

Evolution of forest laws in india



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BUSTER**

Abstract

By 1860's Britain had emerged as the world leader in deforestation destroying its own woods, Ireland's, South Africa's and North Eastern United States to draw timber for ship building, iron smelting and farming. They also used the destruction of forests to signify their political victory².

This paper looks at evolution of forest laws in India. It starts by looking at worship of sacred groves, elephants in the Medieval Period, looks at society before colonization and people's attitude towards forest. It then examines the change in the conservation techniques, shifting to a more scientific management under the stronghold of the State as against the community management. It then looks at evolution of the forest laws post Independence-how the laws still alienated people and forests arguing that forest dwellers and tribals would destroy the forests. It then also looks at changing outlook of Government in providing rights to forest dwellers and tribals with the passing of the Forest Rights Act.

Introduction

Until the early decades of the 19th century lots of communities in the Indian Subcontinent depended on hunting and gathering as a means of sustenance. The abundant rainfall and rich vegetation facilitated subsistence through collection of roots, fruit, and hunting of small game. These communities engaged in trade with the surrounding agricultural communities, exchanging forest produce such as herbs and honey for salt, clothes, tools and sometimes grain. These hunting gathering communities quite easily on the forest produce.

Before the coming of the British, the commercial exploitation of the forest was restricted to commodities such as pepper, ivory, cardamom etc³.

But with the State intervention growing with the coming of the British subsistence activities of these communities were sharply affected. The colonial state redefined property rights imposed a system of management and control which was contradictory to the earlier one based on local use. Also, colonial foresters promoted species such as teak, pine, and deodar which were not of much use to the locals as opposed to Oak and Terminalia which were used as fuel wood, fodder².

Pre Colonial India

We can find evidence in Vedas, Puranas, and Kautalya's Arthashastra, Ashoka's 5th pillar edict about the importance given to trees, forests and wildlife. Kautalya's classified the forests in four categories, viz. 1. Forest for Timber, 2. Reserve forest, 3. Elephant forest, 4. Forest for hunting. During Medieval Period forests were owned by local chiefs with access rights granted to the villagers. 1

The Mughals claimed only surplus grain production and claimed tax on animals above a threshold. Village communities were self sufficient and dealt with the State machinery as a whole. Taxes were paid as a community and as individual household. Horticulture, sheep raising, fisheries and forest holdings were not taxed. The State had no direct claims over land other than hunting preserves 2.

The agrarian system was integrated with the system of artisanal production, operating for local consumption and trade².

Colonial India

At the time Europeans came to India they were experiencing Industrial Revolution wherein a great range of objects became commodities. This had an impact on the Indian Society. It lowered the emphasis on resource gathering and food production for subsistence instead focusing for use as commodities. It also led to a breakdown of local communities. Now with manufacture and commerce became the dominant activities success and status were now measured in money. In 1807, East India Company acquired royalty rights over teak which meant that locals could no longer use timber for domestic purposes¹. In 1846, sanctions were extended to all forests and forest products. The process was intensified with the building of railway network after 1853. In 1860, company prohibited and withdrew all access rights for fuel, fodder etc¹.

By this time Britain had devastated its own woods and forests in Ireland, South Africa and north -eastern United States to draw timber for ship building, iron smelting and farming. They also looked at destruction of forests to symbolize political victory. Following the defeat of the Marathas, the East India Company completely razed the teak plantations in Ratnagiri.

With oak forests fast vanishing in England, supply of durable timber was needed. Indian teak was the ideal substitute. Search parties were sent to the teak forests of the west coast. Ships were built in Surat and on the Malabar Coast.

Revenue Policy also supported the denudation of forests since removal of forests increased the land assessed for revenue; forests were looked upon an obstruction to agriculture.

With the railways growing at an enormous pace—from 1349 kms tracks in 1860 to 51, 658 kms in 1910, requirements increased by leaps and bounds. The Governor General asked for the establishment of a forest department in 1862 to ensure sustained availability for the railways. The imperial forest department formed in 1864 had before it the gigantic task of forging legal mechanisms to establish state control over the forests which curtailed untouched access of the local community. The Indian Forest Act 1865 was the first attempt at asserting State monopoly² facilitated to acquire land for expansion of the railways. It did not seek to take away the existing rights. A conference was convened in 1874 looking for a more inclusive piece of legislation; it culminated in the Indian Forest Act, 1878. This act came in order to remove the ambiguity regarding ‘ absolute proprietary right of the State’. Three distinct positions emerged—Annexationist, Pragmatic and Populist. The Annexationist position was that all land not under cultivation belonged to the State. The Pragmatic position argued that ecologically sensitive and strategically valuable forests should come under State management whereas other areas would remain under communal control. The populist completely rejected State intervention maintaining that tribals and peasants should exercise their right over forests. Baden -Powell, who was in charge of Forest Act, made a clear distinction ‘ strict legal rights’ and ‘ privileges’. The Madras Government was the most articulate speaking for village people, it argued that ‘ use of forest by people should be taken as

presumptive evidence of property therein 2. Baden-Powell said that rights permissible to free born citizens of England could not be accorded to a Colonial Territory. Brandis however took a different stance and insisted that settlement of rights should be just and fair. At the Forest conference of 1874 majority of the participants disagreed with Brandis' pragmatic approach though the Madras Government, in sharp contrast, believed that State intervention should be minimal. Under pressure from London and Fort William Madras government capitulated and in 1882 agreed to act on the 1878 Indian Forest Act 2. Thus the internal intolerance to the Act was subdued. The State adopted ' an annexationist's approach' implying that all land not under cultivation belonged to the State. Forests were now divided into three classes-Reserved Forests, Protected Forests and Village Forests. In Reserved forests total State control by either extinguishing private rights or by transferring them elsewhere or in exceptional cases allowing limited exercise. In Protected Forests certain tree species were reserved and as when they became commercially viable the forest would be closed for grazing and collection of fuel wood. But with railways expanding at a fast pace demand for forest products increased and thus Protected Forests were also converted into Reserved Forests. There was no settlement of rights and no space for meeting local needs. Under the Indian Forest Act, 1927 the Government could reserve any land as Reserved Forest without issuing any notification. The Act enabled the Colonial Government to reserve more land as forest land2.

Independent India

The main aim of the colonial laws was to take over forest land for their expansion hence settlement rights were not accorded and in places where they were settled tribal rights were rarely recorded. This situation worsened after Independence when the declared forests of the princely states, zamindars, private owners were transferred to forest department. The Government did not settle any claims on land and tribals were subsequently declared as “ encroachers”.

The 1927 act, with slight modifications, is still operational in India. In 1948, Indian Government took the land from princely states and Zamindars and converted to Reserve Forests but no effective measures were taken to settle forest rights. Up to the year 1970 forests were exploited commercially for industrial development and for creating farmland for the peasant class 1.

After 1970, the instruments were extremely conservationist and restricted or did not recognize any existing local use rights. The assumption was that the forests were destroyed by the tribals and forest dwellers. During this phase forest conservation was made a directive principle, fundamental duty and was brought to the concurrent list. Also Forest conservation Act, 1980 also came into being but even these did not provide for any forest dwellers’ rights. In the wake of this act many tribal people were termed as “ encroachers” 3.

Panchayats Extension to Scheduled Areas Act, 1996

During the 1990s Government’s domain was challenged and tribal rights were considered sacred. Because of continued protests with the 73rd

amendment to the constitution recognition was given to decentralized governance in rural areas and Bhuria committee was formed to look into the rights of the tribals. It decentralized the approaches to forest governance by bringing in Gram Sabha and recognized the tribal rights over “ community resources”. It was important as it provided a basis and principle for future law making concerning tribals. However there have been instances of the States changing the provisions of the act in order for it to comply with State Laws. Some states like Maharashtra, Gujarat and Orissa tried to dilute the provisions of the Act. This implied that forest rights will be accorded only if existing laws allowed it.

The Act talked about giving ownership to Gram sabha over minor forest produce. MoEF constituted a committee to define “ ownership”. It defined it as the right to net revenue after retaining administrative expenses of the department and not control. Similarly there is no clarity on “ community resources”. States have their own interpretations. While states such as Orissa and Andhra Pradesh were silent about it, states such as Maharashtra defined it as land, water and forest.

Even though the Central Act considered reserve forests as community reserves under PESA but the official assumption left reserve forests out of the purview of PESA. The NTFP policy, 2000 of Orissa restricted Panchayats control over minor forest produce in reserve forests. It says that Gram Panchayats shall have no control over the produce collected from reserve forest¹.

Scheduled Rights and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Government of India in an affidavit to the Supreme Court in 2004 admitted that a great historical injustice had been done to the tribals and forest dwellers which needed to be set right immediately by recognizing their forest rights. With the acceptance of this legislation the Government accepted that injustice had been done to the forest dwellers and people had been alienated. India, a society where groves of Deodars were worshipped transformed into a society where farmers and villagers themselves propagated fires. The legislation came six months after the eviction of families from forest land. The government of India then introduced the scheduled tribes' bill, 2005. A joint Parliamentary Committee was constituted to look at the Bill suggest measures. As the tribals were served with eviction notices in May, 2002 for being unable to provide evidence of residing in forests, it recommended the cut-off date as December 13, 2005 for the settlement of forest rights. It also recommended including non scheduled tribes living for three generations in the forest into its ambit. The recommendations also included identification of “ critical wildlife habitat” by independent and scientific processes and relocation, if necessary. It also urged for ensuring a minimum support price for minor forest produce. It recognized multiple land use for shifting agriculture and removed land ceiling of 2. 5 hectares for land rights. It made Gram Sabha the final authority for rights settlement. In matters relating to Forest land diversion consent of Gram Sabha was made mandatory. Representation of Panchayatiraj institution was recommended at all levels, Gram Sabha being a core unit for selection and identification of forest rights. It also stated that

these are heritable but not transferable. It also specifies the duties of the rights holder which included wildlife, forest, catchment area and other ecologically sensitive areas.

The JPC Report though, did not take into account health of the resource and fringe of the area³.

JPC Report defined “ forest dwelling people” as people who reside in forests and not in close proximity to it. The other change was that non scheduled tribes living in the forest since 1930 or earlier were to be benefited¹. It was hailed as one of the most revolutionary contributions to tribal law making process¹.

If we have a look at the history of forest management we will see that a few constituencies which had community forest management at the time of independence, forest were in a better shape as those compared to the ones under forest department, so in view of this, the legislation is expected to be good for forest management ⁴.

But conservationist and forest officers regarded it as a death knell for the forests. The bill that was passed in 2006 reduced the importance given to the Gram sabha. It is not the final authority anymore nor is its consent mandatory in diversion of forest produce for non forest purposes. The authority had been passed to sub- divisional committee. Representation of forest dwelling tribes was excluded from the bill. The Gram Sabha had no role when it came to demarcation of a protected area or in deciding the critical wildlife habitat. The Government reserved the right to decide the area, whether or not there would be eviction and the Gram Sabha would only

give its informed consent on the resettlement package. It no longer had the right to disagree.

With the promulgation of the Forest Rights Act, which recognized the rights of forest dwelling people debate regarding “ tigers or tribals” was revived once again thus demarcating and demarcating “ critical wildlife habitat” was a crucial aspect of the Act. The Act states that the forest rights recognized under the Act in critical wildlife habitats of national parks and sanctuaries may be modified and resettled provided no forest rights holder shall be resettled or have their rights affected in any manner for the purpose of creating inviolate space for wildlife conservation. The Act implies that provision of forest rights is possible even within a critical wildlife habitat unless the Government and experts feel that it may violate wildlife conservation. Thus relocation is possible only if it is established that coexistence is not possible and the communities give their informed consent.

The Act provides that MoEF would provide guidelines for declaration of CWLH. These guidelines just reiterated MoEF’s stand of keeping people out of protected areas. They restrict local communities from consulting Gram Sabha. The Government’s expert committee also reserves the right to decide on the participation of a sociologist or a member of Gram Sabha. The guidelines state that resolution of Gram sabha would imply that the process of settlement of rights is over.

But this would not be too hard as the Government could get such a resolution through coercion¹.

We have already seen how the States misinterpreted the Act in order to suit their needs.

The Act also mentions that no forest dwelling scheduled tribe shall be evicted or moved until the verification of rights process is over. But there have been instances where dwellers have been evicted before the notification. One such example is Government's decision to create a special corridor in Dudhwa National Park for free movement of the tigers¹.

National Green Tribunal Act, 2010

Adopted by the Indian Government in 2010 this act is to provide effective disposal of cases related to environment, forest conservation⁵.

Vedanta Industries

Recently after long protests, Government denied permission for Bauxite mining in Niyamgiri, Orissa settling the dispute in favour of the indigenous tribe. In 2005, a memorandum of understanding was signed between Government of Orissa and Vedanta to set up a power plant. But according to the Environment Minister Forest Rights Act, Forest Conservation Act, Environment protection has been violated. Environment ministry relied on the N. C. Saxena committee report. The report found that the legitimate claims of the Dongria Kondh have been discouraged and denied without the legal process which is illegal. The report further states that the Orissa Government is unlikely to implement forest rights act. Serious violations were also in its illegal expansion which amounted to violation of Environment Protection Act. The company has been issued two show cause notices⁶.