

A Study on Legal Aspects of Forest Conservation and Deforestation Protection of Forests – Legislation Perspective

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Abstract: *The world's forests are today under unprecedented strain, with deforestation and forest degradation both widespread and accelerating in most parts of the world. These phenomena are driven by a wide variety of factors, from rapidly expanding consumer demand and the growth of urban areas, to rural poverty and the hunger for land. The work in this paper reports the legal implications and covers the different Indian legislation implemented time to time in concern to protect the ecosystem not affecting the pace of industrialization meeting the challenges of developing economy in this competitive world*

Keywords: Legitimice, Deforestation , Afforestation, Ecological, Conservation, Colonial, Denudation

I. INTRODUCTION

Forestry in Colonial India:

It is difficult to reconstruct the picture of the economy of the 'forest dwellers' before the British intervention. Such reconstruction has to be done largely from the writings of the colonial administrators themselves. It would seem, however, by and large the rural communities enjoyed untrammelled use of the forests and wastes in their vicinity. This would be true of villages practising settle (plains) agriculture as well as those that depended more directly on their forest habitat. While the native kings did subject the produce of the forests (such as medicinal plants) to a small cases as and when they were exported, the products of the forests consumed by the people themselves, were not taken onto account. Similarly, it was reported from Madras that villages had traditional owned al forests within their boundaries. Such a situation would have arisen in a state of equilibrium, arrived at through a process of conflict and struggle between the feudal state and the village communities under it aegis. This equilibrium entailed payment of a certain tribute by the peasantry to the feudal authority, which in turn recognized the existence and continuation of certain communally held rights in relation of forests and waste land. The freedom enjoyed here was extensive according to an official handbook of the forest department, under the "oriental governments, that preceded the Raj, "any one was accustomed, without let or hindrance, to get what he wanted from the forest to graze his cattle where he liked, and to clear jungle growth for cultivation wherever he listed." Supportive evidence also comes from the historical experience of pre-capitalist Europe, where villages invariably resisted any attempt to curtail traditionally held rights over forest produce and pasturage.¹

Early period of British Rule:

Among Britain's colonies, India stood pre-eminent by reason of its vastness, the destiny of the population, and the seemingly immeasurable extent of its natural resources. The early days of British rule were characterized by total indifference to the needs of forest conservancy-indeed, up to the middle of the nineteenth century, the Raj saw a "fierce onslaught on India's forests.

The forest show of interest in forestry-the reservation of teak in Malabar in 1806 was predictably dictated by imperialist considerations. By the sixteenth century, much of western Europe had been deforested, and northern Europe was supplying Britain with large quantities of wood. Between 1600 and 1700, Ireland's forests were devastated to meet England's needs of timber for shipbuilding, iron smelting, and tanning. With oak forests vanishing in England, permanent supply of suitable timber was required for the Royal Navy and "for the safety of the empire depended on its

wooden walls". This was the period of fierce competition between the colonial, powers and Indian teak, the most durable of shipbuilding timbers, saved England during the war with Napoleon and the later maritime expansion. Ships were built in dockyard in Goa and on the Malabar coast, as well as from teak imported in to England.

Forest Policy after Independence:

The continuity between colonial and post-colonial forest policy is provided by two official documents: the post-war scheme enumerated in 1944, and the national forest policy of 1952. It is also noteworthy that one of the first government publications, pertaining to forests in independent India, was intended to publicise the contribution of the country's forests towards the "war efforts".

The 1952 statement affirms that the 1894 policy "constitutes the basis for the forest policy of India up to this day". While its "fundamental concepts... still hold good." A part from the populist rhetoric in which it is couched, this policy shares with its predecessor certain other important features:

There is an explicit assertion of state monopoly right at the expense of the forest communities. This exclusion is legitimised in the name of the "national interest." So as to ensure that the "country as a whole (sic)" is not deprived for a "national asset" by the mere "accident of a village being situated close to a forest".

Thus the main prongs of the policy were identified as six-fold, via, the need for (a) balanced and complementary land use, (b) checking denudation, (c) afforestation (d) increased supplies of fuel, grazing, and small timber to the agriculturist, (e) the sustained supply of timber and other forest produce required for deence, communications, and industry, and finally, (f) the need for the realisation of maximum annual revenue in perpetuity consistent with objectives (a) to (e). Yet there is no awareness of whether objective (f) could at all be compatible (a) to (e), especially in a so-called "welfare state".

India is one of the ten most forest-rich countries of the world along with Russia, Brazil, Canada, USA, China, Democratic Republic, Australia. Together, India and these countries account for 67% of total area of world. ²

Forests Protection Before and After Independence Compared :

The dominant interests behind the formation and execution of state policy have differed. The organic links between colonial and post-colonial forest policy are manifest in several other ways. First, in the disjunctions between the "theory" and "practice" of forest policy. Though the needs of the rural communities have been explicitly recognised and articulated in the populist rhetoric of many policy documents, the actual implementation of policy has invariably concentrated on realizing the productive function of the forests.

The 1988 National Forest Policy had conservation as its fundamental principle. In addition to these acts, the government passed the Environment Protection Act 1986 and Foreign Trade (Development and Regulation) Act 1992 for control of biodiversity. ³

Recent Forest Rules Included

Village forests : 'Village forests' popularly termed fuel forests, are intended, in the main to serve the needs of the surrounding villages in respect of small timber for housing and agricultural implements, fire-wood, leaves for manure and fodder, fencing thorns, grazing and edible forests products. "Apply to part of such reserved forests(RF) or Protected Forests(PF) in the village as assigned under the Indian Forest Act(IFA)1927. These rules will not be applicable to forests acquired under community forest rights (CFRs) and Forests Rights Act 2006. ⁴

Tribal people and Forests:

Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be at associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest.

Shifting Cultivation :

Shifting Cultivation is affecting the environment and productivity of land adversely. Alternative avenues of income, suitably harmonized with the right land-use practices, should be devised to discourage shifting cultivation. Area already damaged by such cultivation should be rehabilitated through social forestry an energy plantations.

Forest based Industries :

The main considerations governing the establishment of forest based industries and supply of raw material to them should be as follows:

As far as possible, a forest-based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of direct relationship between the factory and the individuals who can grow the raw material by supporting the individuals with inputs including credit, constant technical advice and finally harvesting and transport services.

LEGISLATIVE PERCEPTION:-

- Conservation of Forests
- Forest Conservation Act
- Environment Impact assessment
- Deforestation

CONSERVATION OF FORESTS:

Legislation for the protection and Conservation of forests:

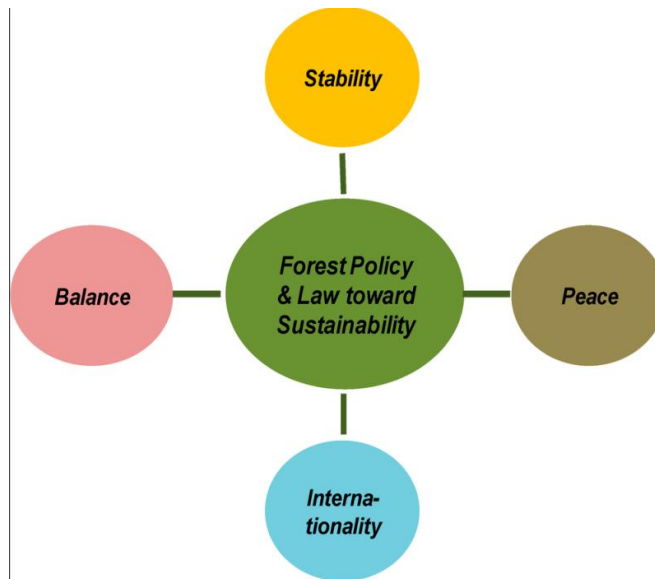


Fig.1) Schematic diagram for implementing forest policy and achieving sustainability

Till the beginning of British rule in India, the forests were well protected and guarded by the people and particularly by the tribal people (forest dwellers). But during the British period the rulers were having an indifferent attitude towards forests and during the nineteenth century, there was a ‘fierce onslaught on Indian forests’. The forests were treated as a source of revenue for the government and not as a natural resource. During this time most of the forests were destroyed in the name of agriculture and the need for more land for cultivation. Later on, forests were extensively cut to meet the needs of timber for ship building, iron smelting and tanning.

Oak forests were cut and shipped to England for the use of the English Royal Navy as the ‘safety of the empire depended on its wooden walls’. The Indian teak of Malabar was found most suitable for ship building and teak forests started vanishing slowly and systematically.

The main purpose of this Act was to facilitate the acquisition of the Indian forest areas to supply timber for railways and to establish the claim to the State on the forest land. . Bhil in Rajasthan and Madhya Pradesh and others to grazing, collecting fuel, and fodder, collecting fruits and medicinal plants and herbs etc. in the forest without having any proprietary rights.⁵

Banwasi Seva Ashram v. State of U.P,⁶ raised an important question relating to the right of the State notify an area as a 'reserved forest' and its effect on the people (adivasis) already living there. In this case, the state government declared the area of Dudhi in Robetsganj tehsil to be a reserved forest under section 20 of the Forest Act. A letter written by the Banwasi Seva Ashram about the rights of these people, was related as writ petition by the court. It was contended that these people had been collecting forest produce, and using the forest for the purpose of grazing and fuel wood etc for generations and now they have been deprived of these rights which constituted their rights to livelihood. Moreover, criminal cases of trespassing and encroachment were registered against them. The state pleaded that the forest land had been acquired to set-up a thermal power station and provide cheaper electricity to the people. The court declared that the land which had been acquired already been acquired would not be part of the writ petition and gave elaborate instructions as to how the interests of the ousted adivasis & land owners should be safeguarded. The court also directed that wide publicity be given to this process and that an Additional District Judge be appointed to exercise the powers of appellate authority in such matters.

The Forest (Conservation) Act, 1980:⁷

The Central Government got the powers to make laws on forests in 1976. Following this the Union Government passed the Forest (Conservation) Act, 1980 which is a land mark in the history of the protection of forests. Mainly, this act was passed to remove the difficulties of the Forest Act, 1927 and to conserve the vegetation cover of the nation.

The main object of the Act is "to provide for the conservation of forests and for matters connected or ancillary or incidental thereto." Conservation of forests is necessary as deforestation causes ecological imbalance and leads to environmental deterioration.

Section 2 of the Act place restrictions on desertion of forests or use of land for 'non forest purposes'. It provides that: "No State Government or other authority shall make, except with the approval of the Central Government, any order directing:-

That any reserved forest, or any portion thereof shall cease to be reserved forest.

That any forest land or any portion thereof may be used for any non-forest purpose.

That any land or any portion thereof may be cleared of trees which have grown naturally in the land or portion for the purpose of using it for reforestation.

Environment Impact Assessment:

Environmental laws and regulations in most countries around the world now include the Environmental Impact Assessment (EIA) as the one qua non for approval of a variety of large and small projects.

As such, the requirements in various legal frame-works have the common and rather straightforward ensuring that environmental quality is not consciously compromised when certain types of products are implemented.⁸

These issues appear to be particularly relevant in the recent Indian context where more than one EIA a project that was earlier approved by an authorized agency has been subsequently revoked by judicial action initiated by public interest litigation, haps the most famous instance of such confusion recent memory relates to the EIA for the proposed MW thermal power plant of the Mangalore ever Company (better known by its promoter, gentrix).

DEFORESTATION: ⁹

Forests among the most basic life support systems of our planet. Forests have played a very vital role in maintaining a balanced ecological system. Forests assist in the essential global recycling of water, oxygen, carbon dioxide and nitrogen. They also influence solar radiation reaching the earth's surface, wind, humidity and temperatures, and thus moderate the climate especially the rainfall. They support an extremely rich bio diversity, which provides a wide variety of products and services. Their role in soil formation and conservation is extremely crucial.

Deforestation occurs for multiple reasons:

Trees are cut down to be used for building or sold as fuel (sometimes in the form of charcoal or timber), while cleared land is used as pasture for plantation. The removal of trees without sufficient reforestation has resulted in habitat damage, biodiversity loss, and aridity. Deforestation has also been used in war to deprive the enemy of vital resources and cover for its forces. Deforestation can destroy genetic variations (such as crop resistance) irretrievably. Deforestation regions typically incur significant adverse soil erosion and frequently degrade into wasteland. Provides for protecting private forests at the request of owners¹⁰.

Deforestation causes extinction, changes to climatic conditions, desertification, and displacement of populations as observed by current conditions and in the past through the fossil record. More than half of all plant and land animal species in the world live in tropical forests.

ACTS PROHIBITED IN RESERVED FOREST:

The following activities are prohibited¹¹ in the reserved forest area:

Clearing of forest for cultivation or for any other purpose,

Setting fire to a reserved forest or kindling any fire or leaving any fire burning, in such manner as to endanger such a forest:

Kindling, keeping or carrying any fire:

Trespassing or pasturing cattle or permitting cattle to trespass:

Causing any damage by negligence in felling any tree or cutting or dragging any timber:

Felling, gridling, loping or burning any tree or stripping off the bark or leaves from any tree or otherwise damaging any tree;

Quarrying stone, burning lime or charcoal or collecting or removing any forest produce;

Clearing or breaking up any land for cultivation or for any other purpose;

Hunting, shooting, fishing, poisoning water or setting traps or snares;

Killing or catching elephants.

II. CONCLUSION

Forests help in maintaining the ecological balance. They render the climate equable, add to the fertility of the soil, prevent soil erosion and promote perennial stream flow in rain-fed rivers. The Supreme Court took note of this role in Rural litigation and Entitlement Kendra v State of U.P. Convinced of the need to stop mining that caused an ecological imbalance in a forest area, the Court said: The trees in the forest draw from the bowels of the earth and release the same into the atmosphere by the process of transpiration and the same is received back by way of rain as a result of condensation of clouds formed out of the atmospheric moisture. Forests thus help the cycle to be completed. Trees are responsible to purify the air by releasing oxygen into the atmosphere through the process of photosynthesis. It has, therefore, been rightly said that there is a balance on earth between air, water, soil and plant. Forests hold up the mountains, cushion the rains and they discipline the rivers and control the floods. Forests also prevent erosion. Besides these benefits from environmental and ecological standpoints, forests bring revenue to the state, supply raw material to industries and act as a source of fuel and fodder. Forest management always gives rise to conflicting view-points, for example, claims of development such as construction of dam or starting an industry in a forest area would raise questions regarding the violation of the forest laws.

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