

FOREST RIGHTS ACT AND THE ROLE OF JUDICIARY IN NORTH EAST INDIA

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ABSTRACT

The Schedules Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which is also popularly known as the Forest Rights Act (FRA) 2006 seeks to protect the rights of the community over the forest. On the contrary, the clash between the community rights or the rights of forest dwellers over the forest and the conservationist role of the bureaucrats has become a prominent issue in India's North East. In addition to these issues, management of community forestry is another crucial problem. However, the Supreme Court of India and the Gauhati High Court have been playing a very significant role in resolving many issues related to the FRA. Hence, in the light of above concern, this paper discusses the problems and prospects of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and also analyzes various court cases pertaining to the FRA with special reference to north-east India. The data for the present paper was collected from both primary and secondary sources and with regard to the role of the judiciary it borrows from the Gauhati High Court judgements.

Keywords: Forest rights, judiciary, scheduled tribes, forest dwellers, north-east India

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I. Introduction

THE STATES of North-East India have been blessed with abundance of forest resources and diverse forest dwelling communities have also been living in these forests since many years. According to the Forest Survey of India Report (1997), the forest cover in the North Eastern region is 64.31 percent as against 19.46 percent in the country as a whole. In, terms of actual forest cover Arunachal Pradesh top the list with 68,602 square Kilometers of land covered under forest,

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amounting to 81.90 percent of the total area of the state. Assam comes next with 23,824 square Kilometer of forest. However, in terms of percentage Assam's forest cover (30.40%) falls far short of the standard prescribed by the National Forest Policy, that one third (two third in the hill areas) of the total land area should be covered by forest. If we take the ratio of land covered in forest to the geographical area of the state, Mizoram has the highest percentage of forest area (89.06) followed by Nagaland (85.77%). Interestingly, Mizoram also has the highest percentage of tribal population in the state (94.75%) followed by Nagaland (87.07%). Assam, on the other hand, has the lowest percentage of tribal population (12.82%) among the states in the region.¹

This, however, is not to suggest that there is a direct, or a one-to-one relationship between the rate of tribal population in the state and the existence of forest. While it is widely established that tribal cultures and life styles exhibit a high degree of respect for forests, verging on reverence, on the empirical plane the relationship is mediated by other social variables, such as, the density of population, political economy of the region and stage of development.

It is very difficult to reconstruct the picture of forest in North-East India before the British intervention. Moreover, such a reconstruction has to be done from the writings of colonial administrators.² This is because there is lack of written evidence pertaining to the forest management practices in different states of North-East India. However, it is a very well-known fact that different communities of North-East India have been managing the forest through their traditional way. These communities are also having their own system of traditional local self-government which has also been playing a very significant role in the management of forest in the areas under their jurisdiction since the time immemorial. Most of the tribal communities manage their natural resources through traditional village councils and these village councils are responsible for allocating natural resources, including water, and decide when regenerating secondary forests are ready to reopen for jhum farming, fuel wood and timber harvesting.³

¹ Nongbri, T. "Forest Policy in North-East India", *Indian Anthropologist*, 29 (2), pp. 1-36, 1999

² Sanjay Upadhyay and Apoorva Mishra, "Role of the Courts and Implications for Community Forestry in Northeast India", California: *Community Forestry International, Inc* (2004), available at: <http://communityforestryinternational.org/publications/> (last visited on April 20, 2014).

³ Poffenberger, Mark. "Indigenous Forestry Stewards of North-East India"; Shillong: *Community Forestry International and Community Forestry Alliance of North-East India* 2007.

However, with the advent of British, drastic change occurred in the forest management in North-East India. After the British took control over the region in mid nineteenth century, timber trade came to be regulated and conservation initiatives were experimented. While introducing reserve forests, they engaged the peasants and strengthened the trade network, administration as well as the methods of survey carried out to identify commercial value of forest resources.⁴

Consequently, Forest Department was also set up by the Britishers like in other parts of India. Subsequently, the inability of Forest Department to exercise control over the vast tracts of forests in the formative years has resulted in large-scale encroachment by planters and private individuals. However, the Government of India Act 1919 and 1935 categorized some parts of the region as backward tracts or excluded and partially excluded area. The colonial rulers gave some autonomy and allowed the setting up of their traditional self-government institutions into these areas. It is also interesting to note that commercial exploitation was the prime reason for the foresters to carry out a systematic survey of codification and valuation. Yet, despite the regulation in force, timber trade had flourished with private traders making huge profits during the last quarter of the nineteenth century. To facilitate further commercialization, communication network like trams and railways made inroads into the reserve forests.⁵ Both major and minor forest produce were extracted accordingly while the former provided uninterrupted supply for the institutional customers like railways and tea industries. From the early twentieth century, the demand for other forest resources like soft wood extraction has also gained importance fueling its promotion during the post-independence period as well.⁶

Subsequently, the peasants' customary rights were not only curtailed but also brought under the new legal framework. However, in the face of protests from the peasants, some privileges were restored along with forest land. Since the 1940s, landless people's demand for land supported by movements and provincial politics has led to de-reservation, relegating conservation as secondary till the 1980s.⁷ Apart from above, in 1990 the Secretary, Ministry of Environment and Forests, formulated a new policy called Joint Forest Management (JFM) to involve the village communities

⁴ Saikia, Arupjyoti. *Forests and Ecological History of Assam 1826–2000* (Oxford University Press, New Delhi. 2011).

⁵ *Ibid.*

⁶ Deka, M. M. *Joint Forest Management in Assam* (Daya Publishing House, New Delhi, 2002).

⁷ *Supra* note 4.

and village assemblies in the regeneration of degraded forest lands.⁸ The circular took the National Forest Policy, 1988 as its basis for envisaging people's involvement in the development and protection of forests. Again, in the year 1996 the Hon'ble Supreme court of India banned the felling of trees and movement of timber from North-East India in the famous *T.N Godavarman* Case. For the first time in the history of forest governance the seven North-Eastern States were brought under the purview of the ban on movement of timber in this case. The enactment of the Scheduled Tribes and other Forest Dwellers (Recognition of Forest Rights) Act 2006 is another landmark in the history of forest in North-East India.

As Forest Dwelling tribal people and forests are inseparable, one cannot survive without the other. The conservation of ecological resources by forest dwelling tribal communities have been referred in ancient manuscripts and scriptures. The colonial rule somehow ignored this reality for greater economic gains. After independence, India adopted the same colonial legislation and adopted more internationally accepted notions of conservation rather than learning from the rich traditions of the country where conservation is embedded in the ethos of the tribal life. For instance, with the enactment of the Forest Conservation Act 1980, hundreds of indigenous people became illegal residents on land over which they have been living for generations.

Subsequently, the guideline pertaining to the regularization of tribal rights issued by the Ministry of Environment and Forest in 1990⁹ was banned by Supreme Court of India in *T.N. Godavarman v. Union of India* case. The Supreme Court of India stayed the regularization of revenue villages on November 23, 2001. All the tribes living in the forest irrespective of whether their rights were recognized under the 1980s Forest Conservation Act or not were effectively extinguished. However, in the year 2005, the Scheduled Tribes (Recognition of Rights) Bill was tabled in the Parliament and in the subsequent years it was re-christened as the Schedules Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. It was passed in the Lok Sabha on December 13, 2006 and the President assented to the bill on December 29, 2006. It was a result of the long struggle by the marginalized and tribal communities of the country.

⁸ *Supra* note 6.

⁹ Maha Forest Handbook, available at: <http://mahaforest.gov.in/fckimagefile/Handbook-33.pdf> (last visited on Dec. 12, 2016).

II. FRA 2006: Problems and Prospects

The Schedules Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which is also popularly known as Forest Rights Act (FRA) 2006 draws its mandate from the Constitution of India. The Act seeks to recognize the land rights as well as forest rights of the forest dwellers. The forest dwellers largely depend on the forests for their food and living. The act confers both the land rights as well as forest rights to forest dwellers. By recognizing the forest rights, the Act confers the right to shelter and livelihood of the Forest Dwellers and also recognizes their rights to cultivation in forest land.

However, there have been numerous problems pertaining to the way in which the Act has been implemented. It has seen that the key features of the FRA have been undermined by combination of apathy and sabotage during the process of implementation. It is proclaimed that the rights of the majority of the tribes and other traditional forest dwellers are being denied and the purpose of the legislation is being defeated.¹⁰ According to various civil society groups working among the Indian forest communities, about 3,00,000 families were evicted from the forest in the last couple of years.¹¹ There was no rehabilitation, and people of all ages were driven away from their homes, forests and agricultural land, to make way for plantations and wildlife areas.

The states in North East India have 14 million hectares out of which 8 million hectare is unclassified forest.¹² In many North Eastern States, written land records are not maintained. FRA recognizes all pre-existing rights recognized under State laws or laws of any Autonomous District Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribe of any State.

¹⁰ Process of implementation of FRA in many of the states of North East India is slow as till date most of states yet to distribute any land titles to the claimants. Moreover, state of Nagaland and Mizoram yet to ratify the Act. See Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Ministry of Tribal Affairs. (available at: <https://tribal.nic.in/FRA/data/MPRMAR2017.pdf>)

¹¹ Sagar, Ravi and Deka Swapna, *Forest Dwellers: Know Your Rights*; Guwahati: Legal Cell for Human Rights. 2008.

¹² Unlike other regions of India, administrative control of forest in the North East is predominantly by community, with much of the forests listed as “unclassified”. As in other parts of India, the state forest departments administer “reserved” and “protected” forests. See Poffenberger, Mark (2007). *Indigenous Forestry Stewards of North-East India*; Shillong: Community Forestry International and Community Forestry Alliance of North-East India.

Since time immemorial the tribes of the states of North-East India being the sole steward of the forest coalesced their lifestyles in a symbiotic way with the nature. However, due to the drastic changes and development their traditional lifestyles have been disturbed and the communities are stuck amid the new process of development, new type of governance and politicisation of the age old traditional self-governing institutions which led to derogation of power of traditional cultural institutions and village councils.

Consequently, this has affected the community control and management of forest and resources. Moreover, according to a report prepared by the *Community Forestry International (2007)*, prior to the implementation of the FRA the state forest departments in North East India intended to change the *unclassified forest* and further tried to classify them as reserved or protected forests so that the management of the forest could be placed under the state forest departments.¹³ In the light of these developments, the enactment of FRA assumes significance as it recognizes the rights of the forest dwellers and the scheduled tribes who have been living in the forest since many years.

It seems that the independence of the country brought greater misery to people living in forests. The new state made old colonial forest laws harsher, limiting people's access to forests. Meanwhile, many conservation initiatives have also been taken, on the other hand the forest kept on disappearing. Subsequently, the rise of the forest smugglers started as new breed of traders and contractors joined hands with an increasingly corrupt forest administration.¹⁴

The official/unofficial loot of forests destroyed the ecology of traditional communities. Poverty, unemployment and starvation forced both migrants and autochthons to become wage labourers under the forest smugglers. Consequently, the process of proletarianization of the forest people of India started. People with unrecorded rights inhabit a strict 'state space', where they were treated as intruders, encroachers and enemy of the forest and wildlife. There are also instances in which the government officials such as the officials of forest department and the police personnel etc. were involved in numerous coercive and repressive actions *viz*, physical abuses, sexual assault and

¹³ See Poffenberger, Mark (ed) (2007). *Indigenous Forestry Stewards of North-East India*; Shillong: Community Forestry International and Community Forestry Alliance of North-East India. p-6

¹⁴ Saravanan, V. *Subalterns v. State Institutions: politicians, state, forest, law and atrocities on tribals in Tamil Nadu, 1990–2000*, pp 948-968, *The International Journal of Human Rights*, 15 (6). 2011

murder etc. against the forest dwellers. Hence, it has been revealed that the government officials hardly recognized any rights of the forest dwellers over the forest land on which they settled.¹⁵ In the name of the conservation, the state forest departments also frequently attempt to evict these people from the land. It is also fact that the forest evictions in India are marked for the exemplary brutality. For instance, in Korku hamlet of Madhya Pradesh, ten families were looted and burnt.¹⁶

Another such barbaric instance also took place in the Haltugaon Forest Division, Kokrajhar district of Assam where many Adivasi people including women and children were forcefully evicted on October 30-31, 2010 without any prior notice. The Forest Department burnt down hundreds of houses in 59 villages in Lungsung forest area and during the eviction drive and perpetrated various atrocities on the Adivasis. In addition, several schools and places of worship were also burnt down.¹⁷

Moreover, in the district of Karimganj, Assam government had sent a 160 member-strong task force of forest officers to forcibly evict both the ‘encroachers’ and ‘other traditional forest dwellers’ living in the reserve forests of Karimganj district. A huge police force from both the state police and the Central Reserve Police Force (CRPF) have been placed at their disposal.¹⁸ Further, it has been reported that the Tripura government has also been accused of forcefully evicting forest dwellers from their own land. According to the sources, the state forest department ordered the eviction of the forest dwellers in Jamjuri area in Gomati district in southern Tripura. The raiders, led by the divisional forest officer, Udaipur range, Arun Kumar, allegedly grounded houses of the forest dwellers in the reserved forest area in the wee hours.¹⁹

¹⁵ *Ibid*

¹⁶ Sumitra Ghosh and C.R Bijoy, *India: End of Forest Evictions? New Forest Bill*, (2006), available at: <http://www.wrm.org.uy/oldsite/bulletin/106/India.html>. (last visited on Sept. 9, 2017).

¹⁷ ACHR, Report of Asian Centre for Human Rights, available at: https://www.achrweb.org/ihrq/issue2/forced_eviction.html (last visited on April 25, 2017).

¹⁸ Asian Human Rights Commission, India: The Assam Government’s Eviction Drive In Karimganj *Scoop World*, April 10, 2012, available at: <http://www.scoop.co.nz/stories/WO1204/S00166/india-the-assam-governments-eviction-drive-in-karimganj.html> (last visited on April 25, 2017).

¹⁹ Shubham Ghosh, Tripura: Govt accused of driving out forest dwellers *One India*, available at: <http://www.oneindia.com/2013/05/06/tripura-govt-accused-of-driving-out-forest-dwellers-1210219.html> (last visited on April 25, 2017).

In the contemporary time judiciary seems to be very active in forest and environment related issues. There are also some crucial forest cases which were taken up by the judiciary by its own initiative. However, the judiciary has certain norms which need to be followed. The judiciary also does not have enough resources and the time to intervene in every action of the government till any individuals or group brings the issue in the floor of the court. It is also true that the court hardly shows its interest towards these issues as the court in most of the time shows its interest towards the conservation of forest and environment. No doubt, in the few cases that were brought before it; the judiciary championed the cause of human rights.

However, in most of the cases pertaining to the issues of forest rights, the judiciary in North East India particularly in Assam hardly succeeded in restoring the rights under FRA. According to authors' interviews with lawyers, it is found that the judiciary relies on the documents placed by the government's side and oral evidences or the statement or arguments are hardly given any importance. It has also been observed that the violation of the basic human rights perpetrated by the security forces or state and central police personnel during any eviction drive in the forest areas had taken place under the guise of protection of flora and fauna of forest.

Hence, in such cases issues of egregious brutality of security forces were hardly taken up by the court rather the issue of rights over the land and the eviction were always the prime concern of the court. When the cases pertaining to coercion and brutality were filed, the forest staff and security forces claimed immunity under the guise of protection of environment and maintenance of internal security. The judiciary's principal role is to safeguard the rights of the people. However; in such issues judiciary often seems to be more pro conservationist rather than the guardian of the rights of the forest dwellers. However, Supreme Court's recent order²⁰ which lifted immunity that was enjoyed by the security personnel for their act of violence under the guise of maintaining internal security is a landmark in the sense that the subordinate courts now have to follow such orders which may be equally applicable to the violation of rights which usually takes place during eviction drives by security forces in the forests.

²⁰ Bhadra Sinha, Army can't use 'excessive or retaliatory force' even in Afspa-notified areas *Hindustan Times*, July 08, 2016, available at: <http://www.hindustantimes.com/india-news/sc-forbids-army-from-using-excessive-and-retaliatory-force-in-manipur/story-UNuwP8gdmVUPZAHfqu0YI.html> (last visited on July 17, 2017).

Moreover, due to a few inherent problems with the FRA it is further difficult for the court to deliver an order without satisfying the conditions prearranged in the FRA. Inherent problems of the FRA refer to a few ambiguities contained in the FRA 2006. For instance, the act neither specifically refers any community or group as forest dwellers nor forwards any such definition from which the forest dwellers can be identified. The Act also entrusted a very important role to the gram sabhas but the act is also silent about areas where *gram sabha* are not there. Unfortunately, the prime focus of the 2006 Act remains regularization of lands held by the tribals without any land deed or other documents, a measure which also benefits non-tribals. The Act is rather silent about the plight of the more than one third of the tribal population who lost their land over the period. They are left with no option but to go further into the forest or to migrate elsewhere.

The FRA has also failed to address all these crucial issues and raised serious concerns about its purpose and stated objectives. The remedial measures contained in it, besides being inadequate to tackle the problems, if implemented, could turn out to be an impediment for empowerment of the tribals and conservation. In other words, as Singh (2005) indicates, its main achievement will be the destruction of our forests and not the betterment of tribal's living standards. Initially, the Draft Bill proposed to recognize the inalienable rights of the tribal communities over the forests, but at the end it seems to be an act which attempts to legitimize the land alienation of the tribals whose root cause of the problem dated back to the colonial period. Hence, the 2006 Act itself appears to be politically motivated.

It is not surprising that the focus on granting ownership rights to tribals was just a cloak to justify and legitimize non-tribal intervention and the disastrous consequences attendant to it. In the event of conversion of forest villages into revenue villages as envisaged by the 2006 Act, there is a greater threat of influx of non-tribals into tribal areas and eventually depriving tribals of their forest rights. However, the act had not foreseen such possibilities. Because, there are certain restrictions over the forest villages for outsider who are not original inhabitants of the forest village but the revenue villages can't exclude particular community or group. Thus, there are high chances of influx of non-tribal with the conversion of such forest village into revenue villages.

Nonetheless, the attitude of the forest department of Assam towards the FRA and its execution is highly bureaucratic and it seems that there is a lack of serious engagement. The FRA is being regarded by forest officials as a toothless Act.²¹ A strong opposition from the Forest Department against the FRA is being observed. The Forest Department misconstrued the requirements of the FRA and the mindset amongst most of the Forest Officials is to interpret that the rural population is historically never forest dependent. As a result, the Act has been misinterpreted as an instrument meant only for the people living in the forest villages.²² Notwithstanding the enforcement of the 2006 FRA, the Forest Departments of the States are not able to effectively prevent the degradation of the forest due to their vested interests.

Subsequent to the enactment of Schedules Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, many issues have cropped up in the states of North East India. In North East India, many communities *vis-a-vis*, Karbi, Bodo, Naga, Khasi and Garo etc. also started claiming their rights over the forest land in due course of time. More interestingly, organizations like Krishak Mukti Sangram Samity (KMSS) have frequently started raising their voice over this issue. Consequently, disputes between the forest dwellers and the state forest departments over the forest land have also taken place and a few such disputes were adjudicated by the Gauhati High Court and some cases are yet to be disposed. In this context, the Judiciary in North East India, particularly the Gauhati High Court, has been playing a very important role which can be discussed under the following heads.

III. FRA and Role of Judiciary in North East India

The clash between the community rights or the rights of forest dwellers over the forest and the conservationist role of the bureaucrats has been an axiomatic fact. In addition, use of forest land for non-forest purposes is the major issue before the court. In this connection, a case can be cited which was brought before the Gauhati High Court. Dispute in this case is in between a person who

²¹ Revealed from the interaction with the forest officials of different levels.

²² *Ibid.*

was allotted the land for grazing purposes in an unclassified forest and the authority who allotted the land. In this case the High Court held that:²³

the deputy commissioner or the sub-divisional officer when exercising his power of fixing or refixing the sites is not bound by any objective standards. He is not bound to give any reasons and there is no provision of appeal against these orders. Fixing of sites or their alteration is left to his discretion.

In another case *Chandmari Tea Company v. State of Assam*²⁴ the petitioner had challenged a notification of government of Assam to alter the boundaries of Burachapari Reserve Forest and the Kaziranga National Park as some of the name of the villages had not appeared in the notification. The Gauhati High Court referring the landmark cases of the Supreme Court of India like *Centre for Environmental Law, WWF-I v. Union of India* and the *M.C Mehta Case* held that if the Government of Assam followed the due process of law, then the boundaries of said reserve forest and national park can be altered. Further, in the *Lakshmi Chauhan v. State of Assam* (1996) case, the Gauhati High Court cancelled allotment of land to 25 families in a reserve forest because the allotment was made for non-forest purpose.²⁵

In another instance, the Itanagar Bench of the Gauhati High Court on October 18, 2012 held that the eviction of encroachers from the reserve forest has to be in accordance with the ejection rules.²⁶ Kohima Bench of the Gauhati High Court directed to evict the encroachers from the Inगतanki National Park on November 24, 2012.²⁷ In this case the petitioners sought the right under the Scheduled Tribes and Other Traditional forest Dwellers Act 2006 but they could not prove before the court that they have been staying there from the last three generation which is equivalent to 75 years. In this connection, in another case the High Court clarified that merely being a member of Scheduled Tribe (ST) one cannot claim rights under the Scheduled Tribes and Other Traditional Forest Dwellers Act 2006, rather conditions precedent is necessary to acquire forest rights.²⁸

²³*Sandhiram Mahajan v. Deputy Commissioner, Kamrup*, AIR 1953 Gau 168.

²⁴*M/s Chandmari Tea Company v. State of Assam*, AIR 2000 Gau 13.

²⁵*Shri Lakshmi Chauhan v. State of Assam* AIR 1996 Gua 35.

²⁶*Bibharam Chakma v. State of Arunachal Pradesh* (2013) 4 GLR 79.

²⁷*Naga United/ Inavi village v. State of Nagaland* (2012) 5 GLR 62.

²⁸*Baburam Narzary v. State of Assam* (2009) 5 GLT 983.

Thus, issues of FRA which were brought before the court seemed very crucial. It has been observed that the court was also at times bound by the provisions and rules framed by the legislature and couldn't do justice to everyone especially those who had failed to prove their rights in pen and paper which was very difficult for the poor and illiterate tribal people who had been living in the forest since very long times.

It is a well-known fact that in certain states like Arunachal Pradesh large areas of land are under Unclassified Forest and hence regulated by the community. The tribal people who have possessed those lands for generations do not have any document; rather, the ownership patterns are in accordance with their customary law. However, in such land, issuing of Land Possession Certificate (LPC) to the outsiders became a vexatious issue. A few numbers of cases have also been brought to the Gauhati High Court. No doubt, the court has been playing a significant role in protecting the inherent and inalienable rights of the tribals. Nonetheless it is the action of the executive which actually matters. In Table 1 some cases pertaining to the issue of LPC are cited.

Sl. No	Cases	Outcome
1	<i>Bedung Apaum v. State of Arunachal Pradesh</i>	Issuance of Land Possession Certificate to the outsiders in respect of community land has no sanction of law.
2	<i>Chowtan Gohain v. State of Arunachal Pradesh</i> ²⁹	Process of cancellation of Land Possession Certificate in the Community Land was stopped by the court.
3	<i>Vijoy Tachang v. State of Arunachal Pradesh</i> ³⁰	Land Possession Certificate issued is liable to be quashed and Traditional Forest Dwellers are basically illiterate and unaware of many facts. Hence, their rights need to be protected under the FRA 2006.
4	<i>Yamkhomang Haokip v. State of Manipur</i> ³¹	Court directed the state government of Manipur to protect the right to life and to provide accommodation of the poor tribal villagers.
5	<i>Thilikhu Village v. State of Nagaland</i> ³²	Court pronounced that the action of eviction undertaken by Deputy Commissioner in the Thiklu village, Nagaland was beyond his jurisdiction.
6	<i>Rangmon Rongpi v. State of Assam</i> ³³	Impugned action of the forest authority in Karbi Anglong Assam was pronounced as illegal and unconstitutional. Hence, the Gauhati High Court

²⁹ 2001(2) GLT110.

³⁰ (2011) GLR 262-287.

³¹ (2003) 3 GLR 409.

³² 2007 (4) GLT 270.

³³ (2010) 4 GLR 176.

		permitted the petitioner to claim compensation from competent authority.
7	<i>Jacob Marak v. State of Assam</i> ³⁴	Court ruled that the possession of the petitioner in the forest in the Karbi Anglong District of Assam should not be disturbed.

Table 1: Cases in which the Gauhati High Court Restored the Rights of Forest Dwellers

(Source: Gauhati Law Report (GLR) and Gauhati Law Times (GLT))

Table 1 reveals that there has been a constant endeavor on the part of state governments of the most of the states of North East India to stake its claim over the land in the community forest areas by using its executive machinery to benefit a section of people but it is the judiciary which has been checking such executive actions which were brought to light by the citizens of the states. There might be number of similar cases but they remain unknown as many such areas are in remote parts of the state. These places aren't conducive for collecting reports and are far away from the media as well and thus these cases never reach the court. However, courts have played a very vital role in resolving such issues if the cases reached them as the cases listed in the table 1. In many of the cases, it has been also seen that the court has restored the rights of the forest dwellers and there are some other cases where the court declared that any person by virtue of belongingness to a particular community cannot enjoy the rights under the FRA 2006; rather, certain given criteria need to be fulfilled to ensure the rights.

The Table 1 cited a few such cases where the Gauhati High Court's role as guardian of the rights of forest dwellers and as the protector of forests can be seen. In this context, it is important to mention that the Gauhati High Court had issued notice on January 7, 2017 to Assam government, CBI, Enforcement Directorate and other concerned individuals on a Public Interest Litigation (PIL) alleging corruption in allotment of quarries which had taken place in Dima Hasao district of Assam.³⁵

³⁴ (LCHR, 2010)

³⁵ PTI, HC notice to Assam govt, CBI, ED on allotment of quarries, *Jan 7, 2016*; available at: <http://indiatoday.intoday.in/story/hc-notice-to-assam-govt-cbi-ed-on-allotment-of-quarries/1/564961.html> (last visited on Jan. 10, 2017).

It is true that the tribal communities included in the schedule tribe category are given certain privileges in the forests. Table 1 further reveals that only in a few cases, the rights of the forest dwellers were verified, recognized and recorded as per the FRA 2006. There are also certain cases in which proper verification of the communities remain undone. For instance, eviction of many Adivasis from the Lungsung area of the Kokrajhar district of Assam in the name of encroachment of the forest on October 2010 violated the FRA 2006 as those Adivasi were lived there since 1964. According to the Asian Centre for Human Rights, the action of the forest officials in this issue is illegal and is a violation of human rights.³⁶ However, the court also made very significant pronouncement by quashing executive action of the state pertaining to the community forest and rights of the forest dwelling Adivasis. Nonetheless, the FRA 2006 can be regarded as an attempt to provide a procedure for verifying and recording their rights in forests and on forest land. It seeks to confer titles on holders of leases and those in possessions of forest land.

The Gauhati High Court Judgment in a Public Interest Litigation (PIL) filed by Mr. Jacob Marak and others is an example in this direction. In this case, Mr. Jacob Marak and 18 others had filed the case in Gauhati Court on behalf of about 10,000 Garo tribal refugees resettled in Karbi Anglong. They prayed for the regularization of the land allotted for their rehabilitation after they fled the then East Pakistan (present day Bangladesh) during the partition of the sub-continent into India and Pakistan in 1947. The Garo families approached the Gauhati High Court because when this petition was filed in 2002, eviction of the encroachers from the forest land was the order of the day after the Supreme Court asked the state governments what they had done about encroachments in forests. The Garo refugees were afraid that they too would be evicted from their land.³⁷ Their fear of their possible eviction was genuine in the context of the eviction of thousands of families because no final settlement had been reached about their rights although they had been living there since the 1950s.³⁸

³⁶ Forced Eviction of Adivasis from Lungsung forest area in Kokrajhar district of Assam, A report by Asian Center for Human Rights, *available at*: http://www.achrweb.org/ihrrq/issue2/forced_eviction.html (last visited on Oct. 12, 2017).

³⁷ Sagar Ravi (2005). *Forest Rights of the Schedule Tribes and Forest Dwellers: The Gauhati High Court Judgment and the Central Forest Bill*; Guwahati: North Eastern Social Research Centre.

³⁸ Interviewed Adv. Ravi Sagar, Director LCHR, Guwahati and the Counsel of the Case.

In addition to the above issues, management of the forest by the community or the community forest is another crucial problem before the court. Sometimes issues in the community forestry have arisen due to an activist judiciary.³⁹ The principal concern is that in most of the time these communities were weakly represented in the court and the real issues were distorted by the state.⁴⁰ It has been understood from the field survey that the petitioners in such cases were illiterate and ignorant and the lawyers who represent the cases are also not in a position to understand many important facts of the community. Hence, it has been observed that many important facts are not produced before the court.

Moreover, the presence of the conservationist lobby on one hand and the apathetic attitude of the executive agency of the state on the implementation of FRA on the other led to an impasse with regard to these issues in the court. Therefore, the Supreme Court and Gauhati High Court and its benches in the states of North-East India were in most of the time unable to take any cognizance of the cases relating to rights of the forest dweller communities over the forest land.⁴¹ In such cases, the petitioners sought the rights under the Scheduled Tribes and Other Traditional forest Dwellers Act 2006 but most often they were unable to prove before the court that they have been staying there from the last three generations which is equivalent to 75 years.⁴²

It is also seen that the court itself took up suo-moto cases in this regard and ordered the executive to protect the forest by evicting the people out of the forest as they are encroachers. For instance, the recent case of eviction of people in Kaziranga National Park based on the order of the Gauhati High Court on 9th October 2015 had again underscored the conservationist role of the court. The Gauhati High Court's conservationist role can be illustrated in Table 2.

³⁹ Sanjay Upadhyay and Apoorva Mishra, "Role of the Courts and Implications for Community Forestry in Northeast India", California: *Community Forestry International, Inc* (2004). available at: <http://communityforestryinternational.org/publications/> (last visited on April 20, 2023).

⁴⁰ It is reported by the *Community Forestry International* that in the courts the communities and their leaders were weakly represented, which may be due to their ignorance and illiteracy. See Sanjay Upadhyay and Apoorva Mishra, Role of the Courts and Implications for Community Forestry in North-East India, California: Community Forestry International, Inc (2004), available at: <http://communityforestryinternational.org/publications/> (last visited on April 20, 2023).

⁴¹ Mark Poffenberger, Indigenous Forest Stewards of North-East India, 46, Community Forestry Alliance for the North-East, 46, (ed. 2007). Available at: <http://www.researchgate.net/publication/> (last visited on April 20, 2023).

⁴² S, Harsha and Sarmah, Dijamani. "Forest Governance in North-east India and the role of Judiciary", Basu, Rumki and Rahman, M. Shamsur (ed). *Governance in South Asia*, Routledge, New Delhi, 2017.

Sl.No.	Cases	Outcome
1.	<i>Kaziranga National Park v. Union of India and Ors.</i> ⁴³	Court directed Deputy Commissioners to evict residents from National Park area including additions and also residents of particular villages.
2.	<i>Panpur Bonansal Go-Palan Samittee and Ors. v. State of Assam and Ors.</i> ⁴⁴	The rights granted to the petitioners are only in the nature of license and for a larger public interest petitioners are prevented from grazing. They cannot have any legal right.
3.	<i>Inavi Village v. State of Nagaland and Ors.</i> ⁴⁵	State was under an obligation to remove illegal encroachment from Intangki Reserve Forest area.

Table 2: Gauhati High Court's Conservationist Role

[Source: Gauhati Law Times (GLT)]

The *Kaziranga National Park v. Union of India* in the Table 2, is the *suo moto* PIL taken up by the Gauhati High Court in accordance with the media coverage on the issue of Rhino Poaching and consequently formed a committee for detailed analysis of the problems prevailing in the Kaziranga National Park. However, no community members from the forest dwelling communities were represented in the committee. It has been further claimed that the people having patta land were also evicted. The Gauhati High Court however, did not accept any claims of those villagers and argued that the government gave the land for social forestry in 1986, but what resulted was a new village through encroachment and hence the court clarified that it would not entertain any claims.⁴⁶ In this case, the high court overlooked the procedure established by the FRA with regard to settlement of rights over forestland.

According to the FRA, only a *gram sabha* or which is known as *gaon sabha* in Assam can take a final decision on this issue, but the high court constituted its own committees. It is contradictory to declare revenue villages as a part of a forest and then to bypass the procedure established by the FRA. Thirdly, the committees constituted by the court had no local representation, and the court

⁴³ 2016 (1) GLT 12.

⁴⁴ 2016 (1) GLT 739.

⁴⁵ (2011) 1 GLR 69.

⁴⁶ GHC (2015): "Gauhati High Court Judgment in the PIL" (*suo motu*) 66/2012, and WP(C) 648/2013 and 4860/2013.

largely relied on the report of the Kaziranga National Park director. It is interesting that the high court based its judgment on the notion of “*larger public interest*” and in this process declared the communities living in and near Kaziranga National Park as “suspected communities”, who could indulge in poaching or helping poachers.⁴⁷ Hence, it is inferred that in this case some illegal encroachers also claimed rights over forest land under the guise of the FRA.

However, the court has not only played a significant role in identifying such cases but also rejected bogus claims under the FRA as the court never accepted such people as the traditional forest dwellers under the Act. It seems that, while dealing with the above cases, the judiciary more specifically the Gauhati High Court emphasizes more on the conservation as the environmental degradation is the biggest challenge in North-East India. As a consequence, the illegal encroachers have been wiped out of the Kaziranga National Park due to the pro-active approach of the court. The court’s action of expelling illegal encroachers also benefited the genuine forest dwellers who deserved protection under the FRA. Thus, apart from the role of the guardian of the rights, the court also played the role of conservationist.

Further, in another case where the petitioners belonging to the state of Nagaland belonging to the scheduled tribe claimed their rights under the FRA but the court did not entertain the petition as the state Legislative Assembly of Nagaland had not ratified the FRA and hence the court declared that the state is under obligation to remove the illegal encroachers in the forest because the petitioners were not eligible to be protected under the FRA. Thus, it has been observed that the judiciary has been playing heterogeneous role at different times and contexts, sometimes pro-conservationist and sometimes as a guardian of the rights of the citizens. Interestingly, the judiciary seems to have overstepped its mandate while using power of judicial activism.

In 2009, the Gauhati High Court ruled that there are no forest dwelling communities in Assam and the scheduled tribe communities who were living inside the Reserved Forests before the year 2005 are not entitled to be protected under FRA.⁴⁸ It was further clarified that the scheduled tribe

⁴⁷ Choubey, Kamal Nayan, Turning the Tide in Forest Rights?, *Economic & Political Weekly*, 20-22 LII (1) 2017.

⁴⁸ The Forest Department of Assam reported that that historically there is no forest dwelling communities in the forest of Assam and hence petitioners claiming rights under FRA should be regarded as encroachers. On the basis of this report of the Forest Department, the Gauhati High Court also delivered its order. See *Report of the Joint Committee*

communities in the state of Assam do not fall under the sections 2(C) and 2(O) of the FRA. Moreover, the Assam Forest Department also denied the existence of forest dwelling communities in Assam and consequently declared such claimants as encroachers. Therefore, in due course, the Gauhati High Court also passed orders with this declaration in mind. The scope of the FRA is much larger but it has been revealed that the Gauhati High Court's ruling was largely based only on a mere literal reading of factual and technical details.⁴⁹

The Gauhati High Court did not take recourse to innovative methods of decision-making widely employed by the Supreme Court of India and other High courts in the country such as expert report, constitution of committee to advise the court, spot visit by judges or the appointment of amicus curiae (friend of the court). Recourse to such innovative methods would have enabled the Gauhati High Court to make sense of complex issues such as customary practices, traditions of the forest dwellers and identification of victims of eviction. A systematic study and analysis of the cases with the help of expert might have clarified many doubts pertaining to the issue of forest dwellers and the outcome of these studies could have been the guiding principles for the subsequent cases. Section 2 (g) of the FRA 2006, defined the meaning of *Gram Sabha* as a village assembly consisting of all adult members of a village. According to the Rules under the Act, gram sabha's are bound to set up a committee to perform various functions under the Act. However, it is observed that the most of the states of North East India violated these provisions of the Act by not constituting these committees in compliance with the FRA 2006.⁵⁰

From the aforementioned account, it has been noticed that the judiciary has become an activist to a large extent when there is a question of conservation. In the above instances, it is obvious that the judiciary, the Supreme Court as well as the Gauhati High Court in the contemporary years have

on the Forest Rights Act, December (2010); MoEF/MoTA Committee on Forest Rights Act, available at: [https://www.fra.org.in/Assam%20Report_National%20Forest%20Rights%20Act%20Committee%20\(Upload\).pdf](https://www.fra.org.in/Assam%20Report_National%20Forest%20Rights%20Act%20Committee%20(Upload).pdf) (last visited on Feb. 12, 2019).

⁴⁹ *Ibid.*

⁵⁰ States like Governments of Arunachal Pradesh, Manipur, Meghalaya and Nagaland already reported that the FRA has limited scope in their states. Moreover, under article 371 (A) of the Constitution of India, state of Nagaland required to ratify the Act to implement any Act and also the state of Mizoram under Article 371 (G). However, these states still not ratified the FRA. Hence, the pace implementation of FRA in the states of North East India is very slow. See Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Ministry of Tribal Affairs. (available at: <https://tribal.nic.in/FRA/data/MPRMAR2017.pdf>).

taken up issues of environment and forest by its own suo-moto powers. The judiciary's concern over the protection of forest and environment is regarded as important to give direction and to initiate the executive agency to act in a particular way. However, in doing so, the judiciary has also overlooked a constitutionally and democratically established institutions established under the FRA such as *Gram Sabha*. No doubt, in some cases, the Supreme Court of India upheld the significance of the *Gram Sabha* as it is very important in deciding whether a particular person or family would enjoy the rights under the FRA or not. However, while dealing with the cases pertaining to the FRA, the Gauhati High Court hardly called for any testimony from the *Gram Sabha*.

Notwithstanding the strictures of the FRA 2006 that the *Gram Sabha* should be convened to recommend whether a community or person is eligible for the rights under the FRA, the Gauhati High Court (Table 2) did not give primacy to the role of *Gram Sabha*. However, the nature of the cases disposed in other High Courts of the states in India is found quite different from the cases which discussed in the above paragraphs. For instance, the Gujarat High Court in the Action Research in Community Health & Development vs State of Gujarat⁵¹ directed the Government of Gujarat to expedite the process of deciding the pending claims and the process of recognition of community rights over forest and also to expedite the process of conversion of forest settlement villages into revenue villages. More importantly, the court in this case recognized the authority and role of gram sabha in giving recognition to the rights to the forest dwellers which is hardly found in the various cases disposed in the Gauhati High Court.

Sometimes the Forest Department of the States plays important role in such cases. In the Orissa High Court, one group of forest dwellers filed a case against another group in which the Forest Department conducted field enquiry and consulted with gram sabha and different other level of institutions and submitted the report to the court and on the basis of which the court delivered its judgment. On the contrary, Assam Forest Department has not played much significant role in the majority of the cases that were disposed in the Gauhati High Court. In the similar cases, the Gauhati High Court usually depends on the evidences and the documents produced by the victims of

⁵¹ Action Research in Community Health & Development vs State of Gujarat available at: <http://indiankanoon.org/doc/34942419/> (last visited on Oct. 02, 2018).

eviction or by the petitioners. There is hardly any case associated with the forest rights in which the Gauhati High Court asked the forest department to conduct field enquiry or the testimony of the gram sabha was taken into consideration. Hence, it is inferred that the process of decision making and the procedure followed by the different high courts are different in nature. The process followed by Gujarat High court was much more participatory and the decisions were taken after consulting Gram Sabha, which was not the case with Guwahati High Court.

IV. Conclusion

It has been noticed that there has been wide-spread antagonism amongst the conservationists on the future implications of FRA. The fundamental aspects of the act they are critiquing and the principal questions that they are raising is not unique to the states in North-East India. The conservation groups have registered their concerns about the rapid deforestation in selected pockets of forests. Concerns have been expressed about the need for implementation of Critical Wildlife Habitat provisions of the FRA. Recent increase in animal-human conflicts is largely seen due to increasing forest settlements. Conservationist also put forward the argument that settlement of people inside the Protected Areas (PAs) will lead to further fragmentation in landscape of the PAs. Wildlife activists cite the example of Manas National Park in Assam whose micro-habitat has been badly damaged due to settlements inside the park.

The outcome of judicial decisions in several cases pertaining to the forest in general, and in the cases of rights of forest dwellers in particular reveal that the court has entered into areas that traditionally did not belong to it and were ought to be the concern of the legislature and the executive. However, if we speak of the community rights over the forest, the judiciary has done little. The aforementioned court cases reveal that in most of the time the traditional communities have been deprived of their customary practices pertaining to the forest because the court is ignorant of the culture and customs of a particular community and moreover the voice of the communities is also weakly represented in the court. Hence, it could be opined that courts in North-East could have taken more sagacious decisions by appointing *amicus curies* and taking their advice.

Recently enacted Rights of Forest Dwellers Act 2006 and the reinterpretation of the act by the Supreme Court and revision of its previous orders bring a new hope to the indigenous communities of North-East India. The court is also bound to deliver judgment in accordance to the provisions framed in the act. However, there are also several technical difficulties in the implementation of its orders. For instance, if a person or family claims the rights under this act then they must be resident of the particular forest land from the last three generations which is equivalent to 75 years. Here the problem is that there are some communities who are moving from one forest to another or one hill to another as a part of their tradition. It may be for the purpose of *Jhum* cultivation or for some other reason. Such communities are alleged as encroachers and frequently evicted from their home and on the contrary, large areas of land have been handed over to the corporate houses in the name of development by inducing eviction of these poor forest dwelling communities from their native land. Hence, it can be said that the traditional forest dwellers of North-East India are still being deprived of their inherent rights.