

# Undemocratic Nature of Indian Forest Governance & Need for Empowering Local Communities

Priyanka, Assistant Professor, Zoology, Govt. College Haripur at Manali

Dr. Sumeet Thakur, Professor Political Science, Govt. College Kullu

## Abstract-

India is democratic country which is being governed by a constitution which ensure regular elections at the national, state level and local level. But India also had legacy of more than two hundred years of colonial rule of British which gave birth to a colonial exploitative bureaucratic apparatus. This bureaucratic apparatus was designed for suppressing the native population with the authority of laws and coercive apparatus. Colonial administration had the motive of appropriating the land revenue and monopolizing the forest resources especially for woods. This led to appropriation of common community lands and community forests by the colonial state. There is the need to democratize the forest governance and empowering the local forest dwelling communities.

## Introduction-

India is democratic country which is being governed by a constitution which ensure regular elections at the national, state level and local level. But India also had legacy of more than two hundred years of colonial rule of British which gave birth to a colonial exploitative bureaucratic apparatus. This bureaucratic apparatus was designed for suppressing the native population with the authority of laws and coercive apparatus. Colonial administration had the motive of appropriating the land revenue and monopolizing the forest resources especially for woods. This led to appropriation of common community lands and community forests by the colonial state. This process was initiated at the revenue level by the Permanent settlement, the Ryotwari system and Mahalwari system. The British being imbued in the ideology of John Locke of individual property and had themselves historically decimated their own common lands.<sup>1</sup> They were more inclined to create individual landowner so that revenue collection could be clearly defined and this thinking was clearly visible in the implementation of the Permanent Settlement. Subsequently the Permanent Settlement gave birth to the indirect landlords which became rent seekers and a middlemen in the revenue generation coming out of the agriculture. This experience guided the British subsequently to adopt Ryotwari system (especially in the newly annexed areas of South India) to authorize the individual peasants to ensure higher supply of land revenue and then under the Mahalwari system they authorized particular peasant castes to become the landowner. The constant push for revenue generation pushed farmer to appropriate common land to fulfil the task of revenue generation. Series of forest laws passed by the British colonial state systematically appropriated the forests which were hitherto unclaimed or were under community ownership. This appropriation happened due to various factors like need of wooden slippers and commercial management of forests which would increase the revenue of the colonial state.

### **Myopic Vision of Environment Movement-**

After independence the main leadership of the environmental movement has been led by the urban based intelligentsia which envisions the environmental protection policies from a very narrow perspective. This perspective is legalistic and centralization oriented in formulating the present environmental protection regime. The Forest Conservation Act which was hailed as the premier law which would conserve our forests has ironically strengthen the central control of the government by empowering the Ministry of Environment & Forests. This Ministry has ensured smooth and legalized transfer of forest land for the development projects while completely severing the relationship between the local communities and forests. This act has exacerbated the pace of displacements of the local communities from their land and forests. <sup>ii</sup>This displacement has endangered their survival and forests have lost their true traditional guardians. Indian governance and developmental model has failed in ensuring the recognition and protection of tribal communities and their cultural relationships with forests. The pace of mineral extraction from the forest lands and increasing developmental projects has increased this process of displacement of the local and forest dwelling populations.

Such people are ideologically galvanized by the leftwing extremists to start a guerilla war against the state especially in the tribal regions of India. The Indian state often adopts the narrow security discourse while dealing with this problem. They fail to address the root cause of problem of this guerilla conflict which is the political question of empowering the local communities, shielding them from the displacements out of villages and providing appropriate compensation. Our present model of economic development considers eviction, displacement and appropriation of resources a negative externalities within the broader project of development.

### **The Indian Forest Act and its implications for forest areas**

The Indian Forest Act has tried to define or rather categories different types of forests. The most important categorization of forest area into the reserved forests and protected forests. Reserved forest are the forest which are reserved for the government use. State government has the power to declare any forest area or wasteland after settlements of rights while following the due procedure which empowers a Forest Settlement Officer to listen to the claims of rights of the local community. He is empowered to accept or reject such claims. After the notification of such reserved forests no community can claim any right except those whose rights are recorded and permitted by the settlement process. Such process of settlement often favored the colonial state's interests at the cost of the pre-existing rights of local community which were oral and traditional in nature. <sup>iii</sup> This process of settlement of claim initiated by a colonial state which itself was an illegal appropriator of community forest helped in legitimation of the colonial appropriation of the forests. Colonial Forest bureaucracy followed the pattern which all the bureaucratic organization does that is protection of its own interests at the cost the larger community and forest dwellers. The Act gave them the mandate to only accept the individual claims and not the community based rights or claims which were needed to verify from the documentary evidence. This kind of colonial forest regime ensured rejection of majority of the community forests rights and appropriation of the forest land by the colonial state. Even if the rights are recognized within the reserved forest the state government can revise, rescind and modify such settlements under this act (section 22) up to five years retrospectively

after the settlement. The process of settlement established the forest bureaucracy as the sole arbitrator of this process and the natives were reduced to the wishes of this bureaucracy. Despite the very limited nature of this settlement exercise which the forest law provided this has not been completed. Shankar Gopala Krishnan points out that as per the affidavits filed in the Supreme Court till 2005 only 60 percent of national parks and 62 percent of sanctuaries in the country had never completed their respective process of settlement of rights of local communities.<sup>iv</sup> Shankar Gopal Krishnan asserts that in 2004 the Madhya Pradesh government informed the Supreme Court that the process of settlement of rights has not been completed in 82 percent of the State's forest blocks. Shankar points out that even in such unsettled forests claim areas the forest department conducts itself as if it owns the reserved forests already. In some cases the state governments had amended the Indian Forest Act to permit areas considered as reserved forest under the hitherto Princely States to be deemed to be reserved forest with no settlement at all. This is the case with 40 percent of Odisha's reserved forests. This clearly points out that forests tribes living in these forests were not given the chance to stake their claims to the community forests rights.

Protected forests are second type of forest which as less regulated by the government as compared to the reserved forests. In protected forests all the pre-existing rights continue except those which are barred by the government regulation. But there is no provision regarding recording these rights. Therefore existence of mere legal provision of rights of people in the protected forests does not ensure protection in real life. In protected forests, the government has sweeping rule-making powers over cultivation, collection of forest produce, etc., and such regulations can so severely circumscribe people's rights that their livelihoods are rendered impossible. Thus, the legal regime of the Forest Act heavily favors the government's power to arbitrarily regulate and prohibit activities and to expropriate resources. The burden of proof is always placed on the community or the people, and even recognized rights can later be withdrawn.<sup>v</sup> The Wild Life (Protection) Act of 1972 follows the same pattern, with more severe punishments. Enormous powers, no legal rights, and a lack of accountability create a situation where records simply bear no relationship to reality. The failure to complete the rights settlement process is only one example. Boundaries are often not clearly demarcated, leading to disputes between the Revenue and Forest Departments.

### **Recent forest laws: Intensification of centralization**

In 1980 the Forest Conservation Act was legislated with the goal of preserving the forest wealth of India. This act has made it mandatory to seek the permission of the Central Government for the diversion of forest land for "non-forest" purposes. This permission is termed as the clearance for the diversion and this permission is bureaucratic in nature. This naturally lacks democratic and dialogue oriented procedure which could have realized the rights and stakes of the local forest dwelling communities. The state forest departments are allowed to make proposals for the diversion of forest land which are sent through a central body called the Forest Advisory Committee (FAC). There is the provision for the allocation of "compensatory afforestation" which will replace the forest that has been diverted.<sup>vi</sup>

All processes are controlled by forest officials and there is no space for input or accountability to affected people (with the sole exception of a single 2009 order based on the Forest Rights Act, which has hardly been implemented). Even the agendas of FAC meetings were not publicly accessible until recently. Unsurprisingly, from 1980 to August 2011, fully 94 percent of the projects that sought forest clearance received it.<sup>vii</sup> It is routine for a proposal to divert forest land to be made without the people of the area being aware of it. These injustices are compounded by compensatory afforestation: one study found that shifting cultivators in a Juang village in Keonjhar District, Odisha, had lost their entire livelihood as 95 percent of their village's land had been given to the Forest Department for compensatory afforestation plantations.<sup>viii</sup> The FCA has been designed with the historically colonial mentality of forest management which has historically overridden the rights of local communities. Colonial state has historically hijacked the control over the forests by defining the forests as natural resource and making the local community as encroacher. This state control of forests has been inherited by the democratic state through the use of a small centralized bodies and cadre of officials who are unaccountable to forest dwelling communities.

### **Impact of T. N. Godavarman case-**

The T. N. Godavarman case (the well-known “forest case”) which has further centralized the forest governance in India. The history of this large and complex case is beyond the scope of this paper, but a number of significant orders are important to note. In 1996, the Court directed that the term “forest” in the Forest (Conservation) Act not only refers to notified government forest land, but to all land that is recorded as forest on any government record, and to all land that fits the “dictionary definition” of forest (irrespective of ownership). This order has not only added to the confusion about forest land boundaries, it has also given the Forest Department considerable power over large areas of government revenue land (such as various local and revenue forests across the country, as well as other areas recorded as “forest”), and even over private lands (namely, those classified as “private forests” under various State legislations). Possibly the most egregious consequence of this has occurred in the Northeast, where large areas of community-owned and managed lands in the hill areas had earlier been recorded as “unclassed state forest” under the Assam Forest Regulation of 1891. After the 1996 order, overnight these lands were brought under the Forest (Conservation) Act, though they are not government lands in any sense whatsoever. The 1996 order has resulted in clashes across the country. Moreover, since the order is impossible to implement in toto, it has been used selectively, leading to even more arbitrariness and abuse. A second key order was passed in 2002, when the Court constituted a Central Empowered Committee consisting of forest officials and a few conservationists; this ad hoc Committee was empowered to monitor implementation of the Court's orders, hear “grievances” against them, and even to pass interim orders. As a result of the Godavarman case, the Supreme Court is now exercising a kind of parallel jurisdiction along with the Environment Ministry. But this does not offer much relief to communities facing attacks on their forest and common lands, for the court process is even more autocratic and opaque than the government one. Orders are usually passed without hearing from the affected communities or people. The only parties typically represented before the court are the forest officials of the Central and State governments, corporate houses and affected businesses, and possibly some environmentalists. The result is that the orders and approach of the court are largely shaped by the impressions, prejudices and vested interests that these parties bring before it. Further, as these proceedings take place in the Supreme Court, there is no possibility of appeal. The tendency to issue

sweeping orders without concern for people's rights reached its apotheosis in an order passed in 2001 that barred "regularization" of "encroachment," and led to one of the largest eviction drives in India's history, targeting the common lands and homes of hundreds of thousands of families.<sup>ix</sup> Even today, the Court is typically dismissive of common lands and collective resource regimes. However, this tendency towards increased concentration of power has not gone unchallenged. As resistance to takeover of common lands has intensified, so has the struggle for alternatives to centralized control over land and resources. In forest law, this struggle eventually led to the first significant reversal of autocratic control, which we turn to next.

### **The Forest Rights Act-**

Following mass protests against evictions, in 2006 the Central Government passed the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act — better known as the Forest Rights Act. For the first time, this legislation provided for explicit recognition of the rights of forest-dwelling communities over common lands and resources, including using land for cultivation, minor forest produce, grazing areas, water bodies, etc. It also legally empowers communities to protect and manage forests, wildlife, biodiversity, water catchment areas and their cultural and natural heritage (Sections 3(1)(i) and 5). Finally, the process of determining and recognizing all these rights was to be initiated by, accountable to, the gram Sabha (village assembly), thus marking a sharp shift away from the centralized control regime. Both prior to and after the passage of this Act, however, the movement for it was met with intense resistance from the forest bureaucracy, other sections of the state machinery, as well as a small number of elite wildlife conservationists. Adivasi and forest dwellers' organizations, leftist political parties and other peoples' movements in turn mobilized protests and mass demonstrations across the country, including some of the most widespread Adivasi protests seen since Independence. Despite the level of political and mass uproar, the opposition from the forest bureaucracy succeeded in delaying the Act's passage by nearly two years and then in blocking the Central Government from notifying it into force for another year. The passionate struggle over the Act did lead to a positive result as well. It triggered policy debates and political struggles over two key issues: democratic control over forest management and collective community rights. Centralized control over forests could no longer be taken for granted, either in law or in the public eye. One of the more striking outcomes of this change was a July 2009 order of the Ministry of Environment and Forests, which made it mandatory for any State government seeking diversion of forest land to provide a certificate from the affected gram Sabha's stating that the implementation of the Forest Rights Act is complete and that the gram Sabha consents to the diversion. This order essentially made the legal requirements of the Forest Rights Act explicit in the context of diversion of forest land. Yet, having failed to scuttle it, forest authorities and other agencies have turned to consistently violating and sabotaging this law. In particular, collective and community rights have rarely been recognized. A September 2010 report of the Council for Social Development concluded that 'all non-land rights in the Act — most of which are community rights — have largely been ignored in implementation.' It also stated that 'there has been large-scale interference by the Forest Department in the rights recognition process' and that 'both the Central and the State governments have actively pursued policies that are in direct violation of the spirit and letter of the Act.'<sup>x</sup> The same has been true of the forest diversion process, which is continuing as if both the Act and the 2009 Ministry order do not exist. A particularly striking illustration of this is provided by the case study of the Polavaram Dam. The Andhra Pradesh

Government simply provided an “assurance” to the Central Government that there are no forest-rights holders. The Ministry accepted this “assurance” despite the fact that there are more than 3,000 forest interface villages in the affected area, that the majority of them are inhabited by forest-dwelling Adivasis, and that the same affected districts had seen more than 87,000 individual claims and 1,800 community claims filed. Once again, Polavaram is not alone in this respect; in July 2011, the Ministry responded to a Right to Information request on compliance with the 2009 order by stating that it has no record of the same.<sup>xi</sup>

## Conclusion-

There is the need to democratize the forest governance in India and decolonize it from the excessive bureaucratization. Forest Rights Act should be implemented sincerely and empowerment of the local community should be done by bestowing Gram Sabha with the power of governing the local forest beats. Conservation should be given the local community and forest department should limit its role to regulation and assessment of the working of local communities. Forest Department should become a policy discussion and formulation facilitator by including more scientists, local communities and conservationist in the functioning.

<sup>i</sup> E.P.Thompson’s *The Making of The English Working Class*, Pelican Book, London, 1968.

<sup>ii</sup> Undemocratic and Arbitrary – Control, Regulation & Expropriation of the India’s Forests and Common Lands, Shankar Gopala Krishnan, Society for the Promotion of Wetlands, page 1 New Delhi, December 2012.

<sup>iii</sup> Undemocratic and Arbitrary – Control, Regulation & Expropriation of the India’s Forests and Common Lands, Shankar Gopala Krishnan, Society for the Promotion of Wetlands, page 10 New Delhi, December 2012.

<sup>iv</sup> Khanna, Shomona. 2007. *Exclude and Protect: The WWF-India Case*. New Delhi: SRUTI.

<sup>v</sup> Khanna, Shomona. 2007. *Exclude and Protect: The WWF- India Case*. New Delhi: SRUTI.

<sup>vi</sup> Part- A Forest (Conservation) Act, 1980: prsindia.org.

<sup>vii</sup> Centre for Science and Environment (CSE). 2011. *Forest clearances*. [www.cseindia.org/userfiles/ Forest%20clearance.pdf](http://www.cseindia.org/userfiles/Forest%20clearance.pdf).

<sup>viii</sup> Vasundhara. 2005. *Notes on alienation of Juang communal lands by the State in Juangpirh, Orissa: A case study of Kadalibadi village*. Land Rights Team, Vasundhara. [http://www.vasundharaorissa.org/ DiscussionPaper\\_eng/Kadalibari%20Case%20Study-15.pdf](http://www.vasundharaorissa.org/DiscussionPaper_eng/Kadalibari%20Case%20Study-15.pdf).

<sup>ix</sup> Campaign for Survival and Dignity. 2004. *Endangered Symbiosis: Evictions and India’s Forest Communities*. Delhi: Campaign for Survival and Dignity.

<sup>x</sup> Council for Social Development. 2010. *Summary Report on the Implementation of the Forest Rights Act*. New Delhi: Council for Social Development.

<sup>xi</sup> Sethi, Nitin. 2011. *As forest minister, Jairam wasn’t anti-industry*. Times of India, July 24