




Assamese Tribal and the Forest Rights Manifesting, or is it? A Socio-Legal Investigation

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Abstract. The strong influence of the law on the shaping of tribal identity and traditional forest rights in pre and post-independent India has been extensively documented in the literature. This influence, however, manifests adversely in Assam, as seen in the form of forest rights denial to traditional forest-dwelling tribes. The study's objective is to scrutinize States' governance, law, and policy attitudes and their resultant impact on the tribal's access to forest resources. The research applied is doctrinal in nature focusing on India's Assam state. Also, a critical reference to Indian forest and administrative laws, along with case laws with relevant legal documents in a qualitative manner is undertaken. Critical scrutiny in the process is provided to the Kaziranga National Park expansion over the years, from 430 in the 1970s to 914 sq. km today, and its impact on indigenous tribal communities whose landholdings were acquired during the process. The present study also closely scrutinizes the present status of Forest Rights Act, 2006, in application in Assam State.

Keywords: Assam, Forest Rights, Tribal, Kaziranga, Community Rights

1 Introduction

Levien (2011) has previously maintained that today's India is characterized by a new plight of state-driven 'land acquisitions'. He terms the experience as 'thousands of small wars against land acquisitions' with noted resistance from farmers, forest-dwellers, herders, and other subjugated groups fighting to retain their land holdings. Levien (2011) Guha (2007) asserts that land beyond livelihood, shapes the social identities of the poor. He also adds that Adivasis across India have been unable to directly participate in the political discourse, hence leading them to rely on organised social movements. Such discourses ultimately lead to their direct engagement with the bureaucracy or the judiciary to secure forest resources (Guha 2007). Also, in such circumstances, a pressing issue remains withholding of resettlement and compensatory packages, which in turn leads to socio-economic poverty and disfranchising of these groups.

Herein a particular case study remains the Kaziranga National Park (KNP) of Assam. KNP authorities on multiple occasions have seized traditional landholdings of indigenous communities during multiple rapid expansions of the park boundary. Here, the role of civil society organisations such as Krishak Mukti Sangram Samiti (KMSS) and Jeepal Krisak Sramik Sangha (JKSS) in leading mass social movements against KNP, particularly post-2000 can be highlighted. Such observation also sheds light on the civil agitation of forest-dependent communities in the KNP area, transcending the conventional 'Human Vs Wildlife' conflict narrative.

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2 Kaziranga conflict

Indigenous tribals such as the Misingsⁱ of Majuli and nearby areas and the Karbis of the Miker hills in Assam have lived close to the Kaziranga National Park (KNP) for generations. In today's Assam, indigenous communities, particularly the plain tribes without the protection of the Sixth Schedule of the Indian Constitutionⁱⁱ, continues to live near protected areasⁱⁱⁱ with or without proper documentation of land rights. Also, Assam State has steadfastly led a protectionist approach for decades in the KNP area which in turn has helped in the conservation of endangered wildlife species and ecology in the park. With the introduction of the Wildlife (Protection) Act, 1972, (WLPA, 1972) Kaziranga was converted into a National Park in 1974. Presently, multiple KNP extensions^{iv} (increase in the size of the park area) and its continuation by the park authorities are leading to evictions of local communities from their traditional landholdings or imposition of restrictions on their traditional forest practices in and around the park. This in turn only intensifies the inquiry into the validity of such acts. (Saikia, 2020; Chakravartty, 2020) In the past, as a result of dense population of human settlements around the park, there have been human-wildlife conflicts leading to collateral damages sustained by both people and wildlife. (Smadja, 2018) Official documentation acknowledges claims of alleged illegal settlement of foreigners encroaching on the park. (Government of Assam, 2014) However, from the present context, KNP authorities' official narrative explicitly projects activities of illegal poaching in the park area as perpetrated acts of indigenous communities living near the park, while circumstances corroborating such stance remain blurry. Also, it is crucial to note that supporting the rights discourse of indigenous communities should not be misconstrued as endorsing the establishment of illegal settlements by non-natives in these areas.

The World Wide Fund on Nature (WWF) provides the TRAFFIC guidelines^v (WWF TRAFFIC Guidelines for Managing Informants) for management of informants by state administrators in protected areas. However, these guidelines do not provide the much-required mechanism to counter false information against alleged acts of poaching. The fact is, WWF remains one of the biggest non-governmental organizations to fund wildlife-related activities in India. WWF India also remains the biggest funder of combat and ambush training for KNP's forest guards including specialist equipment for the park's anti-poaching efforts. (Rowlatt, 2017) Past reports suggest that KNP forest guards remain immune from legal accountability due to a controversial shoot-on-site policy^{vi} rendering them immune from legal accountability resulting in reported cases of civilian deaths on alleged suspicion of poaching, and undocumented civilian deaths from indigenous communities residing near the park boundaries (Lang, 2016; Evans, 2016; Rowlatt, 2017).

3 FRA Application and Assam

In 2009, the High Court of Gauhati held that historically Assam had no traditional forest dwellers (High Court of Gauhati, 2012) Also, the court sanctioned alteration to KNP boundaries under its 2nd, 3rd, and 5th additions (expansions). This was allowed, although procedures under section 35(5) of the WLPA, 1972 were not followed. Under the provision, no alteration of national park boundaries are allowed by state government without the concurrence and recommendation of the National Board for Wildlife on the matter. Such instances have for long enabled the state to indiscriminately evict forest-dependent communities from forest land, a practice that has persisted for an extended period. (Pegu, 2021)

Presently, the Assam government is reviewing the implementation status of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA or Forest Rights Act) in the state. This review acknowledges the socio-cultural dependence of indigenous tribals in Assam on forests. Also, the above judgment of the Gauhati High Court is now viewed as an inaccurate representation of the historical and cultural existence of tribal communities with forests in the State. Further, in a report submitted by Assam Government on the implementation status of FRA, it is maintained that FRA is enforceable in Assam. (Kiro et al, 2010)

The FRA recognizes traditional forest rights of forest-dependent communities, even if previously such rights were not documented. It establishes institutionalized process for documentation of such rights. (See Section 6 of FRA) The FRA also provided a model for sustainable use and conservation of forests as monitored by grassroots institutions. {See Sections 4 (e) and 5}. In general, structural weaknesses and implementation gaps have prevented the legislation from achieving its set objectives (Kothari, 2011). Yet, FRA remains a strong bet in preserving forest rights for indigenous communities, particularly in North-East India. (Bijoy, 2019) Also, FRA allows evictions or limiting of traditional rights of the forest-dependent communities in specific cases. Yet, when such measures are applied, as in the case of evictions, it is done as a last resort means, i.e. when presence of forest-dependent communities causes irreversible damage to the forest habitat or when no option for human-wildlife co-existence remains. (See Section 4. 2 (b) (c) of FRA.) Similar provisions are provided under the Wildlife (Protection) Act, 1972 such as under Section 38 V (4) (i).

4 Implication and Conclusion

Conservation-induced displacement of forest-dependent communities from protected areas presents a reality in today's India (Fanari, 2019). In the context of tribal rights to forests, Misings of Majuli bordering the KNP area, have evolved their traditional practices as per the local ecology. Under previous KNP extensions, the community has seen its fair share of forced relocations and continues to face further threats. In this scenario, the Forest Rights Act (FRA) serves as a crucial safeguard. The recent recognition of the applicability of FRA in Assam marks a positive step by Assam State in upholding community forest resource rights of

indigenous communities in the region. The implementation of FRA and registration of land patta (document of land rights) to indigenous communities have commenced in the state (The Sentinel, 2022). However, criticism is directed at slow progress in implementing FRA and the high rate of rejection of forest rights claims of local tribal communities by authorities. It's important to acknowledge that the impact of the Forest Rights Act, initiated relatively recently in Assam, may take at least a decade to fully manifest. In hindsight, better management of rights claims of forest dwellers by institutions at local level will remain a challenge for Assam in the foreseeable future. Particularly, rights claims of Assamese plain tribes without landholdings under protections of Sixth Schedule will continue to be an area of significance.

ⁱ The Mising community, also officially known as the 'Miri Tribe', holds the status of a Scheduled Tribe as per the Indian Constitution. Consequently, they have been endowed with specific rights under the Constitution for the protection of their cultural traits and socio-economic development. For more, see *The Constitution (Scheduled Tribes) Order, 1950 (C.O.22)*. http://legislative.gov.in/sites/default/files/19_The%20Constitution%20%28ST%29%20Order%201950.pdf

ⁱⁱ For more, see Article 244 (1) and 244 (2) of the Constitution of India, 1950.

ⁱⁱⁱ Protected areas are ecological conservation area. Under the Indian Wildlife Protection Act of 1972, protected areas include national parks, wilderness areas, community conserved areas, nature reserves, etc.

^{iv} Between 1977-99, KNP area has grown from 434 to 884 kilometers. On September 4, 2020, further addition of 3053 hectares was sanctioned by the Assam government to the KNP Authorities. Presently the KNP area has increased to 915 square kilometres. The Assam government has approved 9 additions for KNP till date.

^v For more, see WWF TRAFFIC Guidelines for Managing Informants.

^{vi} For further reading, see Yadava, M.K., 2014. Kaziranga National Park Detailed Report On Issues And Possible Solutions For Long Term Protection of The Greater One Horned Rhinoceros in Kaziranga National Park Pursuant to the Order of the Hon'ble Guahati High Court , Government of Assam, India.

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