

*Original Article*

## Problems Faced in Implementing Environmental Protection Laws Due to Migration in Assam, India

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### Abstract

Migration involves physical movement from one place to another which causes population distribution to bring out socio-economic, cultural, political and legal changes. In modern time, migration has been considered as an essential phenomenon to human societies, cultures, and civilizations throughout the years irrespective of the countries and continents of the world. It is evident that migration has played a crucial role throughout the years in shaping the world as we know it today. It is not a recent phenomenon; on the contrary, it has been part of the human history since its very beginning made for various reasons in search of better opportunity of living. Now a days, migration and settlement in new areas create problems in environment protection in terms of implementation of various laws related to Environment Protection.

The present communication deals with some recent cases of problems faced by Government machineries to implement judicial orders for protection of forest land which are due to migration citing cases of Guwahati in Assam, India.

**Keywords:** Migration, Environment protection Laws, Problem of implementation, Assam.

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### Introduction

Migration has become necessary for human survival, adaptation, and for economic strength over a long period of time worldwide. Though historically migration in India has not been very prominent due to various socioeconomic and political constraints [1], but the picture has changed in recent times. The increasing trend of migration has raised some serious concerns about its affect on demography, social and economic security along with different ethnic and environmental problems. The purpose of the present study is to throw a light on problem of increasing migration in the state of

Assam and its recent consequences in legal problem like implementation of Environment protection laws by the judiciary and executives resulting into more liabilities.

In the last few decades, the number of international migration as well as internal displacements increased rapidly than ever recorded previously in Assam. The demand for migrant worker is also rising in the developed areas for various reasons like deficiency in workforce, environmental changes etc. Host areas could get benefited in the form of economic growth with efficient migration management mechanism while it could improve economies of the origin country as well. However,



the growing tendency to migrate for economic growth brings both legal problems to address irregular migration and opportunities to develop legal framework by regularizing the system for revenue earning for the host region as well as for overall development including environment protection. Efficient administration with strict legal policy is needed to bridge the supply and demand gap in labour market without hampering social framework and the environment. Increase in the number of migrants of various backgrounds in a particular area may grow the diversity and complexity in socio-cultural front but protection of immediate environment will be a challenge. In fact, a dedicated and faithful interest is needed in managing the socio-economic and environmental changes resulted due to mass migration since long. The problem of migration along with rise of undocumented migrants in the light of its recent legal developments is the subject of this study.

After the annexation of Assam into British rule dating back to 1826 [2] before hundred twenty years of independence of India and the gradual introduction of new colonial economic policies towards the agricultural as well as non-agricultural sector, the material progress and economic status of the state in the long run has greatly affected. After gaining the political power, new policies related to the changes in the waste land management as well as in the plantation and non-plantation sector were applied in a very prompt way. Due to the long period of devastation brought by the frequent Burmese raids on Assam as well as the long extended period of civil wars and invasions, vast tracts of lands were left in the form of waste lands throughout the province of Assam. Neither any sort of agricultural production take place on such lands nor revenues could have been collected. That was in the year 1827, for the very first time David Scott initiated a plan of granting waste land to the people for starting cultivation on these plots. Apart from these steps the colonial authorities had moved ahead with their future plans to fully exploit the forest resources of the state, describing the state of Assam as a "forested country" in the administrative reports of 1921-22 [3], long before hundred years. The rich products of the forest, mainly the timber and other products including fruit trees, berry bushes etc. with proving commercially useful in the long run. Therefore, to properly exploit the forest resources proper forest policy was to be initiated for the utilization of forest resources along with revenue collection. The imperial forest department was established in 1864 and the Indian Forest

Act was passed in 1865 that further intensified government monopoly on the forest resources. This was the beginning of total exploitation of the forest resources of the state initiated by the migrants and even today we are facing such exploitation by the migrants of both internal and international nature. Rise of population due to migration is one of the main cause of environmental and forest degradation. Settlements in and around forest areas threaten the livelihood of wildlife and affect the conservation moves of the forests.

The basic economic position of any type of immigrants in comparison to natives is useful in understanding the character of migrants in an area. Basically migrants are self-selective and economy is the main factor to decide a migrant whether to immigrate or emigrate; and the same factor is responsible for those who do not migrate<sup>4</sup>. Perhaps there is no single pattern of such selection for migration; rather, it varies according to some other socio-political and religious conditions in the communities of migrants and non-migrants. However, the basic economic differences between natives and migrants directly determine the pressure on natural resources, basic infrastructures, employments, occupations and labour market dynamics and it also determines accessibilities to services like health, education and food for better livelihood. While migrants migrate with one economic position, which sets their initial difference with natives, their economic position changes as they stay longer at the destination as they aimed for migration, and this is determined by the types and amounts of occupational opportunities open to them as compared to those open to the natives [5].

This concept is taken to be relevant to the immigration problem in Assam, as the duration of stay of migrants has been very long, as evident from the long history of migration in Assam [6]. It can be assumed that when people migrate, they do develop themselves from education and skill, so in the hope of improving their livelihood; and they mostly tried to do, by making full use of the resources available at the destination. They have always tried to attain a status equivalent to that of natives and indigenous and sometimes aimed for even better. It has been internationally recognized that if migrants are better educated than non-migrants, it would tend to follow that they would also occupy higher positions in the occupational hierarchy [7]. This idea also has relevance in Assam; as access to education and basic needs are guaranteed to immigrant children as a moral responsibility, which could pave the way for a

stronger generation of immigrants and tougher labour market competition for natives in near future. This could become even more severe if the immigrant community will have a higher share of the young population than natives who, in turn, are therefore more likely to grow with time.

Environmental degradation has become a burning issue of the present era. The protection of environment which is being threatened by growing pollution as well as population, lack of maintenance of ecology and exhaustion of non-renewable resources creates a debate over implementation of various Environmental laws meant for the purpose of protection and development. Apart from the constitutional framework, there are the numbers of legislations related to environment protection enacted after the independence of India which are being used to combat environment degradation throughout the country. But the laws alone are not enough to combat any kind of irregularities arises due to human interference fueled by rise of population due to migration.

The Legislature formulates the laws, Judiciary interprets and the same laws are to be implemented by the Executives designated for the concerned purpose. Judgments of Judiciary are independent of any influence and for overall benefit of human kind taken in conformity with legislations and the Executives are the helping hands in implementing the rule. Without administrative action, implementation of laws is near to impossible. Taking action in coherence is much more needed for proper implementation of any law in force. But in Assam, there are many instances where direct implementation of Environmental laws, even after pronouncement of judgments faces difficulties in implementation due to mass migration and internal displacement of population and their growth in forest lands and reserved area demarcated for conservation.

### Methods

The research involves the collection of information from recent legal cases related to implementation of Environment protection laws where the problem arises due to migration and for discussion, cases most highlighted in the Guwahati city are taken as these cases have wide impact on other parts of the state. Cases are selected by reviewing many other similar cases, on the basis of the objective of the present study where pronouncement of judgments by judiciary cannot be implemented directly by

the administration or the Government and thus burden of liabilities increases on the part of the administrative mechanism which is ultimately the product of large scale migration took place in reserve forest and protected areas of the state. Important comments of the Cases are discussed in a comprehensive way to sum up with some recommendations.

### Results and Discussion

The judgment pronounced by the Gauhati High Court situated in Assam on 8th September, 2015 [8] regarding the 60 bighas of land (1 bigha is approximately equal to 14,400 sq. feet) which were allotted to some landless and displaced people by the Government faces difficulties in implementation. In this case earlier, after two years of peaceful possession, the Ranger of Rani Forest range under Kamrup Forest Division of Assam objected and obstructed to the possession of the land in May 2008. However, the possession was protected through an interim order of the court. Refereeing to the restrictions, imposed by Section 2(ii) of the Forest (Conservation) Act, 1980, the government advocate argued that the notified forest land cannot be used for any non-forest purpose and here since the land was allotted for cultivation; such use is contended to be prohibited by the said Act. The confusion arose whether the particular land falls under the reserve forest area or not. So the court ordered to carry out a joint survey by Forest authorities, the Revenue and the Land Survey Department to make a clear decision regarding the matter. It was also stated in the judgment that if the allotted land is found to be a part of the reserve forest, steps should be taken for cancellation of allotment and refund the premium and, if the allotted land is not found to be reserve forest land, the right of the people concerned should be protected. Here, due to migration of people and settlement in new areas create difficulties in implementing environment protection legislation.

Again, in T Mochahari and 14 others vs. State of Assam and others [9], the grievance of all the petitioners arose out of the threatened eviction of the petitioners from the occupied government land which is considered to be a part of Hengerabari Reserve Forest within Guwahati city. The people concerned are migratory people in different point of time and settled in the area as forest dwellers. The petitioners claim the forest dwellers' right in respect of the occupied area, under the Scheduled

Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006. On the other hand, the settlement officer of Guwahati stated that the land concerned is described as government record as general government land the area is not recorded as forest land. In this case, two government departments have contradictory perceptions on the character of the land occupied by the petitioners. The Gauhati High Court on March 5, 2016 directed the State's Chief Secretary to resolve the controversy after considering all aspects of the matter originally caused due to migration of people from different area and settlement in new area for livelihood. Then, on a later date, the Chief Secretary directed a demarcation of the Reserve Forest area by the Deputy Commissioner, Kamrup district and the Forest Department of Assam.

Growing encroachment and illegal logging in various Wildlife Sanctuaries have jeopardized long term survival prospects of wild lives and nature. This is a reference of Amchang Wildlife Sanctuary, located east to Guwahati city which shelters high diversity of wildlife, besides providing some much needed green cover for the city. A comparison of satellite imagery taken in 2004 when Amchang was declared a Wildlife Sanctuary and that of eight years later lays bare how growing encroachment has eroded a substantial portion of the 78.64 sq km sanctuary since it was upgraded to a protected area [10]. This whole becomes due to recent migration of people from different corners of Assam to this forest area where they get a chance to settle nearby to a city in cheap cost to continue their economic upliftment and struggle for life in a more convenient way.

The recent eviction drive in the said sanctuary was triggered by a complaint from Early Birds, an NGO who wrote to the Gauhati High Court in 2013 about the ongoing migration and illegal encroachment in the forest land apparently hampering the sanctuary. On receiving a detail report of this, the court registered a suo moto Public Interest Litigation (No. 27/2013) [11]. After much legal debates coupled with counter debates; in August 2017, the court disposed of the case, saying that the administration should evict the unlawful resident within a month. Accordingly on August 25, 2017, a drive to remove encroachment from Amchang was carried out and 283 encroachments were removed, followed by another such drive on November 25, 2017 where 408 dwellings had been demolished and approximately 151 hectare of area were recovered. Three days after on November 28, 2017 again 324 more houses were demolished and

80 hectare of area were recovered. In this drive, two industrial establishments, situated inside the sanctuary, were also demolished. Even after the demolition of 1015 households, the eviction drive has not been completed as there are more than 1000 households remaining within the sanctuary.

There was a huge hue and cry in Assam after the eviction drive in Amchang which led to a prayer for temporary suspension of eviction drive. This is because a large number of people including school going students were affected by the drive. The State Government on humanitarian ground took steps towards rehabilitation for the erosion and flood affected landless migratory people or compensation package or both for the genuinely affected people. Thus, the implementing agencies though follow the rules but have to compensate otherwise the people which in turn increase the liabilities of the Government.

#### *Recommendation*

In the light of the above facts related to legal problems arises due to large scale migration, it would be recommended for the administration to wrap up all the migration related legislation considering the need for environment protection as well as for conservation in a sustainable way and develop a effective way to protect our reserve forests and protected areas from unwanted migratory population. For this newly up graded National Register of Citizens in Assam should be given priority for determining the status of population and at the same time Government should work on fresh land settlement covering all types of lands throughout the state which was pending since last fifty years. Once we could finalize status of people and their holdings, we may opt for proper distribution and even ratify new settlements for developmental strategy which could help to minimize the liability in the part of the government.

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