took the political and religious character in Assam, and conflicts over rights of access to forest resources took the turn of religious conflicts between Muslims and Hindus.

After independence, the conservation of wildlife became an issue in the whole of India including Assam, and in Assam, the terminology of 'Game Sanctuaries' was changed to 'Wildlife Sanctuaries' which gave more emphasis on the protection of wildlife rather than imposing restrictions on hunting as a sporting event. However, after independence pressure on forest lands from landless peasants increased massively. Such pressures increased due to the 1950 earthquake and subsequent floods which made Assam a flood-prone area. These pressures led the politicians to go for the dereservation of forest lands, grazing reserves, and tea gardens which consequently resulted in heavy deforestation besides warnings from FD about the climatic effects due to such deforestation. Further non-peasant social groups took advantage of their close associations with the administration and availed many benefits from such policies which did not go unnoticed by the peasants as a result of which the peasants started revolting against such nexus. Later in 1963 Nagaland got separated from Assam and became a new state and immediately border disputes arose which resulted in massive conflicts. The Assam government initiated policies like half-a-mile settlement under which local people were encouraged to settle in the adjoining forest tracts of the Assam-Nagaland Border. The landless tea laborers occupied the tea gardens which resulted in the eviction of the tea laborers. The peasants organized themselves and started revolting against such evictions. Those protests were even supported by the Assam Pradesh Congress and therefore they escaped from such evictions. However, the Assam-Nagaland conflicts took a violent turn and the government started evicting the forest areas. The FD also started gaining control over the forests and they also started evicting the local population. But now these peasants' movements against the eviction measures were supported by the All Assam Students Union (AASU) and also to some extent by the Bengal Naxal Movement. However, the Janata Government after coming into power ensured for settlement of land which amounted to some sort of security amongst the peasants even though not permanent. But conservation policies of the government started recognizing the need for the conservation of natural resources and ignored the traditional rights of the local population after the forests went under the control of the Central Government through the Forest (Conservation) Act of 1980. Indian government again reaffirmed the colonial practices from time to time and went for commercialization of forests by favoring production forestry. These measures denied the basic human rights of the local forest dwellers. The Forest Rights Act of 2006 is therefore seen as a relief that is expected to address the historical injustice that the local communities have faced for ages. (Rabha, 2019)

From the above discussion, it can be stated that most of the present-day forest dweller communities in Assam were settled by the State Administration for their own motives, and those that were traditionally residing inside the forest vicinities either had to surrender their residence or were marginalized due to the new arrangements introduced by the Government. However, the statuses of these forest dwellers were never certain throughout the history of Assam.

Contemporary Forest Profile of Assam

In Assam, the abundant growth of a variety of species is possible because of the hot and humid climate along with heterogenic physiography. Similarly, Assam is also known for its suitability for the growth of commercial plants like- Banana, Mangoes, Sisyphus, Tea, and so on. This is the reason that made most of the scholars comment on Assam as the 'Biological

Gateway of North-east India'. It is near about impossible to identify separate categories of rich to existing plant formations in Assam. (PCCF, 2012) However, the major types of forests that have been identified so far can be listed as follows-

- a. Tropical Wet Evergreen Forests
- b. Tropical Semi-Evergreen
- c. Tropical Moist Deciduous Forests
- d. Sub-tropical Broadleaf Hill Forests
- e. Littoral and Swamp Forests, and
- f. Grasslands and Savannas

There are 7 national parks, 20 wildlife sanctuaries (3 more proposed), and around 400 reserve forests. Assam also consists of Tiger Reserves, Elephant Reserves, Biosphere Reserves, World Heritage Sites, and Important Birds Areas (IBA). Reserved Forests constitute 66.58% and Unclassed Forests 33.42% of the total forest area in Assam. (ASTECC, 2021) As per the 2021 assessment report around 28,311.51 sq. km. of the area is under forest cover in Assam. (ISRF, 2021) As per the human population inside the forests of Assam is considered a study in 2004 revealed that there are 499 forest villages in the state. (Kimsuk Mitra, 2004) However, no records of Non-Cadastral (NC) villages and Encroachers villages could be found.

Forest Rights Act and Its Implication on Forest Dwelling Communities and Conservation of Forests

The Act in the very beginning mentions that its basic objective is to provide for recognition of rights and occupancy over forests to forest dwelling Scheduled Tribes (ST) and Other Traditional Forest Dwellers (OTFD) which remained unrecognized, by defining the criteria of recognition and the evidence required. The Act further provides that such recognition of rights includes responsibilities and authority over the sustainable use of forest resources, conservation of biodiversity, and maintenance of ecological balance for strengthening the regime of conservation of forests which will ensure the livelihood and food security of such communities. The Act even focuses on recognizing the ancestral rights of such forest-dwelling communities that remained unrecognized during the State Consolidation of forests in the colonial era as well as after independence which are essential for maintaining the sustainability of the forest ecosystem. At last, the Act also attempts to restore the rights of those forest-dwelling communities who had to sacrifice their rights due to State intervention projects within their forest lands. (FRA, 2006) In short, this Act made a strong attempt not only to restore the historical injustice done with the forest-dwelling communities as it claims but also to restore and maintain the forest health by making such communities stakeholders in the conservation of forests and sustainable forestry. (Sarin & Springate-Baginski, 2010) This Act is the only legislation in India that exclusively tried to convert the conflicts between community rights over forests and sustainable forestry to sustainable management of forests through local community participation.

The Act defined "community forest resources" to include customary common forest lands or seasonal use of landscape not only within the premises of village forest but also within reserved forests and protected forests including Sanctuaries and National Parks where such communities had traditional access under Section 2(a). Thus, the Act attempted to dilute the State's rigidity over reserved forests and protected forests. The "Forest Dwelling Scheduled Tribes" has been defined as those members of scheduled tribal communities who reside in the forests including pastoral communities who depend on forest resources for *bona fide* livelihood needs U.S. 2(c). The scope of forest lands has also been extended U.S. 2(d) to include any description falling within any forest area and includes reserved forests, protected forests, and

even unclassified, undermarked as well as existing deemed forests. Forest villages include all those villages that were permitted to be settled by State Governments, during any other forest settlement process, or by forest departments and even include lands that are used for cultivation by such village communities as per Sec. 2(f). *Gram Sabhas* have been defined to mean any traditional village assembly of adult members who are elected and also shall mean *Panchayats*, *Todas*, or any other such village assemblies if are in existence where there shall be unrestricted participation of women as per Sec. 2(g). The Act specifically defines “minor forest produce” to include a variety of non-timber forest produce which makes even such resources fall within the ambit of the forest resources under this Act. The “Other Forest Dwellers” has been defined as those members of communities who had been residing for at least three generations before December 13, 2005 and are dependent on forest resources for *bona fide* livelihood needs. For clarification, the word “generation” has been defined to mean 25 years this indicates that a member to be eligible as an Other Forest Dweller under this Act is required to prove his/her residence over the claimed forest land for at least 75 years. (Ministry of Law and Justice, 2006)

Section 3 of the Act provides for the different categories of rights that are ensured to both individuals as well as communities belonging to the Forest Dwelling ST or OTFD Communities (*bona fide*) as provided by this Act. Those rights includes occupation over forest lands either individually or in common for food and livelihood including cultivation purposes; community rights like *Nishtar* or any other such rights that were traditionally enjoyed by *bona fide* communities under this Act during different periods in history including Princely State, *Zamindari* or any other such intermediary regimes; rights to own, use, collect minor forest produce as defined under this Act that were enjoyed by the *bona fide* communities within or outside the premises of their villages traditionally; rights of pastoral or nomadic communities to fish or water resources, grazing, or any seasonal access to resources within the forests; rights for primitive tribal groups or pre-agricultural communities that include community rights of tenures of habitat and habitation; rights over disputed lands where claimants are in dispute; rights for conversion of lease, grants, or *pattas* issued by any authority of or by State Government itself; rights of settlement and conversion of all villages including unsurveyed and unrecorded villages into revenue villages; rights to regenerate, conserve forest resources that were traditionally being conserved for sustainable use by such communities; rights recognized by State laws, Autonomous Councils, Traditional or Customary Laws of the concerned Tribal Communities of any State; right to access to biodiversity or community rights over traditional knowledge for accessing biodiversity, or cultural diversity; any other rights that the *bona fide* communities enjoyed under this Act but such rights do not include right to hunting or extracting parts from wild animals; and right to *in situ* rehabilitation inside the forest lands in cases where the *bona fide* forest dwellers were illegally evicted.

It also provides for the diversion of forest lands through notification to be provided by Central Government which can extend up to cutting up off seventy-five trees within one hectare to construct schools, hospitals, roads, community centers, etc. provided the forest lands to be diverted shall be less than one hectare and such projects shall be initiated only on the recommendation of the concerned *Gram Sabhas* U. S 3(2).

Under Section 4(1) the beneficiaries of this Act are provided which expressly includes: members of the ST communities who are listed as such by any State as regards the above-mentioned forest rights under this Act and the OTFD. However, it is also provided that any or all the rights as the case may be mentioned in Section 3 can be modified and resettled in the areas of critical wildlife habitat and National Parks provided that all the conditions under this subsection shall be fulfilled. Such conditions include; first the process of vesting of rights to the beneficiaries has been completed under this Act; then the State Government Agencies in

exercise of its powers under the Wildlife Protection Act 1972 shall establish that vesting of the rights under this Act to the holders will create irreversible damage to the wildlife or will lead to sufficient danger to the existing species within the concerned habitat; then the State Government shall conclude that there is no other alternatives available for protection of such critical habitats other than relocating such holders of rights; then the needs of the individual or communities who are entitled for such rights shall be taken into consideration by the State Government while fixing a package for relocation as per the policies of the Central Government; then free informed consent shall be obtained from the *Gram Sabhas* of those areas where such right holders are proposed to be relocated; then the right holders shall not be relocated until and unless such packages and relocation have been arranged as promised to them before relocation and finally once such critical habitats have been vacated, no diversion shall be initiated either by Central Government or State Government whatsoever in future.

Chapter IV of the Act deals with the authorities who are responsible for the implementation of the Act. First, it provides for the functioning of the *Gram Sabhas* who shall be the ground-level authority under the Act for determining the rights of the forest dwellers and forwarding a hard copy of the resolution stating the rights and the beneficiaries to the Sub-Divisional Level Committee. Any party who is aggrieved by the resolution of the *Gram Sabha* shall apply to the Sub-Divisional Level Committee which shall then provide all reasonable opportunities for hearing to the aggrieved party and dispose of the matter within sixty days.

The Sub-Divisional Level Committee shall then prepare all the records of the rights and the beneficiaries which the State shall forward through it to the District Level Committee for final decision. Any party aggrieved by the decision of the Sub-Divisional Level Committee may make a petition to the District Level Committee within sixty days from the date of the order passed by the Sub-Divisional Level Committee who shall dispose of the matter accordingly after providing all reasonable opportunities of hearing to such aggrieved person. The State Government is also responsible to constitute a State Level Monitoring Committee that shall maintain all records on forest rights and forest dwellers and submit them to the Nodal Agencies whenever such Nodal Agencies demand.

The Constitution of all these three committees shall include members from Revenue, Forest, and Tribal Affairs of the State and *Panchayati Raj* Institutions. (Sec. 6) The Act has also provided for offenses committed by the members of the authorities or the committees who are made responsible to implement this Act. However, no such matter can be tried by any Court unless any Forest Dweller is aggrieved by the resolution of the *Gram Sabha* or the *Gram Sabha* by a resolution against the higher authorities have brought the matter to the notice of the State Level Monitoring Committee and the State Committee has not proceeded with the matter within sixty days.

The Ministry of the Central Government that deals with Tribal Affairs or any such authority or office has been made the Nodal Agency for this Act U.S. 11 and also the Central Government has been provided with extensive powers of rulemaking for the implementation of this Act U. S. 14.

Status of Forest Dwellers in Assam

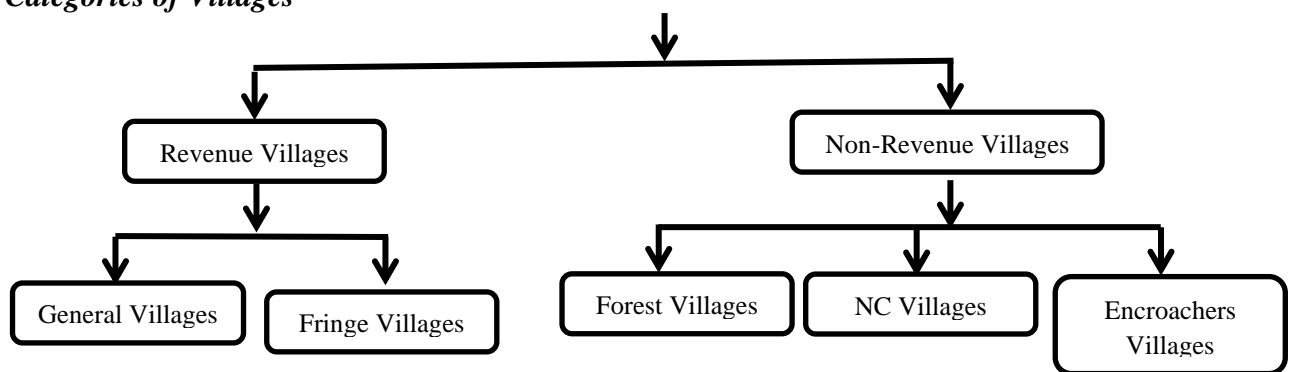
From the historical background, it becomes clear that forest villages in Assam were settled for generating a supply of labor by the colonial government inside the reserved forests. Some human populations also settled inside the forests for several other reasons, for instance, to encourage agricultural expansion for increasing the share of land revenue, etc. After independence also the legacy of colonial practices continued in different places for a long time.

For instance, the system of *beggar* which was legally termed forced labor continued in Assam till 1980. Later several policies were launched for the permanent settlement of claims based on the reports of several committees on forest villages but those policies were never implemented uniformly. Earlier the administration of forest villages was completely under the jurisdiction of FD for which no developmental activities initiated at the *Panchayat* level could reach the villagers as per a study conducted in the *Dibrugarh* district of Assam. (Sonowal, 1997) However, such situations have changed completely although differences exist from place to place in the State.

These forest villages are mostly inhabited by the tribal population and other backward sections. Besides, the other population that was brought by the colonial rulers, the forests of Assam were also traditionally inherited by the indigenous local communities that could not connect themselves with the mainstream regions. However, it has often been alleged that the tribal population residing inside the forests is mostly responsible for deforestation (Nath & Mwchahary, 2012) and they remain the major victims of human-forest conflicts.

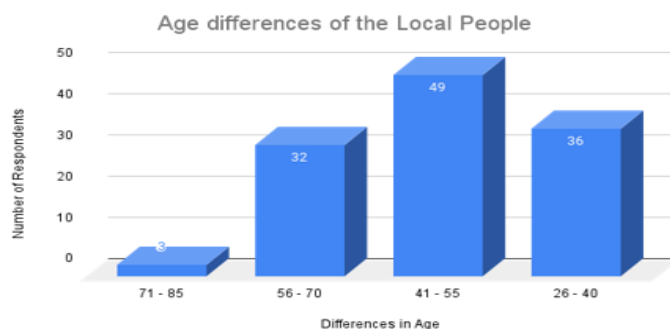
During the survey for this study, it was found that different arrangements exist in all six districts. Different categories of villages near or inside forest areas could be classified according to their legal status which is shown in the below chart:

Categories of Villages

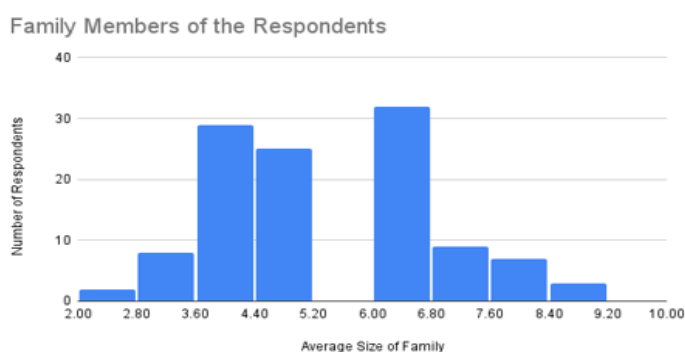


The above categories of villages were found from the targeted areas of study where General Villages were not included in the study since they are not relevant to the subject. General villages include all those villages that are not located near the forest areas and are completely outside the jurisdiction of the FD. They are revenue villages that are administered by the District Administration. However, the other category of revenue villages is Fringe Village has an important role in the management of forests since they are those villages which although come under civil administration, are located near the forests. Therefore, the role of the residents of the Fringe Villagers in sustainable forestry is important and thus has been studied in areas where there are no recorded forest villages.

The non-revenue villages are categorized as those villages that come within the jurisdiction of the FD. The Forest villages were mostly created by the FD and their residents are generally residing in those areas for ages. NC Villages are Non-Cadastral Villages that were found within forest areas. These villagers existed for a long time but they were not included in any Census survey for which they were categorized as Non-Cadastral Villages in the opinion of the residents. Last is the Encroacher Village which are illegal residents in the eyes of the FD. They have no valid proof of rights of residence in the areas inhabited by them. The survey has considered all these types of villages other than the General Villages.

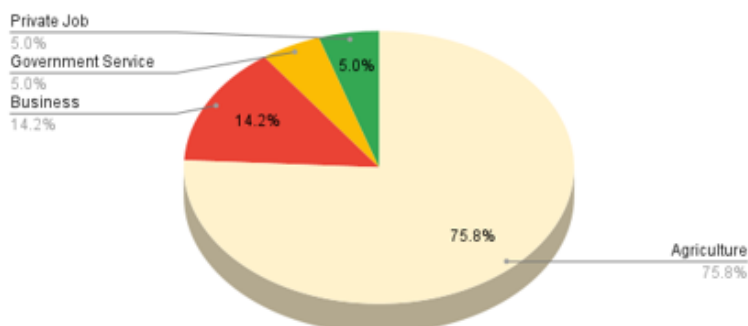


The above chart shows the age difference between the respondents which shows that the majority of the respondents belong to the age group of 41 – 55 years. Out of the surveyed samples 101 samples belong to Hinduism, 15 belong to Islam, and 4 belong to Christianity.



The above chart shows the average size of the family members of the respondent. It shows that more than 30% of the respondents are having 6 or more 6 members within their families. The minimum size of family is 2 members while the maximum is 10 members.

Occupation Status of the Respondents



The above chart shows the occupational status of the respondents. It is found that 75.8% of the respondents are agriculturalists while around 14% of the surveyed population are engaged in a business which is mostly selling of forest produce collected from inside the forests or selling of fruits or vegetables planted by them on the forest lands. However, in the fringe villages, dependency on forest produce is near to nil, and also even in the non-revenue villages inside the reserved or protected forests dependency on forest produce for basic livelihood needs has reduced significantly. The respondents from these villages revealed that they mostly collect dry or dead wood from the forests whenever there are any ceremonial needs. Certain leafy vegetables, fruits, and some other minor forest produce are collected but they are not dependent

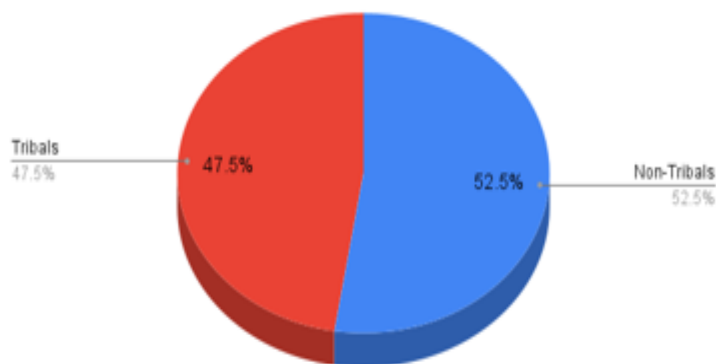
on them. It was found that they are now basically relying on forest lands for settled agricultural practices.

The monthly income of 101 out of 120 respondents was found to be less than 15,000 rupees. While only 4 respondents were found to have monthly income of above 45,000 rupees. It shows that the economic level of the majority of the respondents residing both in the fringe villages and non-revenue villages is marginal. Further, inside the forest areas, the respondents revealed that they are prohibited from constructing permanent structures. In the district of *Kamrup (Metro)*, in *Garbhanga* Reserve Forest, the respondent forest villagers expressed that they have no access to electricity. Moreover, the President of the *Panchayat* revealed that once attempts for electrification were made and cables were brought but later it was discovered that inside the forests such cables won't work and would be dangerous for the wild animals. Therefore, the plan was dropped, and instead, solar energy stations were installed. However, the energy generated from such solar stations is not sufficient for the entire population. Most of the forest villagers also revealed that they are even not allowed to go for plantation of permanent cash crops like tea plantation, etc. If planted then such plantations would be evicted by the FD as was reported by the respondents from the *Tinsukia* district. However, the President of the *Panchayat* of the forest villages in *Lakhipathar* Forest Village near *Dihing-Patkai* elephant reserve revealed that the eviction procedure of the FD is discretionary and many local people are establishing tea gardens inside the forest vicinities but no actions have been taken yet. It has been revealed by the forest officials of *Karimganj* division that infrastructure facilities like the construction of roads are restricted inside the reserved forests for preventing smuggling activities. The respondents of *Charaipunj* Forest Village near *Dihing Patkai* National Park revealed that they are not even paid any compensation in most cases if they lose lives and properties in attacks from wild animals. The respondents of *Tinsukia* District even blamed the forest administration for their lack of interest in the protection of forests and reported that if they are on duty then how smugglers can enter the forests. From outside the forest areas, forests appear to be dense but from inside it has been significantly cleared. While on the other hand, the forest officials blamed the local people for involving in the nexus with smugglers. However, the forest officials also admitted in the districts of *Baksa*, *Dibrugarh*, and *Nagaon* that without support from the local people, they won't be able to protect the forests. In the *Baksa* district, many instances were reported where the local population engaged themselves in the conservation of the forests and started earning their livelihood from such activities. The NGOs that were interviewed also reported their purpose of establishment where they had successfully been able to convince the local population of the management of forests. Mr. Chandrakanta Basumutary, the Former Brand Ambassador of the Assam State Forest Department and the President of an NGO revealed that without the local residents inside the forests, the forest could not be protected by deploying merely state agencies. A similar stand was adopted by the Forest Man of India Shri Shri Padmashree Jadav Payeng. He revealed true stories of the successful engagement of village people in the management of forests whereby the people not only engaged themselves in the conservation of forests but also started earning a better livelihood from such management.

As per land rights for the residents of non-revenue forest villages are concerned it has been found that out of the total respondents that have filed for land rights only 49.1% have received positive responses while 46.6% have received either no responses or their claims have been denied. The ones who have received positive responses mostly belong to the tribal communities. This is mainly because of the implementation of the FRA 2006. However, the period of residence in almost all the forest villages and NC villages for both tribals and non-tribals are the same. Further, there appears no basic difference in the economic levels of both

communities. In the *Tinsukia* district, it was found that even a separate scheme under the title *Basundhara* is active for securing the land rights of the tribal population inside the forest villages. It was reported by the respondents that under these scheme even documents like Voter ID and NRC are considered for asserting claims over their lands which are not considered under FRA. This scheme, therefore, relaxes the requirements of FRA. However, the non-tribals are not aware of this scheme as per their responses. Moreover, in the *Baksa* district, it was found that during the *Bodo* agitation many non-tribals had to vacate their homes and those places were occupied by the members of the *Bodo* tribes. In the surveyed areas it was also found that the majority of the population is staying in the forest villages since after the 1950s. Therefore, it indicates that none of the non-tribal communities that are residing inside the forests are eligible for rights under FRA. The below chart shows the distribution of samples amongst the tribal and non-tribal populations:

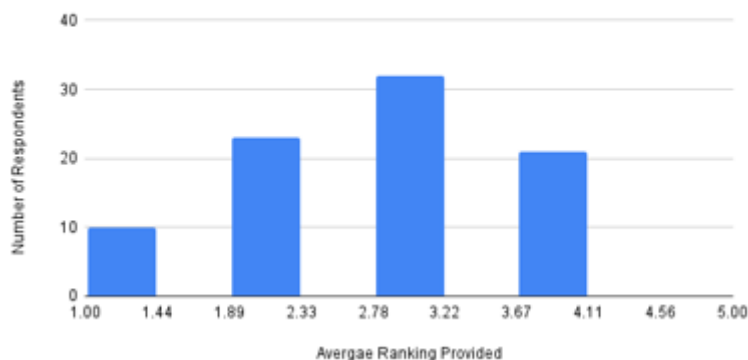
Proportion of Tribal and Non-Tribal Population



The study has shown that 35.8% of the total population surveyed has faced notice of eviction. However, the majority of these notices were served against the expansion of agricultural land. But in the district of *Karimganj* in the *Batshatila* Reserve Forest, an encroacher village was surveyed where it was found that the residents belong to the Islamic fraternity and their residential status differed from that of NRC and Voter ID cards. They were staying inside the reserve forests in a village named *Izarfar* which is not recorded in the documents of the FD. Further, their legal identity proofs stated different places of residence. However, house tax was collected from them by the *Panchayat*. It was also found that whenever notices of eviction get issued from the FD, immediately they use to file petition in the district courts and they use to gain an injunction against which the FD could not initiate any action. In the meantime, they use to get sufficient time for relocating their settlement to some other places in the forests.

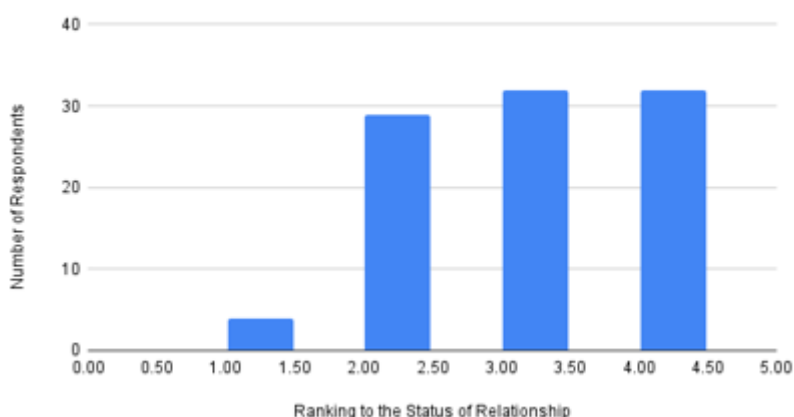
Regarding the status of implementation of the FRA, it was found that only tribals are eligible under this Act and the claims of the non tribals are mostly rejected. Further, those who have received title certificates are still unable to avail of their rights due to the lack of demarcation of land.

Satisfaction Level of the Local People with the Management System of Forests



The chart above shows the level of satisfaction of the local people over the present management system of forests. The level was assessed using linear scale from 1 to 5 points where 1 stand for very poor and 5 stands for highly satisfied. The study shows a mixed nature of responses. In the revenue villages the respondents mostly responded on the positive side while in the non-revenue villages, the responses were not so positive.

Status of Relationship with the Forest Department



The chart shows the level of relationship shared by the local people with the FD officials and staff. It was found that in the fringe villages, the relationship is quite healthy while in the non-revenue villages, it was of mixed nature.

Under the present system of management of forests in Assam, it has been found that the forest dwellers in Assam had been facing injustice mostly due to changing political will and interests of the rulers since the Ahom period. Initially during the Ahom rules the security of the territorial integrity of the State made the rulers encourage the settlement of villages in the vicinities of forests lying on the border areas. Later during the Colonial period, villagers were allowed to settle inside the forests for generating cheap labor that was required for the commercial appropriation of the forests. Subsequently, after independence, this study has shown that political leaders of independent Assam have a great role in influencing human settlements inside the forests in the name of relief provided to peoples that became landless due to earthquakes, floods, or other factors including social and political movements. Besides, such factors in Assam it was also found that the so-called encroachers are having Voter IDs and NRC registration along with other documents like House Tax paying receipts and electricity bills inside the reserved forest areas. Further, the forest officials stated that only NOC was provided for electrification for the forest villages and not for any other schemes but

it was found that the forest villagers including the encroachers were getting benefits of many States sponsored schemes through their respective *Panchayats* which indicates political intervention for the sake of vote bank. On the other hand, the real beneficiaries who are staying in the forest villages established either by the FD or by the State Governments in the past are unable to avail even the basic requirements for the realization of their human rights like electricity. This discrimination is a result of different treatment of populations from different areas by the political parties in power depending on the number of votes to be generated against welfare policies initiated by such political parties.

During the survey, it was also found that many schemes are enacted and implemented but with a lack of clarity amongst the local people. For instance, the members of the *Panchayat* in *Tinsukia* district reported miss-utilization of funds that were allotted for activities under JFM. A similar view was provided by the members of the *Panchayat* from the *Dibrugarh* district. The respondents reported that the forest staff does not consider the entire local population before initiating any welfare scheme and only a few politically influential leaders from those areas are consulted which results in a lack of transparency in the implementation of such schemes and that further results in lack of confidence amongst the local population against the welfare initiatives of the State.

FRA has provided a separate procedure for the settling of claims over forest land and resources inside the forests where even the role of the Judiciary has been limited to the extent of being the final Court of Appeal in cases of grievances during the process of such settlement of claims. Moreover, it was provided that in matters related to forest rights, even PIL could not be filed. (*Pitor Baumatory v. the State of Assam & 9 Others*, 2017) But it has been found that the district court has granted injunctions in such cases. Further, the scheme of *Basundhara* which is a state-sponsored scheme is providing land rights while FRA is an Act enacted by the Union Government providing for similar arrangements but through different procedures. Such arrangements have created significant confusion amongst the local population as well as the forest officials.

Conclusion and Suggestions

The study reveals that forest dwellers have a significant role to play in the sustainable forestry of Assam with their traditional knowledge. Such role becomes even more influential for the protection of forests owing to the lack of resources both human and infrastructural amongst the FD. However, these forest dwellers are denied economic liberty and such liberty even gets more unsecured due to the conflicting provisions of the law and the unequal processes of implementation. Political will is the major reason for the present situation of the forest dwellers in Assam and such a situation is also responsible for increasing conflicts between humans and forests. It was also reported by forest officials that if rights inside the forests are permanently settled under FRA, then the forest dwellers might lose their accountability in protecting the forests which might further result in the decrease of the authority of the FD. Therefore, it is essential to engage these forest dwellers in the management of forests where they are provided with minimum security over the forest resources with economic liberty, and at the same time they shall be made accountable for sustainable forestry. Such an arrangement requires economic opportunities to be generated from within the system of management of forests *inter alia* so that they consider forests as their own property which might restrict them from entering into any nexus with the outsiders engaged in the process of exploitation of such resources. Instances could be taken from *Baksa* district where at one time the *Bodo* agitation was held responsible for the massive destruction of the Manas National Park but since 2000,

after the declaration of *Bodoland* as an Autonomous District Council (ADC), several NGOs developed on the lines of eco-tourism that made conservation of the forests a profitable venture for the local people.

The legal provisions need to be more non-discriminatory. The discrimination between tribals and non-tribals does not hold well in the state of Assam where both tribals and non-tribals are residing in the forest areas for the same period and without any differences in their economic status. In such cases when the period of residence is the same between both the communities and when these communities were settled by the State itself, then the concept of so-called aboriginals in the name ST does not make any sense. If such discrimination is allowed then it might lead to serious injustice against the non-tribals. Further, the concept of aboriginals and ST also possess significant differences for which the concept of ST in India also cannot be justified to represent the indigenous communities in the strict sense.

Furthermore, the political interventions in such matters shall be shifted from differential treatment to uniform approaches for the preservation of economic liberty for the forest dwellers. The state-sponsored schemes shall be uniformly applicable and if FRA is to be implemented, then demarcation of the land against the title holders shall be completed as soon as possible and a fixed period for such demarcation shall be provided in the laws or rules against which matters can be brought before the Court in cases of non-implementation. Such initiative shall secure the rights of the forest dwellers which will further allow them to engage wilfully with certainty in the process of sustainable forestry.

At last, the dates for determination of the *bonafide* forest dwellers shall be changed and conformity shall be established with the other Citizenship Laws of the land since if they are legally declared as Indian citizens under the Citizenship Laws due to different dates of determination but are evicted from the residences due to different laws applicable for the forest areas with different dates, then also it would result in the violation of the fundamental right to livelihood and shelter as guaranteed under Article 21 of the Constitution of India. For restoration of which, the burden will be on the State for separate rehabilitation.

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