CHAPTER FIVE

THE FOREST RIGHTS ACT 2006 AND THE FOREST DWELLERS OF NAMERI AREA

1. Introduction

This Chapter makes an assessment of the implementation of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, briefly known as FRA 2006, in the FVs of Nameri area in particular and Assam in general. Although the Act is hailed as a historic piece of legislation for the restoration of traditional rights of the forest dwelling communities in India, it has attracted serious contestations regarding its potential implications in Assam. No doubt that the Act has a sensitive approach and a broader framework for recognising the long denied rights of the forest dwelling communities. However, certain definitional problems in the Act have raised questions and concerns about its prospects in the state and indeed in many other areas of India. The Act has been criticised for being too much informed by the central and eastern Indian experiences to the exception of experience in other regions.

The FRA 2006 came into force on 1 January 2008 after a long sustained struggle by forest dwellers and forest rights activists for justice and restoration of traditional rights over forests (Upadhaya 2009; Aiyar 2008, 5-6; Kothari 2008, 138; Ramakrishnan 2008, 4). Crucially, the Act for the first time acknowledged the ‘historic injustice’ done to the tribals and other forest dwelling communities (Kothari 2008, 138; Updahyay 2008, 14). Most of the customary rights of the local communities were ignored at the time of declaring many forests in the country as PAs initially by the colonial government and later by the post-colonial Indian state (Aiyar 2008, 5). In India, the failure of the ‘exclusionary model’ of forest conservation through the creation of ‘people free zone’ in and around the PAs has eventually resulted in the promulgation of the Act.

Chapter Two has discussed the ecological and social crisis resulting from the exclusionary conservation policies in the country. It explained how the exclusionary policies of the state during both colonial and post-colonial periods displaced a large number of forest dwellers from their livelihood resources. These policies which always treated the forests as an ‘isolated entity’ have severely curtailed the access of the traditional forest dwellers to the CPRs for livelihood.
The result of this dilution of rights has caused severe hardships for these communities resulting in alienation from their forests and outright hostility towards state-initiated conservation measures (Kothari et al. 1998, 49). As a result, the communities living in and around forest areas for ages have become strangers in their own habitat. Importantly, going strictly by the provisions of various forest Acts in independent India, their status in the forest land have become similar to that of encroachers, since they do not possess any legal documents to prove their rights on the forest land. State monopoly control over the forests has caused serious discontentment among the forest dwellers (Aiyar 2008, 5-6).

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

In such a backdrop, this Chapter makes an attempt to understand the significance of various provisions of the Act and its implications in Assam through the study of the experiences in the FVs of Nameri. The Chapter first recounts the process of implementing the FRA in the FVs (especially the non-tribals FVs) in Nameri and responses of the people and FD to the Act. The experience in Nameri is then sought to be understood in the larger context of Assam. It explicates the different social, official and political voices and positions that have unfolded in response to the FRA and the challenges that its implementation is faced with in the state.

2. Rights over Land and the FRA 2006 in the Forest Villages of Nameri

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72 It implies a conservation regime which solely believes in protecting forests and wildlife by excluding the local forest dwellers through fences and fines. But such a conservation move has been criticized as unrealistic in Indian context where protected areas have been inhabited by forest dwellers for ages.
The promulgation of the FRA 2006 created new possibilities of entitlements in so far as the rights of the forest dwelling communities on their land and forest are concerned. The Act broadly aims to recognise and vest the forest rights and occupation in forest land in the forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers who have been residing in such forests for generations but whose rights could not be recorded (Upadhyay 2009). One of the most significant provisions of the FRA recognises the “rights of settlement and conversion of all forest villages, old habitation unsurveyed villages and other villages in forest, whether recorded, notified, or not, into revenue villages.”

The Act brought new rays of hope to the villagers of Sopaloga, Gamani and other FVs in Nameri when initiatives for its implementation in the area were undertaken in December 2008. The information on this new legislation reached the villagers through their former local MLA who distributed the copies of the Act in Assamese. The villagers were happy that the Act would provide them permanent pattas on their land and that they would no longer have to live under the control of the FD. Locally, the FRA came to be known as Mati Patta Aain (Law for Land Rights). The villagers in Sopaloga and Gamani expressed that they wanted revenue land. Being FVs deprived them of many benefits of government developmental programmes. They complained that in the absence of any official documents confirming their rights over land they could not obtain bank loan to start off any business (for details on the implementation of the FRA in Assam, see Sarma 2012b).

As per the Act, along with other FVs in the Nameri area, Forest Rights Committees (FRCs -- Bon Adhikar Samitis) were constituted in Sopaloga and Gamani, and the claimants were asked to pay Rs. 50/- as a fee for claims verification process and to meet the material costs. The villagers readily paid the amount. For them what lied ahead was more important. The FRCs in both villages laid down the procedures for the recognition and settlement of rights of the villagers. It consisted of 15 members selected from amongst the local villagers. The Assam government had fixed 28 February 2009 as a deadline to submit all claims under the FRA. Later, it was extended to 7 April 2009. The process of submission of claims was carried out with great enthusiasm in Sopaloga and Gamani. The FRCs’ meetings were held in the villages in the early part of January.

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73 Section 3 (h) of FRA
74 Paneswar Basumatary
2009. Owing to the villagers’ unfamiliarity with the claims process, a lot of confusion occurred during the verification process. It was found that the claimants were required to submit maps showing amount of their landholdings along with claim forms. Finally, the FRCs could accumulate claim forms from all the villagers in the first week of April 2009 (Bose 2009). A villager from Sopaloga FV who spearheaded the process of submission of claims comments:

Many of us worked hard since the time Mati Patta Aain has been implemented in Sopaloga. We contributed money to form the FRC in our village…members were selected from amongst the villagers and the committee was formed. As per the Act, all claimants were required to submit maps showing amount of landholdings along with claim forms. Since our villagers are mostly unfamiliar with the entire claim process, I prepared maps showing the amount of landholdings for each and every family and helped most villagers to fill up the forms…

However, at the time of submission, the forest officials declared that Sopaloga and Gamani FVs had not yet completed 75 years and thus were ineligible to get the benefit under the FRA. Though the FRA makes provision for the recognition of the existing FVs as revenue villages, this was either entirely suppressed or ignored by the local FD. It is noteworthy that according to the FD, Sopaloga, Gamani and several other neighbouring villages were recognised as ‘FVs’ in 1962 though this date is contested by the local villagers. What is significant here is that the local forest officials focused only on that provision in the FRA, which is applicable to the forest dwellers outside the FVs. The section 4 (3) of the FRA pledges to recognise the rights of the forest dwelling Scheduled Tribes and Other Traditional Forest Dwellers (OTFDs) inhabiting a forest land prior to 13 December 2005. However, as per the section 2 (o) of the Act, the OTFDs are required to have, for at least three generations (that is, 75 years) prior to 13 December 2005, primarily resided in and depended on the forest or forest land for bona fide livelihood needs (Upadhyay 2009, 31-45).

Such a twist in the implementation of the Act by the forest officials dealt a body blow to the optimism of the local communities to get rights on their occupied forest land. While the prevailing oral history suggests that the history of human penetration in this area is more than 75

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75 Ranjit Das of Sopaloga FV.
76 Discussion with Ranjit Das of Sopaloga, who spearheaded the claim submission process under the FRA.
years or three generation old, the lack of proper supporting written evidence now becomes the root of all problems. A villager in Gamani FV rues:

    The 75 years of occupation for the non-tribal forest villagers as enshrined in the Act has become a problem for us. The FD says Gamani and Sopaloga would take another 10 to 15 years to complete 75 years. Unfortunately, we have nothing in our hands, we have to wait till time comes.  

Another villager from Tarajan FV laments:

    All the villagers have submitted claim forms in April 2009. We are hoping to get ownership rights over land where we have been staying for long. But possibility of conversion of our village to revenue village is rather less…if it happens we will become the owner of our own land. Whatever we have grown in the homestead land, will be ours.

The villagers contend that the records regarding the formation of the early human settlements in the area during the colonial period were kept in the APO office at Chariduar which was also in charge of the forest administration in the area. However, with the change in the administration in 1962, many important historical records and documents were either lost or perished. The office of the APO was also eventually abolished in 1978. These documents, the villagers maintain, would have proved critical in ascertaining their legal rights on the forest land under the FRA. The forest officials also deny having any records in their possession prior to 1962, the year in which they were declared as ‘FVs’. They maintain that it has the Khajana records of the FVs in the Nameri area only since 1962. Amazingly, neither the villagers nor the forest officials could give a satisfactory answer to as to why the villages of the area were declared as FVs again in 1962 if they were already recognised as such. Indeed, the villagers assert that their villages were referred to as FVs in official records since much before and that they have been paying Khajana to the FD since much earlier. As mentioned in Chapter Three, I found a Khajana receipt of as early as 1937-38 which clearly defines Gamani as a FV. In Sopaloga FV, a few Khajana receipts were also found. The elderly villagers state that they used to pay Khajana at a Forest Beat Office at Amaribari and the records were kept at the APO office till early 1960s. After that this Beat Office also became the custodian of the Khajana records. This continued till the time when a

77 Podoram Koch.
78 Muhidhar Das.
79 Vide sanction nos. FG 18/3 (a) to FG 18/3 (G) dt. 23.4.62, B/7533 dt. 7.10.55 and B/3650 dt 22.5.56.
Range Office came into being at Chariduar in 1984.\textsuperscript{80} When asked about these records, the present Ranger expressed ignorance about them. However, he said that some of such records might be kept at the Beat Office at Amaribari.\textsuperscript{81} When the Ranger of the Beat Office, Amaribari was asked about the records, he said:

We do not have those records in our possession at the Beat Office…I do not know much about the early history of Khajana collection in this office. Even if there may be some kept at the Divisional Forest Office, Tezpur, it will be extremely difficult to find them.\textsuperscript{82}

When the villagers were asked as to whether they have produced their Khajana receipts at the FD during the claim submission process under the FRA to prove their occupation they narrated their disappointing experience with the process. Ranjit Das of Sopaloga FV laments:

Whatever evidences we could gather in the village…mainly the old Khajana payment receipts and a few applications which also show our occupation on the forest lands…were all produced at the Divisional Forest Office, Tezpur. Unfortunately, the officials did not recognise these records. The Divisional Forest Officer told us that since the FD has no records showing our occupation in this forest area…it cannot issue patta just relying on the records that we had produced.

This only shows the lackadaisical approach of the FD in keeping records in its custody which would have been so critical in providing tenurial rights to the forest villagers of Nameri under the FRA. Thus, an atmosphere of enthusiasm and hope soon turned into one of despair. As a villager rues:

We do not know exactly when our forefathers had come to these forest areas in search of cultivable lands. Though we do not exactly remember the dates of migration, our earlier two generations had provided begari to the Political Sahab and paid Khajana on their lands as forest villagers. To our dismay, now the FD does not acknowledge us as eligible to get our due settlement rights on the land that we have been occupying for generations. Just because we are unable to produce records of our occupation on the land, we are suffering today. We (all villagers) had never thought that this kind of a situation would come someday and Khajana receipts would prove to be so crucial in ascertaining our rights.\textsuperscript{83}

\textsuperscript{80} As stated by A.K. Dev Choudhury, Range Officer of Chariduar. Amazingly, nobody could give us definite information as to when the APO was closed down, and since when the villagers have been paying the Khajana on land.

\textsuperscript{81} Ranger, Range Office, Chariduar (Territorial Division).

\textsuperscript{82} Karmananda Sharma, Range Officer, Beat Office, Amaribari.

\textsuperscript{83} Purno Kanta Das of Sopaloga belongs to the third generation of present villagers. An illiterate person, he does not know his present age. However, he seems to be in his late 50s. During the discussion, he recalled the situation in the area at the time of the Indo-China war in 1962. He has some faded memories of that time since he was child.
However, it is important to state that these FVs in Nameri are actually eligible for land ownership rights under the FRA. Firstly, Sopaloga and Gamani are already declared FVs and secondly, the *Khajana* payment receipts clearly testify that these villages have completed more than 75 years now. This way, these villages fulfills both criteria to get ownership rights over land under Sections 2 (o), 3 (a), and 4 (3) of the FRA. However, the state government seems to be deliberately ignoring the issue of granting land rights, especially to the non-tribals in Assam.

The villagers now seem to be totally unsure of their next step. Interestingly, one does not witness any mobilisation among the forest dwellers of Nameri area on the issue of land rights although a popular peasant mobilisation sweeps across contemporary Assam led by the KMSS on this question. This may be attributed to the fact the forest villagers of Nameri area live in recognised FVs and do not want to risk their existing privileges by challenging the forest authorities. The fact that there has been no peasant or political organisation, like the KMSS to take up their cause unlike other such cases in Assam has also not given them the required confidence to fight for their entitlements as dwellers of FVs.

There is no doubt that the proof of 75 years of settlement in forest for non-tribal forest villagers is a very difficult condition enshrined in the FRA. This also dashed the hope of such villagers of Nameri of getting land rights as promised by the AFP 2004. It is indeed a tall order to expect the villagers (a majority of them were illiterate till a couple of decades back) to keep their settlement records (the *Khajana* receipts) for such a long time what even the FD has failed to do.

This unfolds a very complex situation where contesting discourses with regard to a not-so-ancient historical fact have emerged within the context of a RF area. The situation betrays a typical cavalier attitude of the FD which is supposed to be the repository of all important records and acquainted with the important developments pertaining to the FVs. The villagers lament that they never thought that this kind of a situation would arise one day and that the *Khajana* receipts

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Since most of the elderly villagers are either illiterate or semi-literate, I often had to rely on their memories to ascertain many information about the past. They could well relate their narratives to certain past events but failed to tell the exact dates. Such narratives definitely helped me to understand many crucial issues of the colonial times and the period just after the Independence in 1947. But cross-checking their narratives were a problem. The FD officials literally neither possess those information nor any written records either to validate or negate these narratives.

84 Assam Forest Policy 2004, 4.3.1.1.
33. The Building of the Erstwhile APO Office, Chariduar

34. Molan Koch and Rajani Bhuyan: The nonagenarian villagers in Gamani and Sopaloga respectively
35. New settlements in the outskirts of the Namri National Park
would be so crucial in ascertaining their settlement rights. Indeed, the issue of regularisation of 
\textit{patta} is not new in Assam. The AFP 2004 spoke of regularising the pre-1980 encroachers on
forest land. But with the coming of the FRA, the AFP became redundant.

However, the tribal forest villagers around Sopaloga and Gamani are set to get the tenurial rights
over their land under the FRA. This has created some discontentment among the non-tribal forest
dwellers who have assumed that the recent tribal encroachers would also get land rights while
they would not under the FRA. It may be mentioned that most of the new tribal encroachers in
the Nameri area, mainly the Bodos, became forest dwellers only as an “accidental by-product of
a political movement” (Bose 2009). This is part of a political design by the leadership of the
Bodo homeland movement since 1990s to create a contiguous Bodo-inhabited territory in the
northern Assam. Although these encroachers themselves are victims of land alienation, such
strategic usurpation of forest land adds a new dimension not only to the ecological conservation
but also to the socio-political landscape of the state.

Nevertheless, the local Ranger maintained that the FD is issuing the land ownership certificates
to only the dwellers of the existing tribal FVs and not to the illegal encroachers. Though this
certificate is described as ‘\textit{patta}’ in the local parlance, this entitles these tribal forest villagers
only to have rights over land which is “heritable but not alienable or transferable” under section
4 (4) of the FRA.

\textbf{3. Problems of Implementing the FRA in Assam}

It is true that most of the rights and privileges addressed in the FRA are ground-breaking. Yet, it
has been found that some of its provisions do not match with the existing ground realities in
Assam. For example, the use of the phrase the ‘\textit{OTFD}’ in the Act is a vexed one. Section 2 (o) of
the Act defines \textit{OTFD} as any member or community who has primarily resided in and depended
on the forest or forest land for \textit{bona fide} livelihood needs (Upadhyay 2009, 31). This definition
holds true for a large number of tribal forest dwellers in most of the PAs in India. They are not
settled agriculturalists, but \textit{gatherers} who live in close proximity to forests, and most of them
have a long tradition of forest use for sustenance (Lele 2011, 96).
As discussed in Chapter Three, in Assam both tribal and non-tribal forest villagers hardly show any worthwhile differences in terms of their economic life. Unlike other parts of India, in Assam the forest villagers are all peasants and their dependence on forests for survival is minimal and complementary. The existing ground realities in Nameri also clearly show this. Besides, the forest dwellers in Assam cannot be termed as the ‘traditional dwellers’ because they are neither the traditional inhabitants of forests nor intrinsically dependent on forest products for their livelihood. Only circumstances and natural calamities forced these indigenous poor peasants to move into forests areas in search of land and livelihood. One also does not witness any sacred grove or explicit history of forest protection among the villagers (Bose 2009). In other words, the history of man-forest relations in the area has its own specificity and varies from the all-India perspective that informed the FRA.

However, as already mentioned, the dwellers of a number of the tribal FVs in the Nameri area such as Dharikati, Eraliloga, Bogijuli and Sotai have recently got land ownership certificates (‘patta’) under the FRA. Earlier the villagers were not allowed to collect NTFPs other than firewood, thatch, fodder, etc. Now, they can collect all NTFPs. But that is almost irrelevant for the forest villagers in Nameri as its forests (that is, the buffer areas of the NTR) now hardly have any worthwhile NTFPs except firewood which the villagers anyway collect from the fringes of the forest. Further, there have been several lapses in the process of providing land rights to the tribal forest dwellers too. A villager from Eraliloga tribal FV shares his view on this:

The FD has recently distributed mati patta to the tribal FVs in the Nameri area. But this patta only gives us ownership rights but we are still not entitled to sell or mortgage our land at times of exigencies…we cannot even use this patta to avail bank loans.85

The discussions with the villagers in both tribal and non-tribal FVs revealed that there is still a misconception among them that land patta will make them independent of FD’s control and they will be able to sell or mortgage land at times of difficulties. But the Act clearly states, “A right conferred by section (1)86 shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons and in the name of

85 Discussion with Jishu Brahma in November 2010.
86 Sub-section 1 of Section 4 confers the power to the Central Government to recognise and vest forest rights in the forest dwelling Scheduled Tribes and the Other Traditional Forest Dwellers.
the single head in the case of a household headed by single person and in the absence of a direct heir, the heritable right shall pass on to the next-of-kin.” 87

Perhaps the major dispute in the FVs in Nameri has been about settlement of land rights, most of the important provisions of the Act are being entirely sidelined. The FD officials are also seemed to be quite reluctant to organise awareness campaigns at the village level to educate the villagers about the important provisions of the Act. As a result, the forest villagers are totally unaware about the other empowerment and conservation elements of the Act such as the right to community forest resource, right to protect and manage forests and the gram sabha’s (in local parlance gram sabha is known as gaon sabha) role in biodiversity, water and forest conservation. When asked about the conservation responsibilities that the villagers should take under the provisions of the Act, a villager vents out his views as follows:

*Mati Patta Aain* has been implemented to give us land titles and to convert our FVs into revenue villages. We hardly know about any other empowerment and conservation needs of the Act. As far as forest conservation is concerned, we are planting trees (*paleng*) under the JFM scheme on the deforested tracts surrounding our villages. 88

Thus, the villagers are more concerned with the regularisation of their land settlement rights and tenurial security. The foresters seem to be worried over the issue of distribution of land under the Act. This is because many villagers own surplus land (landholdings under ‘actual occupation’) over and above the official limit. While many of them are landless or marginal peasants. This situation has made the land tenure systems in the FVs in the buffer areas of the NTR more complex.

4. Public Consultations on the FRA in Assam

The inadequacies in the FRA have also created problems in many parts of the country and the protests and concerns expressed by the affected people and the forest right activists led the government to review the Act by a committee known as the National Forest Rights Act Committee (NFRC). 89 The committee submitted its report after holding public consultations in

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87 Section 4 (4).
88 Umakanta Das of Gamani FV.
89 The two ministries of Environment and Forest and the Tribal Affairs of Government of India constituted a joint Committee on April 2010 to comprehensively review the implementation FRA, 2006. The Committee members
various parts of the country. The committee found that the FRA has faced challenges even in those states of central and eastern India which consist of largest number of forest dwellers.

In Andhra Pradesh, for example, the Act came under severe criticisms during the initial phase of its implementation (Reddy et al. 2011). The forest rights activists from Uttar Pradesh complain that the government is engaged in subverting the FRA by pitting the Adivasis and the Dalits against each other. Again, the state’s Taungya community is also finding it hard to get their entitlements under the FRA as the illiterate Taungyas do not have the required documents to support 75 years of residential proof. These documents are with the FD which is not keen to part with the land (Tripathi 2011). Besides, the attempts at corporate acquisition of tribal-inhabited forest land in the states of Chhattisgarh and Orissa have already generated much public outrage.

In Assam, these consultations took place during 11 to 14 July 2010 in some select areas of the state. The consultation was carried out in areas like, Kaki (Nagaon, Central Assam), Kaziranga NP, Tengani Reserve (Golaghat), Jagun sub-division (Margherita, Tinsukia District). However, the Nameri area was not included in the list. In addition to the public consultations, the committee also carried out discussions with the officials of the state, forest and civil administration as well as with the local communities. The consultations with the concerned people revealed various procedural lapses during the implementation of the FRA. The conditions of forest dwellers residing in different NPs, Sanctuaries and RF areas of Assam also resemble the forest villagers of Nameri.

In Assam too, the scope and nature of the definition of ‘forests’ has been grossly misinterpreted by the state government officials leading to non-implementation of the FRA in areas where the definitions of ‘forests’ has strong implication. The fact that the state underwent through different stages of evolution of modern legal meaning of ‘forests’, also adds to the problem. Moreover, the NFRC in its report on Assam prepared after its consultations with the concerned public and the government officials notes that like the rest of India, the concerned Assam government officials are also found to be either extremely critical or indifferent to the FRA. Often they are unaware of

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were selected from wide spectrum of retired civil servants, forest officers, tribal department officers and representatives of civil society organisations and NGOs.

the provisions of the Act and indulge in misinterpretation. In the Nameri area, the forest officials
are clearly seen to be engaged in subverting the provisions of the Act.

The Committee finds that the state government is especially critical of the section 3 (h) of the
FRA which makes provision for conversion of FVs to revenue villages. The Gauhati High Court
ruling in 2009 stating that there are no traditional forest dwellers in Assam has also become a
handy tool for the state government for not implementing the Act although scope of the FRA is
much larger. Moreover, this ruling despite being factually true clearly has glossed over the
specific historical processes of land use and alienation among the local communities and their
relationship with forest land and other resources. Interestingly, the Assam chief secretary stated
before the Committee that the state government would give rights to the tribals but not to the
non-tribals as most of them were encroachers. The Committee also notes that while the
government has apparently prioritised the forest villagers and ST populations to be given land
rights amongst all other claimants there has been complete lack of entertaining the claims of
OTFDs except those areas where there are strong and vested political interests (Kiro et al. 2010).
The Assam government is reluctant to process the claims of the OTFDs and it states that if the
Act is to be implemented there will be no forest coverage left in the state.91 The state seems to be
engaged in subverting the Act in many ways as it does not want to lose its monopoly control over
forests.

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

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91 The Report of the Forest Rights Act: Undoing of historical injustice withered, A Report by Asian Indigenous and
The public consultations on the FRA in Assam and my own discussions with the top-ranked bureaucrats and officials (both at the state level and FD) revealed their cavalier attitudes towards the implementation of the Act. It is observed that there has been serious lack of awareness about the provisions of the Act even among the officials of both civil and forest administration. Awareness campaigns pertaining to the local people’s rights and privileges as per the Act also have not been carried out. As a result, people hardly know about the major empowers and responsibilities towards forest conservation conferred on them by the Act. The only thing they know is that the Act is implemented to provide them tenurial land security. One glaring lapse in the implementation of the FRA in Assam has been the non-constitution of gram sabhas. The situation in the FVs in the Nameri area clearly testifies this.

Moreover, there has been no flow of information among various implementing agencies such as FRCs, FD, Sub-Divisional Level Committee (SDLC) and District Level Committee (DLC). The FD also seems to presume that granting of tenurial land rights will only encourage more encroachment leading to more deforestation. As pointed out earlier, the OTFDs are facing resistance from the state government in getting tenurial land rights under the FRA. The prevailing opinion is that the OTFDs are encroachers on forest lands and hence they are not entitled for land pattas. Moreover, the question of three generations for them to be able to claim their rights on forest land has become a major problem. For instance, the case of the OTFDs in Nameri resembles other areas in the state. The fieldwork in Nameri also reveals that the OTFDs do not have evidences to support their three generations habitation in the forest lands. The FVs have provided crucial information and strong oral history supporting their occupation on these forest areas for more than three generations (or 75 years) now. Amazingly, the FD has not acknowledged the local oral history.

In the FVs of Nameri area and other PAs, the process of entitlements over the community forest resources is not dealt with as per the provisions of the Act. According to the Section 2 (a) of the FRA,

Community forest resources (CFRs) means customary common forest land within the traditional or customary boundaries of the village or seasonal use of landscape in the case of pastoral communities, including reserved forests, protected forests and protected areas such as Sanctuaries and National Parks to which the community had traditional access.
Discussions with the villagers brought to light that they were asked to claim their rights only over the individual landholdings. The provision of customary rights for the forest villagers has been ignored totally by the FD. The lack of knowledge and absence of proper awareness campaigns stood in the way of the villagers’ claims to their rights over the community resources. The public consultations on the FRA also state that there has been lack of awareness about the implications of the CFRs in the state. In some PAs in the country, claims over community rights have been filed but the no action is taken by the government till now. The NGOs and concerned agencies must impart awareness to the people on the importance of community resources.

Another serious violation of procedure under the Act is seen in areas of quick or no mapping and measuring of land boundaries, improper verification of evidences and so on. For instance in Dharikati tribal FVs\(^92\) in Nameri, the process of distribution of land \textit{pattas} were haphazardly and hurriedly completed. The areas of landholdings of each family was not strictly demarcated and measured as laid down in the Act. As a result, each family now own land over and above the limit (4 hectares) as per the Act.\(^93\) This is also the case with other FVs in the state.

At the implementation level, the role of the Nodal Agencies in monitoring the FRA is crucial. At the Centre, the MoTA is the nodal agency for the implementation of the Act. The MoTA has also nominated the Secretary in charge of the Tribal Welfare/Social Welfare Departments in the various states to be the nodal agency under section 11 of the FRA for its implementation. In fact, the role of the Nodal Agencies at the state level is pathetic. Officials are not aware about the provisions of the Act and often misinterpret the Act in order to deny the rights to the tribals/OTFDs. In Assam, the Social Welfare Department’s (nodal agency) structure and presence at the field level is very weak. The department had not been able to provide sufficient inputs and support, facilitating filing of form, etc. The senior officials do not cross-check the work being done at the SDLC or at the DLC level.\(^94\) My field experiences in the FVs of Nameri area also substantiate this. There has been a complete neglect on the part of the concerned

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\(^92\) It is one of the largest FVs in Nameri in terms of its population and area. The population mainly belong to the Mishing community.

\(^93\) Discussion with the Ranger A. K. Dev Choudhury, Chariduar Range Office.

authorities and awareness campaigns for the villagers have not been carried out so far in the Nameri area. The other FVs in Assam also show a similar situation.

The implementation of this new legislation, thus widely reflects varied responses of governments, communities and other concerned agencies across the country. As discussed, the over-interference of the FD in different states has threatened the very spirit of the Act. Gopalkrishnan discusses three-fold problems on the implementation of the Act: large-scale FD interference, wrong gram sabha formation and violation of community rights. Across Rajasthan, Madhya Pradesh, Gujarat, Chhattisgarh, Maharashtra and other states, show widespread violation of the FRA provisions. The Act specifically provides that gram sabha should be called at the level of revenue villages, and in Scheduled Areas, at hamlet level, but never at the panchayat level, where the meetings would be large and make democratic functioning impossible. But in most areas, except where agitations have forced the government to change its stand, gram sabhas are being called at the panchayat level (2011, 66-67).

Kothari (2011) also points out that the community rights under the FRA have been seriously violated by the FD. Gopalkrishnan further contends,

The truly radical part of the FRA is the provision for recognising community rights and powers over forests. The government has consistently tried to dilute these, first, by insisting that the community’s powers of forest protection are ‘duties’…and second, by ensuring that community rights are neither publicised nor recognised when applied for. The rules also provide no clear procedure for community rights, including property rights such as the rights to minor forest produce, etc…In many areas -- for example, all parts of Tamil Nadu -- rights to minor forest produce have been conferred along with illegal restrictions, such as requirements for Forest Department permission or bans on sale of produce (which constitutes a major source of income for adivasis). Grazing rights and rights to water bodies have been entirely ignored. (2011: 67)

5. The Way Forward

Despite these serious shortcomings of the FRA as discussed, the progressive steps for forest governance implicit in the Act cannot be ignored. The public consultations in Assam while taking note of the misinterpretation of various provisions in the FRA also suggests that there is an urgent need to amend some of its provisions taking into consideration the specific history of man-forest relationship in the region. A historian in this regard comments,
The Act nowhere suggests that the term ‘forest-dweller’ is equivalent to ‘banavasi’ in the classical anthropological sense. The legal meaning as spelled out in the Act draws our attention to the historically and anthropologically relevant subjects of ‘habitat’ and ‘dependence’. These notions are widely explained keeping in mind the key features of the eastern and northern Indian historical transition. Essentially such explanations skip the nuances of historical transition of societies in Assam. Similarly, no efforts have been made in public or academic debates to explain these issues in the context of Assam.

(Saikia 2011)

In the light of the above, a vigorous awareness campaign along with suitable amendment of certain provisions of the FRA seems necessary in order to create a sustainable forest conservation regime vis-à-vis livelihood needs of the poor forest dwellers. Any conservation policy for Assam must incorporate its local historical and livelihood specificities. It is of utmost importance that the FRA 2006 formulates a more practical deadline for providing land rights to the OTFDs in Assam as its present term of 75 years before 13 December, 2005 seems at odd with the reality in the state. Simultaneously, the FD must enforce stringent measures, indeed in collaboration with the forest dwellers, to combat illegal encroachments and commercial activities inside the PAs.

Interestingly, on the basis of the results of the public consultations from various parts of the country on the working of the FRA, the erstwhile Union Minister of State for Environment and Forest, Jairam Ramesh advocated a complete ‘paradigm shift’ in the management and governance of forests in the country from a model based on the primacy of the state to a three-fold model of state, communities, and partnership between the two (Ramesh, 2011). He called for a three-fold model of state involvement, community engagement and partnership between the two for an effective governance of forests. He further emphasised that for effective implementation of forest policies, different regions in the country needs diversity of models such as, state-centered model, state-cum-community partnership and community-led model. However, though activists and environmentalists widely welcomed this new official thinking, no action toward bringing this thought into reality has been witnessed ever since.

95 Here the author makes a distinction between the legal and anthropological (banavasi which means forest dwellers) meaning of the term ‘forest dwellers’.