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PRESERVING INDIA'S GREEN TREASURE: AN ANALYSIS OF FOREST LEGISLATION

- Dr Teena Momsia¹ and Gopi C. Mahore²

ABSTRACT

This Research paper presents the basic features of modern forestry legislation and also clarifies various concerns that should be considered in evaluating the acceptability of forest laws and presents options for declaring the concerns. This way is for improvement and the effectiveness of the Forest laws as the source of sustainable forest management.

Keywords: Forest policy, Forest laws, Agriculture, Restoration of forests, Ecosystem.

INTRODUCTION

Forests are the predominant terrestrial ecosystem of Earth and are found around the globe. It is also a complex ecological system in which trees are the dominant life forms. A forest is with a high rate of photosynthesis affecting both plant and animal systems in a series of complex organic relationships. It can develop under various conditions, and the kind of soil, plant and animal life differs according to the extremes of environmental influences.

Forests play a major role in sustainable agricultural development through a host of channels, including the water cycle, soil conservation, carbon sequestration, natural pest control, influencing local climates and providing habitat protection for pollinators and other species. Agriculture, alongside its allied sectors, exists as one of the largest sources of livelihood in India. Figures ascertained by the *Food and Agriculture Organisation (FAO)* indicate that agriculture still serves as a primary source of income for about 70% of Indian rural households. The government, therefore, endeavours to boost this sector by means of schemes, policies, and tax exemptions for agricultural income. Agricultural income refers to the income earned or revenue

¹ , Dr. Bhimrao Ambedkar Law University, Jaipur

² , Dr. Bhimrao Ambedkar Law University, Jaipur

generated from sources essentially premised on agricultural activities. These sources of income include farming land, and buildings on or identified with agricultural land.

To regulate the movement of forest produce, and duty leviable forest produce, aimed to “The Indian Forest Act, 1927”. It also explains the procedure to be followed for declaring an area as a Reserved Forest, Protected Forest or Village Forest. This act has details of what a forest offence is, what the acts prohibited inside a Reserved Forest, and penalties leviable on violation of the provisions of the Act.

HISTORICAL BACKGROUND

In India, we worship plants because of their medicinal properties and personified as Lord *Varuna* during the Vedic era (Srivastava & Barman, 2019).

In Vedas (*Atharvaveda*), mentioned the human interaction with forest flora where the people categorized, cherished, and cultivated wild plants for their beneficial worth (Bagchi, 2011). Faith and principles of Indian religiousness have encouraged a sense of ‘altruism’ in human minds toward nature, where the concern for forests surpassed their use values (Gupta, 2013).

The restoration of forests has been promoted as a solution to sustain the ‘ailing’ condition of the terrestrial ecology (Ravindranath & Sukumar, 1998). Forests in India have been lost due to their conversion to agricultural fields, factories, and settlement areas (Singh et al., 2017). A study reported that around 5% of Central Himalayan forests were converted to agricultural lands during 1963–93 (Semwal et al., 2004). In a similar study in the Western Ghats, Jha et al. (2000) found 26% of forest cover was lost to agriculture in 22 years (1973–95). Such human-driven land-use change alters the biophysical properties of the forestlands and degrades its ecological functionality, thus causing land degradation (Acharya & Kafle, 2009). These losses have spurred social movements such as *Chipko Andolan* (Shiva & Bandyopadhyay, 1986) involving struggles between government officials and forest-dependent people (Guha, 2001).

The environmental awareness of savers in the Indian history of forests and its management has focused on contrasting attributes of refurbishment based on the forest discourses of the concerned period. There was a contradiction between the objectives of forest restoration during colonial and postcolonial India.

WHY DOES LEGISLATION MATTER? - ASSESSING PRIOR FOREST PROTECTION LAWS

The National Forest Policy of India is formulated on the basis of six paramount needs of the country, *i.e.*-

- (1.) For evolving a system of balanced and complementary land-use,
- (2.) For checking-
 - (a) Denudation in mountainous regions,
 - (b) Erosion progressing space along the treeless banks of the great rivers,
 - (c) Invasion of sea-sands on coastal tracts, and the shifting of sand dunes,
- (3.) For establishing tree lands, for the general well-being of the people
- (4.) For ensuring progressively increasing supplies.
- (5.) For sustained supply of timber and other forest produce is required for defence, communications and industry.
- (6.) For the realization of the maximum annual revenue in perpetuity consistent with the fulfilment of the needs enumerated above.

In 1880, the first effort began in South India to regulate the Indian forests. To enquire into the availability of teak in the Malabar forests, a commission was appointed and the commission reported that trees below 28 inches of girth should not be felled. In 1885, a Forest Committee constituted for defining the capacity of forests found out that more manageable forests had been exhausted which led to a declaration that teak trees had royalty rights in the south and no unauthorized felling of these trees was permitted.

Sir Dietrich Brandis was the first inspector general of forests in India who helped the British formulate the Indian Forest Act of 1865. His assistant did research and came to a conclusion

that a separate legislation was necessary in order to not only protect forests but also to ensure proper management. Subsequently, the first Indian Forest Act was approved in 1865 and came into effect on 1st May 1865. It authorized the British India government to take over any forest and conserve it but the Act did not extend to Madras presidency because its Board of Revenue held that the villagers had rights over the forests and the government could not take absolute control of it.

Later in 1878, a newer revised version of the Indian Forest Act was passed which aimed at removing the drawbacks of the prior Forest Act, 1865. It classifies the forests into three kinds- Reserved forests, protected forests and village forests. It also empowered the government to exercise control over all the forest area except for Madras and some other areas (Choudhary, 2020).

PRESENT LEGISLATIONS

INDIAN FOREST ACT, 1927

The Indian Forest Act, 1927 was approved in 1927 which domineered all previous laws and making them invalid. This Act was more effective in nature involved 86 sections divided into 13 chapters. Its aims were as follows:

1. Consolidating laws relating to forests.
2. Transit of forest-produce.
3. Levying duties on timber and other forest-produce.

This Act allows the government to take authority over private forests held by private owners if it is “needed for a public purpose” as given under section 4 (Land Acquisition Act, 1894). This Act does not define the term “forests”.

Section 2 of the Forest Act, of 1927 has set the meaning of definite words like cattle, forest produce, forest officer, forest offence, river, timber and tree which is effective in determining the true definition of these words leading to precision of the legislation. Under section 77, Penalties

for breach of rules, of the Act, “Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punished with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both”.

This Act put an example for framing State Forest Acts. It makes better the government tax revenue also by laying imposition of duty on timber.

OBJECTIVE OF INDIAN FOREST ACT, 1927

- Consolidate all the previous laws regarding forests.
- Provide the Government the power to create different classes of forests for their effective usage for colonial purposes.
- Regulate movement and transit of forest produce, and duty leviable on timber and other forest produce.
- Define the procedure to be followed for declaring an area as Reserved Forest, Protected Forest or Village Forest.
- Define forest offences acts prohibited inside the Reserved Forest, and penalties leviable on the violation.
- Make conservation of forests and wildlife more accountable.

DRAWBACKS OF THE INDIAN FOREST ACT, 1927

It may look like the new provisions, rules and regulations brought in by the Indian Forest Act 1927 were to protect and conserve the vegetation cover of India, but a deep investigation of the act makes known that the real intention behind the new provisions, rules and regulations of the act was to earn revenue from the forest-produce i.e., cutting down of trees, timber, fodder, wood, rocks and minerals. This act gave a lot of power to the forest officials and organizations which often led to taking advantage of the forest dwellers and it also deprived the nomads, tribal people and forest dwellers of their rights and rights to use the forest-produce. This act never designed to regulate the cutting of trees but to earn revenue from cutting of trees to such a scope that it does not destroy the forest-land.

This Act was apparently made in order to ease the process of conservation of forests and improve the management for the same. However, a thorough probation signifies that it emphasizes on:

- The government claimed that the act was aimed to protect the vegetation cover of India. However, a deep investigation of the act reveals that the real motive behind the act was to earn revenue from the cutting of the trees and from the forest produce.
- The act gave immense preference and power to the forest bureaucracy which often led to the harassment of the forest dwellers.
- Besides, it led to depriving the nomads and tribal people their age-old rights and privileges to use the forests and forest produce.
- The revenue earning potential from timber overshadowed the other values like biodiversity, prevention of soil erosion, etc.

LATER INITIATIVES

1. Indian Forest Policy, 1952

The Indian Forest Policy, 1952 was a simple extension of colonial forest policy. However, it became conscious of the need to increase the forest cover to one-third of the total land area. At that time maximum annual revenue from forests is a vital national need. The two World Wars, the need for defence, developmental projects such as river valley projects, industries like pulp, paper and plywood, and communication heavily depended on forest produce on national interest, as a result, huge areas of forests were cleared to raise revenue for the State.

2. Forest Conservation Act, 1980

The Forest Conservation Act, of 1980 postulated that central permission is necessary to practice sustainable agro-forestry in forest areas. Violation or lack of permit was treated as a criminal offence.

It targeted to limit deforestation, conserve biodiversity and save wildlife. Though this Act provides greater hope towards forest conservation it was not successful in its target.

3. National Forest Policy, 1988

The ultimate objective of the National Forest policy was to maintain environmental stability and ecological balance through the conservation of forests as natural heritage. The National Forest Policy in 1988 made a very significant and categorical shift from commercial concerns to focus on the ecological role of the forests and participatory management.

Some of the other Acts related to forest conservation are:

I. The Wildlife Protection Act of 1972, The Environment Protection Act of 1986, and The Biodiversity Protection Act of 2003.

II. **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006:** It has been enacted to recognize and vest the forest rights and occupation of forest land in forest-dwelling Scheduled Tribes and other traditional forest dwellers, who have been residing in such forests for generations.

4. The Forest Conservation Amendment Bill 2023

In a recent development, the Forest (Conservation) Amendment Bill 2023 has been passed by the Lok Sabha, introducing important amendments to the Forest (Conservation) Act, of 1980. A key piece of legislation that governs forest conservation in India. The proposed revisions include. After India's independence, substantial expanses of forested territory were **designated**. However, certain forested regions did not receive such designations, creating a gap in coverage that left them vulnerable to deforestation and degradation.

On the other hand, some areas devoid of standing forests were also designated as 'forest' lands. This highlights the complexity of India's forest classification system and raises questions about the effectiveness of conservation efforts.

In the landmark Godavarman case of 1996, the Supreme Court imposed a nationwide ban on tree felling and broadened the scope of the Forest Conservation Act to include all land parcels recorded as 'forest' or meeting the dictionary definition of a forest. This ruling extensive protections for forested areas and aimed to prevent the loss of valuable ecosystems.

More recently, in June 2022, the government amended the Forest Conservation Act Rules to establish a mechanism allowing developers to create plantations on land not covered by the Forest Conservation Act and to exchange these plots for subsequent compensatory afforestation requirements. This amendment has the potential to streamline development projects.

KEY PROVISIONS OF THE FOREST (CONSERVATION) AMENDMENT BILL 2023

SCOPE OF THE ACT:

- i. The Bill expands the scope of the Act by inserting a Preamble.
- ii. The Act's name has been changed to Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 to reflect the potential of its provisions.

APPLICABILITY ON VARIOUS LANDS:

- i. The Act, which was initially applied to notified forest land, was later extended to revenue forest land and lands recorded as forest.
- ii. These amendments seek to streamline the application of the Act to recorded forest lands, private forest lands and plantations, etc.

However, the Bill has faced criticism and raised concerns regarding Objections to the Hindi name of the Act as being non-inclusive.

LAND UNDER THE PURVIEW OF THE ACT:

The Forest (Conservation) Amendment Bill, 2023 clarifies the categories of land that will fall under the purview of the Act. The two types of land include:

- i. Land that has been officially declared or notified as a forest under the Indian Forest Act, 1927, or any other relevant legislation.

- ii. Land that has not been categorized under the first category but has been officially notified as a forest on or after October 25, 1980, in a government record.

EXEMPTED CATEGORIES OF LAND:

The Forest (Conservation) Amendment Bill, 2023 proposes several exemptions for specific types of land from the provisions of the Act. These exemptions include:

- i. Forest land alongside government-maintained rail lines or public roads providing access to habitations, rail lines, and roadside amenities, with a maximum area of 0.10 hectares.
- ii. Land located within 100 km from international borders, Line of Control, or Line of Actual Control, allocated for strategic linear projects of national importance concerning national security.
- iii. Land up to 10 hectares designated for constructing security-related infrastructure.
- iv. Land intended for defence-related projects, camps for paramilitary forces, or public utility projects up to five hectares in areas affected by left-wing extremism.

ASSIGNMENT/LEASING OF FOREST LAND:

The Forest (Conservation) Amendment Bill, 2023 amends the Act to require prior approval from the central government for the assignment of forest land to all entities, including government-owned ones. This prior approval will be subject to terms and conditions set by the central government, ensuring greater oversight and control over forest land assignments.

PERMITTED ACTIVITIES IN FOREST LAND:

The Forest (Conservation) Act regulates the de-reservation of forests, and use of forest land for non-forest purposes, requiring prior central government approval. Non-forest purposes include horticultural crop cultivation and activities other than reafforestation. Certain activities, such as forest and wildlife conservation efforts, are excluded from non-forest purposes, meaning restrictions do not apply.

The Forest (Conservation) Amendment Bill, 2023 adds more activities to the exclusion list:

- i. Government-owned zoos and safaris in non-protected forest areas.
- ii. Ecotourism facilities.
- iii. Silvicultural operations.
- iv. Other purposes specified by the central government.

The Bill also allows the central government to specify terms and conditions to exclude surveys like exploration activities and seismic surveys from being classified as non-forest purposes.

POWER TO ISSUE DIRECTIONS:

The Bill adds that the central government may issue directions for the implementation of the Act to any authority/organisation under or recognised by the centre, state, or union territory.

PART B: KEY ISSUES AND ANALYSIS

1. Certain types of forest land may be excluded from the purview of the Act.
2. Exclusion of land that has been recorded as a forest before October 25, 1980, but not notified as such
3. Exemption of land that changed from forest use to non-forest use before December 12, 1996
4. Exempted categories of land
5. Exemptions near border areas would cover large parts of the north-eastern region.

Proposed border area exemptions will considerably influence the north-eastern region, impacting its significant forest cover and biodiversity, given the vast territories it covers:

The Northeastern states of India have the highest proportion of forest cover relative to their geographical area. Mizoram has the most significant forest cover (85%), followed by Arunachal Pradesh, Meghalaya, Manipur, Nagaland, and Tripura (all at 74%). These states are also biodiversity hotspots. However, factors such as shifting cultivation, tree felling, natural

calamities, anthropogenic pressure, and developmental activities have led to a decline in forest cover over time.

The Forest (Conservation) Amendment Bill's provisions allowing the diversion of forest land for security-related projects within 100 km of international borders/LoC/LAC may exacerbate the decline in forest cover in these regions. This 100 km distance encompasses most north-eastern states, Sikkim (47% forest cover), and Uttarakhand (45% forest cover).

Although compensatory afforestation attempts to mitigate the loss in forest cover, it cannot replace the biodiversity lost due to habitat destruction. Additionally, linear projects can significantly impact biodiversity beyond their immediate footprint, with each kilometre of road potentially affecting up to ten hectares of habitat.

Granting forest clearance exemptions for security projects may not effectively mitigate overall delays, as multiple factors beyond clearances contribute to prolonged project timelines

The Forest (Conservation) Amendment Bill proposes to remove the requirement for mandatory central government approval in certain cases of forest land diversion, delegating decision-making authority to state governments and UT administrations. The Bill seeks to fast-track strategic and security-related projects, which often experience delays. However, this blanket exemption may be unsuitable given the potential impacts on forest cover and biodiversity.

A substantial portion of delays in forest clearances occur at the state level. As of May 2023, most pending applications for the first stage of forest clearance approval were with state government authorities rather than the central government. Other factors contributing to delays include land acquisition, wildlife clearances, and various compliances.

The central government has previously established exemptions for specific projects through guidelines under the 1980 Act, including security-related projects near borders, infrastructure projects in left-wing extremism-affected areas, and linear projects. These exemptions are subject to certain conditions, such as avoiding National Parks or Wildlife Sanctuaries, minimizing forest land use, and maintaining diverted land's status as forest land. However, the Bill does not impose such conditions on the exemptions it proposes.

In conclusion, the Bill's focus on expediting project approvals may have consequences for forest cover and biodiversity. While it is essential to address delays in security-related projects, attributing these delays primarily to central government clearance procedures appears unfounded. As such, the blanket exemption proposed in the Bill may not be the most appropriate solution.

Achieving equilibrium between forest preservation and commercial pursuits *Achieving equilibrium between forest preservation and commercial pursuits:*

The Forest (Conservation) Amendment Bill, 2023 amends the 1980 Act, permitting new activities without prior approval, such as silvicultural operations and eco-tourism facilities. While these activities may promote economic development, the blanket exemption raises concerns over balancing conservation and development, potentially impacting the Act's objective of curbing deforestation.

Establishing a zoo within a forest area remains ambiguous:

The Forest (Conservation) Amendment Bill, 2023 exempts zoos from requiring prior approval, raising questions about their necessity within forests. The Supreme Court has criticized allowing tiger safaris within tiger reserves and National Parks, emphasizing the importance of natural habitats over artificial environments.

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