

The Protection of Forests in India: A Legal Perspective

*Prof. Fareed Ahmad Rafiqi**
*Ryhana Farooq***

Abstract

Forests are considered as the ‘green gold’ for any country. These provide huge habitat for wildlife of the country. The areas with mountainous landscape and vast lush green forests add up to the natural beauty of India making it the richest reservoir of flora and fauna throughout the world. However, the natural and non-natural interventions often impact not only the forest capital but its impending consequences as well. The phenomena of regional political movements, unplanned development, deployment of military and security establishments, rehabilitation of displaced, overexploitation of construction materials due to increasing population, increasing number of national and multinational companies are some of the factors which have caused huge footprints in the forest areas. The answer perhaps lies somewhere in legal wherewithal and its effective implementation. This paper is a humble attempt to evaluate the forest protection in India, challenges involved and the efficacy of legal measures involved for the protection of forests.

Keywords: Forest wealth, Human environment, Tribal Population, conservation, flora and green-gold.

* Former Professor, School of Law, University of Kashmir.

**PhD Scholar, Mewar University, Rajasthan

Introduction

The UN Conference on Human Environment and Development at Stockholm in 1972 is considered as the *Magna Carta* of environment protection where the world community got together to discuss environmental concerns related to human development. This conference resulted in the "Stockholm Declaration on the Human Environment." The Principle 1 of Stockholm Declaration succinctly stated that "man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations".¹ The Montreal Protocol, 1987(ozone treaty),² the Brundtland Commission Report of 1987 on sustainable development,³ the Earth summit of 1992 at Rio De Jenario,⁴ the UN framework Convention on Climate Change of 1992,⁵ Earth summit of Johannesburg in 2002,⁵⁶ the Kyoto Protocol on climate change 2005,⁷ are some of the significant international initiatives towards

¹ Jaiswal, P.S. *Environmental Law*, p:16, (3rd edition, Allahabad Law Agency, 1559 Outram Lines, Near Kingsway Camp, Delhi 110009)

² The Montreal Protocol on Substances that Deplete the Ozone Layer(a protocol to the Vienna Convention for the Protection of the Ozone Layer) is an international treaty designed to protect the ozone layer by phasing out the production of numerous substances that are responsible for ozone depletion. It was agreed on 16 September 1987, and entered into force on 1 January 1989, followed by a first meeting in Helsinki, May 1989.

³ Our Common Future, also known as the Brundtland Report, from the United Nations World Commission on Environment and Development (WCED) was published in 1987. Its targets were multilateralism and interdependence of nations in the search for a sustainable development path. The report sought to recapture the spirit of the Stockholm Conference - which had introduced environmental concerns to the formal political development sphere. Our Common Future placed environmental issues firmly on the political agenda; it aimed to discuss the environment and development as one single issue.

⁴ The United Nations Conference on Environment and Development (UNCED), also known as the Rio de Janeiro Earth Summit was a major United Nations conference held in Rio de Janeiro from 3 to 14 June 1992. An important achievement of the summit was an agreement on the Climate Change Convention which in turn led to the Kyoto Protocol and the Paris Agreement. Another agreement was to "not to carry out any activities on the lands of indigenous peoples that would cause environmental degradation or that would be culturally inappropriate".

⁵ The objective is to "stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system"

⁶ The World Summit on Sustainable Development, WSSD or ONG Earth Summit 2002 took place in Johannesburg, South Africa, from 26 August to 4 September 2002. It was convened to discuss sustainable development by the United Nations.

⁷ The Kyoto Protocol is an international agreement linked to the United Nations Framework Convention on Climate Change, which **commits** its Parties by setting internationally binding emission reduction targets.

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the environmental protection and preservation at global level. Forests form the major component of the overall environmental graph in terms of maintaining the ecological balance. However, the forests are increasingly seen as Commercial Avenue rather than natural habitat and source of ecological balance for human beings along with the flora and fauna. Tribal populations feeding upon forests are also under the threat of displacement. Besides these environmental and ecological benefits, forest bring revenue to the state, supply raw material to industries, and act as a source of natural resources and minerals.

Forest Wealth: Conceptual Background

As per the India State of Forest Report (ISFR) 2019, forest cover is 21.67% or 0.13% more than ISFR 2017(21.54 % in ISFR 2017). Forest and tree cover is 25.56% (24.39 % in ISFR 2017).⁸ However, Forest is not equally distributed all over India. The Forest Survey of India (FSI) is a premier national organization under the Union Ministry of Environment and Forests, responsible for assessment and monitoring of the forest resources of the country regularly⁹. According to the survey, the laws on forests and environment in India are more focused on revenue, rather than preservation and conservation of forest wealth. The laws have become defunct being less effective. The local communities' accessibility is very restricted to forest areas. The perpetual lease and license mechanism which has been adopted vis-à-vis forests and activities related to them have also hurt the forest protection. The main legislation for the protection of forests in India happens to be the Indian Forest Act 1927 which is comprehensive and consolidating. The States have also over the period of time come with legislation relating to forests imposing Governmental control over forests by demarcating them into reserved forests, protected forests and village forests. Based on a revenue-oriented policy, its main object was to regulate dealing in forest produce and augment the public exchequer by levy of duties on timber. The Indian Forest Act gives the state jurisdiction over both public and private forests and facilitates the extraction of timber for profit. It is to be remembered that at the inception of Constitution 'forests' were placed under State List. However, in 1976 the field was

⁸ Available at: <https://www.onlyiasexam.com/2020/06/give-account-of-forest-wealth-of-india.html#>:

⁹ **India has 2% of the Global forest area, standing at 10th position among the top ten countries in respect of forest area.** Russia Federation tops the list with 20% of the global forest cover.

placed in Concurrent List, thus enabling both Parliaments, as well as, State to make laws on the preservation of forests¹⁰.

Indian Forest Act, 1927

Indian Forest Act, 1927 is a comprehensive legislation which also consolidated the previous laws relating to forests. The Act consists of 86 sections divided into 13 chapters. The main objects of the Act have been: to consolidate the laws relating to forests; Regulation of and the transit of forest produce; to levy duty on timber and other forest produce.

The term “**forest**” has not been defined in the Act. According to the Food and Agriculture Organization (FAO) forest means:

All lands bearing vegetative association demarcated by trees of any size, exploited or not, capable of producing wood or other food products.

Once the Forest Settlement Officer settles all the rights either by admitting them or rejecting them, as per the provisions of the Act, and has heard appeals, if any, and settled the same, all the rights with the said piece of land, with or without alteration or modification of boundaries, vest with the State Government. Thereafter, the State Government issues notification declaring that piece of land to be a Reserved Forest.¹¹

The Government may assign to any village community the rights over a land which may be a part of a reserved forest for use of the community. Usually, forested community lands are constituted into Village Grazing Reserve. Parcels of land so notified are marked on the settlement revenue maps of the villages.¹²

Protected forests are an area or mass of land, which is not a reserved forest, and over which the Government has property rights, declared to be so by a State Government. It does not require the long and tedious process of settlement, as in case of declaration of a reserved forest. However, if such a declaration infringes upon a person's rights, the Government may cause an inquiry into the same; but pending such inquiries, the declaration cannot abridge or affect such rights of persons or communities.¹³

¹⁰ The Forest law is proposed to be amended in tune with the modern challenges to ecological wealth, for example see, Forest Policy Division, MOEF&CC, GoI [Proposed Indian Forest (Amendment) Act, 2019].

¹¹ Section 20

¹² Section 28

¹³ Section 29

Drawbacks of the Indian Forest Act, 1927

The Act does not thrust upon forests as a source of ecological balance and life habitat. Rather more focus is on generating of revenue rather than preservation of forests. No elaborations have been made upon conservation of forests to protect biodiversity. This enactment paves way for the Government to gain more power over the forest produce rather than its conservation and protection of vegetation. The Act mainly focuses on the forest land, its produce and the officers whereas there are no detailed provisions for the fauna under the Act. There is no mention of protection of wild life, flora and fauna in the Act.

However, a separate legislation¹⁴ for the protection of wild life was enacted later on after a long time. Cutting of timber is facilitated by this Forest Act, even though taxes are levied on them. The Act though wanted to protect the rights of the forest dwellers, it failed to meet the expectations of the local inhabitants as they were denied the occupancy and property rights even after residing in the forests for years. It can be inferred easily from the reading of the Act, that it regulates the cutting of trees and earning of revenue from such cutting of the trees and the forest produce. The interests of nomads and tribal indigenous people living in forest areas from centuries have not been taken care of. They have been deprived of their rights to use the forest and forest produce. It mainly aimed at supplying raw material for forest based industries though forest was accepted as a significant factor in eco-balance and environmental preservation. It is necessary to point out here that revenue oriented attitude towards the forest has continued even after independence. Therefore, this Act of 1927 has failed miserably to protect the forest from unscientific and unplanned exploitation. The Act denied common ownership or occupancy rights or property rights to the occupants of land/tribal. These forest dwellers living there for generations were not given any right over the forest land and forest produce, thereby denying them the valuable right of benefit sharing. Since the Forests were declared to be the property of the government and in case of disputes the Forest settlement officer would have all the rights to decide the claim.

Forest Conservation Act, 1980

In 1980, the Parliament, in response to the rapid decline in the forest covers in India, and also to fulfill the Constitutional obligation under Article 48-A, enacted a new legislation called the Forest Conservation Act, 1980. The basic aim of the Act was to provide for the conservation of forests and for matters connected therewith

¹⁴ Wild Life Protection Act, 1972

or ancillary or incidental thereto. Under the provisions of this Act, prior approval of the Central Government was essential for diversion of forest lands for the non-forestry purposes. The basic objective of the Act avowedly was to regulate the indiscriminate diversion of forest lands for non-forestry uses and to maintain a logical balance between the developmental needs of the country and the conservation of natural heritage. The guidelines have been issued under the Act from time to time, to simplify the procedures, to cut down delays and to make the Act more user friendly. Prior to 1980, the rate of diversion of forest lands for non-forestry purposes was about 1.43 lakh hectare per annum. However, with the advent of the Forest (Conservation) Act, 1980, the rate of diversion of forest lands was controlled to a certain extent.

The Act allowed the diversion of forest land only for certain purposes, such as, to meet the developmental needs for drinking water projects, irrigation projects, transmission lines, railway lines, roads, power projects, defense related projects, mining etc. For such diversions of forest lands for non-forestry purposes, compensatory afforestation was stipulated and catchment area treatment plan, wildlife habitat improvement plan, rehabilitation plan etc. are being implemented, to mitigate the ill effects of diversion of such vast area of green forests.¹⁵

Compensatory Afforestation

To monitor the effective implementation of the compensatory afforestation in the country, an authority named as "*Compensatory Afforestation Management and Planning Authority (CAMPA)*" has been constituted at the national level¹⁶. To

¹⁵ M F Ahmed, "In-Depth Country Study-India", Asia-Pacific Forestry Sector Outlook Study Working Paper Series, Working Paper No: APFSOS/WP/26, October 1997 last visited on 01/12/2021

¹⁶ The Compensatory Afforestation Fund (CAF) Act., 2016 has been notified by Ministry of Environment, Forests and Climate Change, Government of India vide Gazette notification 45, dated 3rd August, 2016. The Act has been enacted to provide for the establishment of funds under the public accounts of India and the public accounts of each State crediting thereto the monies received from the user agencies towards compensatory afforestation, additional compensatory afforestation, penal compensatory afforestation, net present value and all other amounts recovered from such agencies under the Forest Conservation Act, 1980. Based on the Act., the Ministry of Environment, Forests and Climate Change, Government of India had also notified the Compensatory Afforestation Fund Rules, 2018 vide Gazette Notification No. G.S.R. 766 (E), Dtd. 10th August, 2018. Further, the Ministry of Environment, Forests and Climate Change, Govt. of India has notified the National Compensatory Afforestation Fund Management and Planning Authority vide notification No. S.O. 4855 (E), dtd 14.09.2018 and State Compensatory

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butress said scheme a monitoring cell is envisaged to be set up in the Ministry of Environment & Forests to monitor the movement of proposals at various stages and the compliance of the conditions stipulated in the forestry clearances by the user agencies.

Clearance from Central Government for de-reservation of Reserve Forests, for use of forestland for non-forest purpose and for assignment of leases has been made mandatory under Forest Conservation Act, 1980. The prior approval of Central Government has to be obtained by the State Government or other authority for undertaking any of the above mentioned activities.¹⁷ For this purpose, the proposal has to be sent to the Central Government in the form specified in The Forest Conservation Rules, 1982. In case the proposal for clearances are rejected, a person aggrieved by an order granting environmental clearance can appeal to National Environmental Appellate Authority set up under National Environmental Appellate Authority Act, 1997 within thirty days from the rejection of the proposal.¹⁸

Forest Protection & Role of Judiciary

The courts in India have played a dynamic role in preserving the environment and eco-system. The Constitutional Provisions like Article 21 and 14 have been widely interpreted and invoked by the Supreme Court and High Courts for the protection and restoration of glory of forests.

The *Dehradun Valley Litigation*¹⁹ is significant case requiring Supreme Court to balance environmental and ecological integrity against industrial demands on forest resources. The case arose from haphazard and dangerous limestone quarrying practices in the Missouri Hill Range of the Himalayas. The State failed to stop illegal mining in the Dehradun Forests resulting in huge landslides and other environmental disasters like drying up of springs and shortage of otherwise abundant water supplies. Illegal mining leases were renewed and created havoc in the Dehradun valley full of lush green forests. This all happened with the covet support of government authorities. The Apex Court played an activist role in this litigation, essentially conducting a comprehensive environmental review and

Afforestation Fund Management and Planning Authority vide notification No. S.O. 4856 (E), dtd 14.09.2018.

¹⁷ Section 2 of the 1980 Act

¹⁸ Rekha Singhal, “Changing Modes of Forest Governance in India: Evolution or Revolution?” Indian Institute of Forest Management, pp5672, http://awsassets.wwfindia.org/downloads/forest_governance.pdf.

¹⁹ Rural Litigation and Entitlement Kendra, Dehradun v State of Uttar Pradesh AIR 1985

analysis of the national need for mining operation located in the Dehradun Valley. It is to be noted that Dehradun Valley mining operations occupied eight hundred hectares of reserved forests. The court concluded in this case in 1988 that continued mining in the Valley violated the Forest Conservation Act, 1980.

T. N. Godavarman Thirumulkpad V. Union of India²⁰ case has been instrumental in forest conservation in India. Famously known as the “forest conservation case”, it is an example of the judiciary overstepping its constitutional mandate. The Court has effectively taken over the day-to-day governance of Indian forests leading to negative social, ecological and administrative effects. This case was initially instituted to address timber felling in the Nilgiri range of Tamil Nadu. But subsequently, when several cases of similar nature were brought before the Court, they were combined with the Godavarman case. This case emerged as the holistic one dealing with all aspects of forest management including definition of forest, working plans, saw mills, dams, mining, infrastructure projects, use of forest land, encroachment, across the country and is not limited to any specific location or State. In this case, the Supreme Court reinterpreted and expanded the scope of the Forest (Conservation) Act, 1980. The word 'forest' was limited only to government declared forests irrespective of whether it had tree cover or not. Likewise, areas with significant tree cover were not regarded as 'forest' simply because in government records it was not declared as 'forest'. Due to this, large areas under good forest cover were outside the purview of the Forest (Conservation) Act, 1980. However, by its order, the SC expanded the term which now included within its scope not only forests as mentioned in government record but all areas that are forests in the dictionary meaning of the term irrespective of the nature of ownership and classification thereof. The case provided momentum to the environment and forest preservation movement across county.

Bhagwan Bhoi V. State Of Orissa²¹ In this case the land was shown as forest and in possession of the Forest Department. The only question was as to whether petitioner can carry on Saw Mill on the forest land. It was stated that since the petitioner was not granted license for Saw Mill after 1997, so cannot be renewed. The Supreme Court while considering the question about the object and purpose of the enactment of Forest (Conservation) Act, 1980 issued some guidelines which are as follows:

²⁰ AIR 1997 SC 1228.

²¹ 2003 SCC

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"In view of the meaning of the word "forest" in the Act, it is obvious that prior approval of the Central Government is required for any non-forest activity within the area of any "forest". In accordance with Section 2 of the Act, all ongoing activity within any forest in any State throughout the country, without the prior approval of the Central Government, must cease forthwith. It is therefore, clear that the running of Saw Mills of any kind including veneer or ply wood mills, and mining of any mineral are non-forest purposes and are, therefore, not permissible without prior approval of the Central Government.

*Accordingly, any such activity is *prima facie* violation of the provisions of the Forest Conservation Act, 1980. Every State Government must promptly ensure total cessation of all such activities forthwith."*

The Government of India has initiated a process of revitalizing the law and policy to conserve and protect the forest resources by seeking public response to the proposed amendments in the current law which may bring a substantial change in the law and policy on forests.²²

Forest Rights Act 2006: A Myth or a Reality

Indian government enacted the Forest Rights Act in 2006²³ to correct the historic injustice done to tribal people and forest dweller²⁴. Since its enactment in

22 See the notification of environment, forests and Climate change available at : http://environmentclearance.nic.in/writereaddata/OMs-2004-2021/263_OM_02_10_2021.pdf

23 The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006, also known as the Forest Rights Act (FRA), has been in force for the last 15 years. See for details : <https://science.thewire.in/politics/rights/15-years-forest-rights-act-claims-recognition-trends/>

24 The Forest Act gives number of rights to forest dwellers which inter alia include:

- (a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;...
- (c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;
- (d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;
- (e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;
- (f) rights in or over disputes lands under any nomenclature in any State where claims are disputed; (g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

2006, the Forest Rights Act (FRA) has been hailed as a step to correct the historic injustice meted out to tribal people and forest dwellers in India, but even over a decade later, its implementation “has been uneven since its inception and remains incomplete,” finds a recent study.²⁵ The Supreme Court on February 13, 2019 had asked authorities of 21 states to file affidavits explaining why evictions, wherever ordered, under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, had not taken place. The law remains orphaned, there is little enforcement, the nodal tribal ministry and departments remain under resourced with no adequate budget for FRA implementation. There was no effective defence of the law in the ongoing SC case for the last four years by the Centre or state governments.²⁶

Conclusion

The existing laws relating to forests need to be more proactive and holistic keeping in view of the overall components of environment into consideration. There need to be coordination between different agencies of the government who are at helm of preserving the environment via air, water, forests, wildlife etc. The reorientation of existing legislations on environment and forests is the need of the hour to make them more stringent in their implementation. While implementing the forest laws the old colonial policy of exploitation need to be substituted with benefit sharing and feasible blend of sustainable development and ecological balance.

(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages; (i) rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

²⁵ Lee J.L., and Wolf S.A. (2018). Critical assessment of implementation of the Forest Rights Act of India. *Land Use Policy*, Vol. 79, 834-844.

²⁶ Maynek Agarwal, **Forest Rights Act: A decade old but implementation remains incomplete**, Available at : <https://india.mongabay.com/2018/12/forest-rights-act-a-decade-old-butimplementation-remainsincomplete/#:~:text=Forest%20Rights%20Act,13%20December%202018>.