

Land, Forest and Communities Implementation of Forest Rights Act 2006

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Abstract—*The relationship between people, forest and livelihood is of immense interest particularly in the context of rapid sprawl of urbanization that the Guwahati city is experiencing in the recent decades. There is an existing conflict between the forest dwellers and the forest department over the issues of land and access to forest resources. Why there has been so much debate regarding forest? The paper will try to deal with this question. The definition of forest is interpreted in different times according to the vested interest of varied stakeholders. The ambiguity around the definition of forest has facilitated varied transitions. The question of governing the forest in colonial as well as in the free independent India exhibits dualistic scenario. Forest turned to be sites of conflict between the people and the forest departments from the time they were declared as Reserve and Protected areas. The paper will attempt to highlight states monopoly control over the resources without recognizing the rights of the communities which ignited the conflict. Activities like poaching and smuggling increased in the protected areas. Lack of access to resources and alienation from their land has resulted hostility of the communities towards the forest department. Further there always existed tussle between the Forest and the Revenue department. With all these several attempts the question of defining the forest was ambiguous which placed the forest dwelling communities in an unstable threatening position.*

Introduction: Jungles¹ which did not possess any restriction for the people who resided there suddenly altered to Forest with the advent of the Britishers (Saikia 2011:2) The former was never seen as a profit making tool for its dwellers while the later is being created for revenue generation for colonial rulers. Around 100-250 million people in India are directly or indirectly tangled with forests and possess a long tradition of using the forest for subsistence. (Lele 2011:96) Forest was always treated as a common source of sustenance from which their food, agricultural activities, fuel wood, medicines and other livelihood amenities could be derived. The relationship between man and environment have experienced a continuous flux possessing a long history. For the maintenance of the stable ecosystem this interrelation between man and forest is essential. But with the intervention of the state this relation has experienced manifold changes. Presently the co-adaptation has resulted in conflict between the forest dwellers and the state

for whom the people are the destroyers of forest (Prasad 2004:59) as stated by Karl Marx- the rich destroys the forest for profit and the poor for food. This state's monopoly over forests land without recognizing the rights of the forest dwellers made them aliens in their own land. The absolute dependence on forest and forest products with the community ownership² of land was the hallmark of these forest dwelling communities (Sharma 2001:4791)

The destructions created by colonial rulers upon forest for timber extraction and sport hunting have pushed the forest to brink of conservation. The conservation paradigm gave an all new dimension to the forest on one hand with the creation of "people free zones" (Ghimire and Pimbert 2006) which was perceived as the best way to ensure the protection and conservation of forests. This approach has faced severe criticism for being bio-centric unseeing the anthro-centric and eco-centric perspective. This attempt to keep the forests untouched maintaining its "wilderness" (deep ecology*) was imposed in India without practicality. The park -centric approach treated forests as "isolated entity" (Kothari 2003:1) by excluding the forest dwellers through "fences and fines" or "guns or guards" approach which brought hostility among the forest dwellers. And on the other hand it is argued by some other conservationist that the dwellers must be treated as integral to the conservation process where their voices should be heard and they should be treated as important parts of the forest conservation method. (Guha: 2006)

Conflicts between the concept of jungle and forest:

- Pre Colonial Period-The history of the forest dwelling communities could be traced from the pre colonial period in India. The forests were mainly occupied by tribal populations and the social interaction between tribal's and non tribal population was negligible and very minimal (Sharma 2001) the tribal's have faced numerous exploitation from time immemorial undermining their survival. The process began with the invasion of fertile lands near riverbanks by the dominant clan and

¹ Densely covered areas of foliage and trees seen as homes of wild animal and beasts marked by wilderness.

² Rights owned by communities sharing the resources by all and no possession of individual titles.

communities forcefully pushing the tribal's into the hilly and forest areas. (Asher and Agarwal 2007:pp11) Forests in India were an intrinsic part of the communities' sustenance where resources were held by the people as "commons" referring them as Common Property Resources (village ponds, grazing grounds, community forests, wastelands etc) and possessing customary rights no private rights over these resources. (Rangarajan 2006: pp206) Between the forests and communities no traces of conflict could be witnessed as they knew that without forest they could not sustain their livelihood. Access to the forest resources was uncomplicated as the communities could collect the minor forest produce like honey, fuel wood, medicinal herbs etc for their daily use. (Gadgil and Guha 1995) In pre-colonial period communities use to attach divine mythical ideas with forests treating them as sacred.

- Pre Independence Period-In colonized India a different perspective of the forests was introduced. For the first time the question of governing the forest came into the picture. Britishers saw the extensive forest areas as opportunities for revenue generation and timber extraction. The Common Property Rights got shattered due to taxation. For fulfilling the capitalist intentions of yielding profit from forests; the question of ownership, management, access, use and distribution of resources was brought about by Britishers. Forest became a restricted area- Who is in? And who is out? The customary rights of the people were curtailed in the first draft of Imperial Forest Department 1864 starting "settlement and survey" of lands including forests(Asher and Agarwal 2007) Declaration of Forest made easy accessibility of timber for railway and ship building and other industrial purposes. The Indian Forest Act of 1878 classified forests into three categories: Reserve forest, Protected forest and village forest³ after these categorization once an area is brought under colonial state control the common rights were abolished and the resources were used for profit making. It was during this period Indian Forest Act 1927 and Forest policy of 1988 came up providing the basic constitutional framework for forest governance yet unable to support it with a clear acceptable definition of forest (Das 2010: pp16, Sharma and Sarma 2014: pp 3) this subjective definition cause increasing damage to region like Kumaon and Chotanagpur saw huge forest tracts were declared as Reserve for colonial regime, the exploitation of which continued even in the independent India. The Forest Acts favored government's power to arbitrarily regulate and prohibit resource expropriating activities. The forest people lived in these areas long before the Imperial Forest

Department came into existence, it reduced them to squatters (kashwan 2012)

- Post Independence Period-The post colonial period continued with the same colonial legacy of treating forests as resource extracting entities. The new acts and policies were redesigned to meet the requirements of the state. The National Forest Policy 1952 came with the main aim of providing forest products for commercial purposes with resulted in increasing exploitation of forest for industrial use; alienating the communities from their dependence on forest for their livelihood needs (Gadgil and Guha 2000: pp 185, Prasad 2004: pp32, Saikia 2011: pp 138) The needs of the people are subservient to national interest. Even after thirty years of Independence India could not assure the status of the forest dwelling communities. The stringent exclusionary policies pushed the people further away from the forest which comprised a part of their daily life (Guha 2006:pp140) subduing the voices of the local communities. After return of then Prime Minister Indira Gandhi from the Stockholm Conference on Human Environment 1972 the conservation of forest and environmental protection emerged as a national priority. Forest found place in the Indian constitution reflected in the Directive Principles Of State policy* (Sharma and Sarma 2014:pp 3) The National Wildlife Policy for India 1970 was formulated to reflect the growing awareness about the environmental degradation much of which was subsequently included in The Wildlife Protection Act 1972 followed the same pattern with more severe punishments. The burden of proof was further put on the communities referring them as "encroachers*" (Gopalkrishnan 2012: pp10, Sharma and Sarma 2014: pp4) Forest turned to be sites of conflict between the people and the forest department from the time they were declared as protected area. The states monopoly control over the resources without recognizing the rights of the communities ignited the conflict. Activities like poaching and smuggling increased in the protected areas. Lack of access to resources and alienation from their land has resulted hostility of the communities towards the forest department (Prasad 2004: pp58). Further there always existed tussle between the Forest and the Revenue department.

The period from 1980's to 1990's has witnessed drastic changes in the governance of forest. Further The Social Forestry 1976 introduced the scheme for plantation of quick species in all available private and common land outside the forest areas to ensure environmental protection. The process further widened the gap between the landlords and marginalized rural communities (Asher and Agarwal 2007: pp13) the conservation process followed the Top down Approach which was not people- friendly. The state neglected the fact that forest and communities in India were "Fluid Entities" (Kothari 2003) which resulted in resistance in the form of environmental movement for instance the Chipko

³ RF,s comprise of the part of the forest occupied by valuable trees, PF's consisted of the species of biotic communities which need to be protected and VF's were marked by habitation for the local population

Movement. The shift from exploiting the forest to conserving the forest left little space for the communities who were dependent on forest for their bone-fide livelihood. The people are more likely to follow the forest management regulation if these regulations take into consideration their need and requirements. Community Forestry can be used in two distinct ways: one by the policies and forms of forest management which have involvement of local communities and other by the management of forest by communities for their own use. This would ensure at least a significant degree of autonomy to the communities in the decision making process (Fisher 2010:10; Sharma and Sarma 2014: 7) This decentralized process of forest management gave rise to Joint Forest Management (JFM) 1990 in India. It attempted to collaboration and significant contribution of the local communities towards forest conservation. JFM involved an agreement between the forest department and the local communities in which the communities receive some access to forest resources and income in exchange of carry out some forest management tasks like plantation and protection⁴. The main objective of the introduction of JFM was to help resolve the long standing conflict between the forest department and forest users. (Sharma and Sarma 2014: pp7; Asher and Agarwal 2007:pp13; Kashwan 2012: 618) Despite the attempts made by the government JFM failed to emerge as a people friendly model of conservation. The rights held under JFM were devoid of statute which allowed the state to unilaterally alter the benefit sharing mechanisms (Kashwan 2012:pp618) While community rights specifically involves “handover” certain use rights to communities found in case of Nepal. In India JFM was implemented in different way which actually increased the concentration of power in the hands of the state (Kothari 2006:pp121; Sharma and Sarma 2014:pp8). The historical injustice continued upon the indigenous communities even after participatory forest management models were adopted.

This exclusionary model of conservation through the creation of people free zone have resulted in the creation of The Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 briefly referred to as FRA. The Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act came with the main focus that the lack of access to and control over natural resources was the root cause of affecting livelihood and identity of the forest dwelling communities. FRA came as a landmark legislation to undo the historical injustice which was done to the forest dwellers from time immemorial. (Sharma and Sarma 2014; Ministry of Tribal Affairs GOI AND United Nations Development Program; Community Forest Rights under FRA by Kalpavriksh and Vasundhara)

The colonial rule also drastically changed the landscape of Assam Valley in the early part of nineteenth century. With the

introduction of Tea plantation large tracts of village commons or community forest lands were brought under colonial administration. The Bengal Forest Act 1865 classified forests of Assam as: Reserve forest and Open or Protected forest. The interest behind the reservation of forest was to secure monopoly control over the commercial value of the forest (Saikia 2011; Sharma and Sarma 2014) The Assam Forest Regulation 1891 introduced a new category of forest stating it as Unclassed State Forest (USF)⁵ comprising of fallow lands and unproductive timbers were deforested to meet the requirements of tea planters. Early twentieth century opened the possibility of jute cultivation in the wastelands bringing poor peasant class from East Bengal. (Sharma and Sarma 2014) From early history itself the state has owned all lands in Assam; previously it was controlled by the semi feudal Ahom state under the corvee labour (paiks) system (Guha 1991, Sharma and Sarma 2014) which later got transformed into the rule of the Britishers which again transformed the ownership of the lands into the hands of the State. The revenue and the land settlement patterns of Assam clearly depicts the changing nexus of the city with the constrain of the space(Mahadevia et al. 2016). The study will seek to understand the forests of the region and the drastic changes its underwent due to its close proximity with the rapidly growing urban space of Guwahati. The ‘Regional Environmentalism’ (Saikia 2011) was deprecated among the peasant class of Assam when the complex issue of conservation practices contested with ownership rights of the communities settling in the forests. Land in the city of Guwahati have various features from the 1950’s itself which could be characterized by wetland, forests land, tea estates, government land and land under tribal belt.(Saikia 2011, Mahadevia et al. 2016) The natural tendency of the uneven spread of the population have resulted in conflicts among the communities and state initiated conservation programs as after 1970’s a huge form of influx of migrants could be seen in the city resulting the scarcity of the housing space making ecologically sensitive area to be preferred way of accessing housing facilities in the city(Ibid)

Enactment of FRA2006:

FRA recognises and vests forest rights to the tribal’s and other traditional forest dwellers who have resided in the forest but whose rights could not be recorded. By securing tenural rights and access to the forest resources the main aim of FRA is:

- To ensure livelihood and food security to the forest dependent communities
- Provide legal recognition to community conservation initiatives strengthening traditional conservation practices
- Protect their traditional knowledge and intellectual property relating to biodiversity

⁴ Local dwellers were given the duty of protecting the valuable trees and timber from felling and illegal smuggling

⁵ In Assam the Britishers made another classification of land referred to as USF consisting of marshy and fallow lands used for jute and tea cultivation

- Empower communities to protect conserve and manage forest resources in turn protect their customary rights.
- Establish empowered institutions at the community level for conservation and management of natural resources, thereby strengthening the governance at grassroot level.

Unlike other forest policies that resulted in providing forest patches to households after being privatised FRA neither provide clearing of the forest nor privatization. It recognizes rights of forest people to the land under subsistence cultivation but classified in government records as “forest” (Kothari et.al 2011; GOI 2006) the notion forest, forest resources and forest dwelling communities was clearly stated in the legislation:

- Forest dwelling Scheduled Tribes means the members and community of the scheduled tribes who primarily resided in the forest for 1 generation (25 years) and is dependent on forest and forest land for bona fide livelihood.
- Other Traditional Forest Dwellers means any member and community who has for at least last 3 generations prior to 13 December 2005 primarily reside in the forest and is dependent on forest and forest land for bona fide livelihood.
- Forest land means land of any description falling within any forest area including unclassified forests, undemarcated forest, existing or deemed forest, reserve forest, protected forest, parks and sanctuaries.
- Minor forest produce include non timber forest produce i.e. bamboo, brushwood, stumps, cane, tussar, honey, wax, tendu patta, medicinal plants and herbs.

FRA acted as a response to the long sustained struggle by the forest dwelling communities for justice and restoration of traditional rights over forests (Sharma and Sarma 2014:8; Sahu et.al 2017:44; Lele 2017:55) The implementation of FRA is seen as savior of forest dwelling communities which is hailed as a historic Endeavour to undo the wrong committed against them by providing rights to land and resources within the forest (Kothari 2006:138)

Shortcomings and Problems of FRA:

Undoubtedly FRA was a ground breaking legislation to assure the rights and privileges of the forest dwelling communities yet it failed to match with the existing ground realities. The definition of OTFD turned out to be defective as in some part of India these dwellers are not settled agriculturalist but gatherers who live in close proximity of the forest (Lele 2011: 96; Upadhyay 2009:31) in Assam for instance the forest dwellers were mostly OTFD and have migrated to forests due to land alienation caused by flood and erosion. The burden of proof turned to be a problem for these dwellers. Moreover lack of proper documentation has also affected their status as forest dwelling individuals or communities. (Sharma 2001: 4793; Saikia 2011) Further most of states have failed to train the communities about this complex piece of legislation. The State

Level Monitoring Committees of FRA are not functional in most of the states the meetings between district-level committees; sub-divisional level committees and the gram sabha are not held properly because of which they lack intimidation. Moreover some villagers are unaware of the provisions of their claims to community forest rights, in many cases these claims have been i) left pending ii) partially granted iii) illegally rejected iv) granted much smaller area then being used v) CRF titles issued in the name of Gram Panchayat or JFMC but not Gram Sabha (Sahu, Dash and Dubey 2017: 44) In the context of Assam the government have apparently prioritized the forest villagers and ST to give land rights in according to their claims. But in case of OTFD there was complete lack of entertainment towards their claims only in some exceptional areas with strong political interest. (Kiro et.al. 2010)

Conclusion:

The transformation of forest lands from being commons to resource mobilising entities have left the forest dwellers in the state of dilemma. From the failure of policies and acts it could be said that it must amalgamate the issues of land question, livelihood needs and forest conservation. From the review of the literature one distinctive point can be asserted that the root cause of all social and ecological problems is the state-centered and top-down approach, which adversely affects the livelihood security of the people living in close dependence on forest. The conservation policies were always with the exclusionary outlook downplaying local communities’ traditional belief and practices and more specifically their livelihood need.

The forest policy of 1988 set an apprehensive attempt to participatory forest management, with a notion to decentralize decision making in the hands of the local communities; to meet their livelihood needs. However JFM never gave such autonomy and coverage that it was expected to give rather such control of the foresters highlighted the atrocities of forest department towards inclusionary policy of forest management. The prospects of country’s democratic forest governance was tried to be addressed by the FRA 2006. Forest department and traditional conservationist opposed to this enactment as they believed that giving rights to the forest dwelling communities would place them in an irrelevant position. (Lele 2011) The act also could not be said as a successful one due to the complexities faced by the communities in understanding the act and the disinterest of the governing bodies for the proper implementation of the act. The act was being sideline both by the central as well as the state government.

The lack of alternative sources of income among the forest dwellers is the factor responsible for the attitudes and the rising problems of the conservation method. It calls for hands on conservation strategies which would entail evolving innovative practices of alternative livelihood for forest dwellers. This will motivate the later to conserve the forest for self interest (Rangarajan et.al 2007:12; Sharma and Sarma

2014) the contemporary realities demand for incorporating the local historical specificities into policy perspective. Drawing from above discussion imperative traditional exclusionist model will not exercise profoundly rather people-friendly inclusionary policies will fit the demand of the contemporary times.

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