



Forests at Crossroads of Bureaucracy and Indigeneity: A Post Colonial Critique of the Contemporary Developments in Forest Governance in India

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Abstract. Forest dwellers in India have been known to serve as the primary stakeholder in forest governance with their livelihoods and subsistence depending on it. Forest landscapes have shaped the identity and traditions of numerous forest-dwelling communities, especially in India. Yet, forest governance in India has been defined by prolonged bureaucratic intercession into the land and livelihoods of these communities. Contemporary forest regimes in India have been grafted through disclaiming the identities of forest-dwelling communities, both during and after colonial rule. Nevertheless, the Forest Rights Act 2006, to some extent diluted this trend, being enacted to address the ‘historical injustice’ to forest dwellers. However, yet again, the Act failed to provide any momentum to the rights of forest dwellers and was criticized on many fronts for glaring inconsistencies, ultimately failing to achieve its stated goals. This paper seeks to deconstruct India's forest governance regime, locating the identities of forest-dwelling communities within the existing regime. The paper adopts a post-colonial lens and seeks to provide some pointers in charting out the future trajectory of the governance of forests in the country.

Keywords: Forest dwellers, Forest rights, Indigenous, Post-colonialism.

Introduction

India is home to almost 275 million people who depend on forests for their livelihood¹. Forests are to them, a source of edible fruits, flowers, leaves, firewood, grazing land for their cattle and a source of several marketable non-timber forest products. Forests are hence integral to their sustenance². However, ever since the advent of organised forest governance, these communities have gradually lost their customary access. The colonial vision framed them as ‘encroachers’, rather than stakeholders who can be meaningfully co-opted in governing the forests. In this regard, there has hardly been any difference between the colonial and post-independence laws and policies. Recent efforts to reconceptualise their role have faced significant roadblocks thereby leaving us crossroads whose future pathways are yet to be charted out. In this context, the authors here have thought it pertinent to undertake this study, which seeks to briefly trace the political ecology of forest governance in India, to provide certain pointers to how the future trajectory must be mapped. The present study uses the post-colonial lens for analysis. There is no easy way to define a postcolonial framework of analysis. On one hand, it depicts a time-based relationship with colonialism, on the other hand, it is often equated with anti-colonialism. For this paper, we are rejecting both the above-mentioned meanings because the former definition insinuates that colonialism as a phenomenon has ended and we are onto the phase thereafter, which is a flawed understanding of how colonialism functions, while the latter definition presumes that the colonised nations may have ideologically critiqued colonialism but are still functioning under the very systems created by it. Postcolonial, in its real sense, is about understanding that an anti-colonial lens leads to the reproduction of the same colonial ideas of hegemony and domination. Through a postcolonial lens, the paper tries to analyse the modes or rules of knowledge/truth creation that led to certain groups being in the position to decide what is right for others. It is about deconstructing the episteme created by a discourse that makes possible certain knowledge to be unquestionable.

1 Forest Governance during Colonial Rule

The advent of an organized structure for forest governance in India goes back to the transfer of administration of India from the British East India Company to the Crown of England. The desire to strengthen administration over the vast, hitherto inaccessible terrains led the colonial administration to consolidate its grip over forests. The demand for timber was also acute. Hence, the Imperial Forest Department

¹ ‘India’s Landmark Law to Empower Indigenous Forest-Dwellers to Sustainably Access and Use Forest Resources’ (*Pathfinders*) <<https://www.sdg16.plus/policies/indias-landmark-law-to-empower-indigenous-forest-dwellers-to-sustainably-access-and-use-forest-resources/>> accessed 1 February 2024

² ‘Livelihood of local communities and forest degradation in India’ (*TERI*) <<http://moef.gov.in/wp-content/uploads/2018/03/redd-bk3.pdf>> accessed 1 February 2024

was set up and a series of legislation were passed, thereby setting up a monolithic, centrally organized, technocratic forest governance regime³.

On the other hand, the colonial rule was also characterized by a distrust towards the natives; the locals. The British viewed the presence of the locals as hardly desirable. Hence, they were focused on constructing barriers around a resource where there could be free reign of the bureaucracy⁴. This approach is reflected in colonial archaeology where legislation like the AMPA served a similar purpose. Forests were no different with, the Indian Forest Acts of 1878 and 1927. Three-fold classification of forests was introduced; the reserved forests, protected forests and the village forests. Reserved forests were deemed to be areas which were already under government control, containing a supply of timber and were rich in mineral resources. These forests were established to nullify all previous forest rights which were provided to the communities and remove their access⁵. The second category, protected forests, comprised of forests that would be demarcated as reserved forests in the future after work plans for the same had been formulated. Access to commercially valuable tree species was restricted and activities like grazing could be limited⁶. Finally, village forests consisted of reserved forest areas where administrative power had been given by the state government to village authorities, but being a reserved forest were seldom exercised by them⁷. Provisions were made under the Indian Forest Act, of 1927 (IFA) to settle or acquire (under the colonial Land Acquisition Act, of 1894) all the pre-existing customary rights of locals in reserved forests. A broad spectrum of activities was penalized in such reserved forests, which included activities like hunting on one hand and pasturing cattle on the other⁸. In protected forests too, the State government was empowered to make laws about the activities that shall not be permitted, or permitted subject to restrictions⁹. Any contravention was to be penalized. Interestingly enough, though the IFA talks about settling individual forest rights, there is no mention of the rights which communities customarily had over forests. But in case of contravention of the regulations, a community could be punished by the acts of an individual¹⁰.

³ Richard Haeuber, *Indian Forestry Policy in Two Eras: Continuity or Change?*, 17 *Environmental History Review* 49 (1993)

⁴ Deborah Sutton, 'Inhabited Pasts: Monuments, Authority and People in Delhi, 1912-1970s' (2018) 77(4) *Journal of Asian Studies*, 1013-1075

⁵ *Supra* n.3

⁶ *Ibid*

⁷ *Ibid*

⁸ The two activities have been mentioned in the same sentence, to bring out the sharp contrast between these two activities, in terms of their gravity. It's pertinent to point out that the punishment prescribed for both of these were the same.

⁹ *Supra* n.3

¹⁰ *Ibid*

2 Forest Governance After Independence

The broad framework of governance laid down during British rule was carried forward with utmost obedience, even after independence. In fact, during the transfer of power and the negotiations of princely states, several forests therein were converted to reserved forests, without any acknowledgement or settlement of those rights¹¹. The focus of the Indian state remained on infrastructure development and forest conservation was viewed as secondary, if not worse. The situation started to change in the 70s. India's participation in the Stockholm Conference and the concomitant amendments to its Constitution reflected further centralization of governance, besides a keen interest in the end of the State towards resource governance¹². The Forest Conservation Act enacted in 1980 made forest land diversion for non-forestry purposes stringent¹³. But till this period, there was hardly any rethinking about the role of forest dwellers or their rights that was reflected in any major law or policy visions.

In 1988, the National Forest Policy, which is the prevailing policy document for forests of the country, was adopted. It was the first time that the concerns around the rights and concessions of the tribal, their access to minor forest produces and the necessity to involve them in governance was emphasized. The symbiotic relationship of tribes with forests was recognized and the policy called for a mass movement with the involvement of women to achieve the objectives stated in the policy.¹⁴

The policy is credited for heralding a new paradigm in forest governance. It was the paradigm of decentralization, participation and bottom-up decision-making.

The momentum created by the Forest Policy led to the formulation of the Joint Forest Management Programme (JFM). Under the JFM programme, forest management was to be carried on through the participation of both the State and forest communities. Forest Protection Committees were established under the control and supervision of the Forest Department.¹⁵ JFM was based on three prongs- participation in the decision-making process, benefit sharing and physical governance. Experience revealed, however, that the focus was more on the second limb i.e. benefit sharing including direct access and control on the use and sale of a large number of timber forest products and other intangible benefits like water recharge, pollination etc. The

¹¹ Arun Bandopadhyay, *The Colonial Legacy of Forest Policies in India*, 38 ½ Social Scientist 53 (2010)

¹² Ibid

¹³ Ibid

¹⁴ See National Forest Policy 1988, paras 2, 3, 4.3.4 & 4.6. Available at <https://mpforest.gov.in/img/files/Policy_NFP.pdf>

¹⁵ Ashish Kothari, Neema Pathak, Arshiya Bose, Kalpavriksh, "Critical Review Of Selected Forest-Related Regulatory Initiatives", Forest Rights and Conservation: FRA Act 2006, India chapter 2.

other two limbs had largely been ignored¹⁶. Moreover, decades of bureaucratisation of forest governance have implementing the scheme a difficult task. ¹⁷

3 Exploring Impacts of the PESA, 1996 and FRA, 2006

Decentralization became a theme of governance in India in the 90s, with the three-tier *Panchayati Raj* system receiving constitutional recognition through the 73rd Amendment. The *Panchayati Raj* structure was extended to the scheduled areas notified in the Constitution through the Panchayat Extension to Scheduled Areas Act, 1996 (PESA). This cemented the foundation for enacting the Forest Rights Act in 2006 (FRA). The Act attempted to address the ‘historic injustice’ faced by the communities whose rights had not been recognized¹⁸. The Act recognizes a host of customary rights of the scheduled tribes and communities dependent on the forest for their livelihood, both individual and collective (community rights).¹⁹ The legislation allowed them to possess and reside in forest lands which were under individual or common occupation for habitation or self-cultivation; rights relating to ownership, access, usage and disposal of minor forest produces, fishing and grazing rights, right to convert leases to titles, rights relating to protection and conservation of any community forest resource, access to biodiversity, right to rehabilitation and development etc.²⁰. The FRA also had provisions for the identification of wildlife habitats and provided a transparent process for excluding human activity from areas reserved for wildlife, providing for resettlement of tribal communities if any, happens during the process²¹.

The Act mechanized a multi-layered system for implementing forest rights. Authorities at multiple levels were deemed responsible for the protection and enforcement of the rights, thus creating a decentralized system marking a departure from earlier legislations. The Act placed gram sabha at the crux of enforcement, authorising it to decide on claims of forest rights. While the district committee could make the final decision on a claim, the gram sabha would decide and verify individual claims. The sub-divisional and district committees were tasked with verifying and maintaining records of claims, while the state-level committee would be in charge of the overall monitoring²².

¹⁶ Dolly Arora, From State Regulation to People's Participation: Case of Forest Management in India, 29 ECON. & POL. WKLY. 691, 691 no.12 (Mar. 19, 2004)

¹⁷ Ujal Kumar Mookherjee & Dr. Manjeri Subbin Sundar Raj, “Whose Forest is It After All?”, XIV NALSAR Students Law Review 33 (2020)

¹⁸ Ibid

¹⁹ Supra n.15

²⁰ See Section 3, Forest Rights Act 2006

²¹ Donald M Schug. "The Bureaucratisation of Forest Management in India." Environment and History 6, no. 2 (June 2000): 229–42. doi:10.3197/096734000129342299.

²² Ibid

All in all, the FRA recognized the customary rights of forest-dependent populations over the forests and afforded them legal protection through a claim determination process which was primarily driven by the *Gram Sabhas*. This placed against the colonial laws, presents a picture of stark contrast. While the governance framework earlier can be characterized as top-down, centralized and bureaucratic, the governance envisaged under the FRA can be characterized as bottom-up, decentralized and democratic.

4 Why are forests at crossroads?

The question then that comes up for consideration is why the authors contend that forests are at a crossroads. A few factors have been highlighted in this section to support this.

4.1 Judicial Challenges to FRA

Immediately after the enactment of FRA, a slew of petitions was filed challenging the validity of the Act was challenged mostly by wildlife conservationist organizations like Wildlife First, Tiger Research and Conservation Trust along with other organizations for ex-zamindars and bureaucrats. The Supreme Court while hearing these petitions, in the case of Wildlife First vs. MoEF²³, ordered the removal of millions of tribal people whose claims had earlier been rejected. The decision was based on affidavits provided by the state governments on the number of rejected claims, the nature of claimants whose claims were rejected and the rejection-to-eviction ratio. It further directed the FSI (Forest Survey of India) to undertake a satellite survey to record the incidence of encroachment in these states before eviction. This order was severely criticised and saw huge protests. Concerns were raised as to the data that had been submitted by the States for rejection of forest rights claims. If forest rights claims are to be rejected under the Act, then justifications for such rejection need to be recorded. The applicants are also provided with a chance to appeal the decisions relating to rejections. Additionally, the data submitted failed to reflect whether the rejection of the claims was final or could be appealed against. In this regard, recently, the National Commission for Scheduled Tribes has written to the apex Court's Registry to invoke its special powers vide clause 8(d) under Article 338A of the Constitution to review the data provided by State governments to the apex Court during litigation.²⁴ Further allegations were also raised that the Ministry of Tribal Affairs had failed to make any serious endeavour to uphold the Act or

²³ Wildlife First Vs. Ministry of Environment & Ors. Writ Petition (Civil) No. 109 of 2008

²⁴ 'Tribal Panel Invokes Special Powers to Evaluate States' Implementation of Forest Rights Act (*Wire*, 2023) <<https://thewire.in/environment/tribal-panel-invokes-special-powers-to-evaluate-states-implementation-of-forest-rights-act>> last accessed 22nd Jan, 2024

protect the rights of forest-dwelling communities. Following a review petition filed by, a stay was placed on the Supreme Court order.²⁵

4.2 Poor Implementation of the FRA

The issue that has plagued the efficacy of the Act has mostly been poor implementation. It is undeniable that the implementation of legislation like the FRA throws up a host of challenges, especially because of the departure from the traditional forms of governance that the country has been used to. However, despite this, to say that the implementation of the Act has been poor is an understatement. In 2022, statistics presented by the MoTA to the Upper House (Rajya Sabha) reveal that only 50% of the claims for forest rights (both individual and community) have been recognised. In some states like Uttarakhand, only 185 forest rights claims have been recognised out of almost 7000 claims filed²⁶. While states like Chhattisgarh and Odisha have done better in this aspect, the performance of states like Assam, Gujarat, Bihar, Rajasthan and Madhya Pradesh presents a grim picture²⁷. A report published in 2015 by the Resource Rights Initiative tried to map the minimum potential areas of forest for recognising rights under the FRA. In this report, it was identified that the FRA would be able to reinstate the rights of forest dwellers in 100 million acres of forest land. Out of that, as of 2021, only 14.75% of the minimum potential area has been recognised²⁸.

All this presents a very grim picture of the overall implementation of the act. Further, recent data also suggests a decline in the filing of claims under the FRA, which can be attributed to the lack of administrative support for the implementation of the Act²⁹.

4.3 Challenges faced by the Implementing Agencies

The MoTA, being the nodal ministry for implementation of the Act has been in constant conflict with the MoEFCC or the forest ministry, which is in charge of administering other forest-related legislations like the FCA and IFA³⁰. Under the

²⁵ 'Eviction of Forest Dwellers' (*Supreme Court Observer*) <<https://www.scobserver.in/cases/wildlife-first-v-ministry-of-forest-and-environment- eviction-of-forest-dwellers-background/>> accessed 1 February 2024

²⁶ <https://sansad.in/getFile/annex/262/AU1258.pdf?source=pqars>

²⁷ Tripathi A, 'The Long Wait: 16 Years on, Only 50% Claims Settled under the Forest Rights Act' (28 December 2022) <<https://www.gaonconnection.com/lead-stories/forest-rights-act-land-titles-tribals-advansi-claims-settlement-indigenous-community-india-laws-analysis-51526>> accessed 1 February 2024

²⁸ M L, Samal AK and Sahu G, '15 Years of FRA: What Trends in Forest Rights Claims and Recognition Tell Us – The Wire Science' (22 December 2021) <<https://science.thewire.in/politics/rights/15-years-forest-rights-act-claims-recognition-trends/>> accessed 1 February 2024

²⁹ Ibid

³⁰ 'Communities Denied Justice Due to Logjam between Tribal Affairs and Environment Ministry' <<https://www.downtoearth.org.in/news/forests/communities-denied-justice-due->

FCA, if any land was sought for a project that sought the redirection of forest land for non-forestry purposes, a forest clearance certificate (FC) is required to be obtained. For the FC, it was essential to show a gram sabha certificate acknowledging the completion of recognition of forest rights in the said forest land. The provision has been continuously diluted by the MoEFCC, despite resistance from the MoTA, and has now been relegated to a post-clearance phase³¹. Further, the Act has to be implemented on the ground by the state tribal affairs department or any other department associated with tribal welfare³². However being overburdened with several other activities, developing strategies to effectively implement the FRA has proven to be difficult in States like Jharkhand. This has meant weak facilitation provided to the Gram Sabha and the Forest Rights Committee, lack of training amongst State and District level committees in the claim determination process and inability to update data regularly relating to FRA implementation³³. Several claims of forest rights languish at the State and District level committees for years despite the rights being recognised by the Gram Sabha, thereby adding another limb to the administrative hurdles in implementing the Act³⁴.

4.4 Single Window Clearance for Ease of Doing Business

Ever since the National Democratic Alliance has come to power in 2014, one of its primary focus has been on ease of doing business³⁵. The government has continuously sought to revamp environmental and particularly forest-related legislation to facilitate EDB³⁶. This has at times meant the bypassing of FRA clearances or simply lack of reference to the FRA. This has meant that there is a lack of synergy between the forest-related laws. Additionally, these initiatives have tried to

to-logjam-between-ministry-of-tribal-affairs-and-environment-59362> accessed 1 February 2024; 'Tribal Affairs Ministry Gives in to Pressure, "Okays" Village Forest Rules' <<https://www.downtoearth.org.in/news/governance/tribal-affairs-ministry-gives-in-to-pressure-okays-village-forest-rules-52402>> accessed 1 February 2024

³¹ Shankar P, '[Commentary] The Underbelly of the Forest Conservation (Amendment) Bill 2023' (*Mongabay-India*, 7 April 2023) <<https://india.mongabay.com/2023/04/commentary-the-underbelly-of-the-forest-conservation-amendment-bill-2023/>> accessed 1 February 2024

³² Sahu G, 'Implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act 2006 in Jharkhand: Problems and Challenges' (2021) 9 *Journal of Land and Rural Studies* 158 <<http://journals.sagepub.com/doi/10.1177/2321024920968334>> accessed 1 February 2024

³³ Ibid

³⁴ Supra n.28

³⁵ Asit Ranjan Mishra, India Vaults to 63rd in Ease of Doing Business Rankings, *mint* (2019), <https://www.livemint.com/news/india/india-vaults-to-63rd-in-ease-of-doing-business-rankings-1157194> (last visited Feb 1, 2024).

³⁶ Rishika Pardikar, Explained | What Will the Amended Forest (Conservation) Act Change? *The Hindu*, Aug. 1, 2023, <https://www.thehindu.com/sci-tech/energy-and-environment/explained-what-will-the-amended-forest-conservation-act-change/article67146543.ece> (last visited Feb 1, 2024). 1484955.html

strengthen the joint forest management practices, which can at times come in conflict with Gram Sabhas' rights to govern under the FRA.

4.5 Indian Forest Act 1927 continues to criminalise the exercise of rights

In all of this, the Indian Forest Act continues unamended without any reference to FRA. It fails to reflect the re-imagination of governance required in the wake of the recognition of forest rights and it continues to penalise acts which have now been recognised as exercise of legal rights under the FRA. The government has attempted to bring in amendments to the act, but the objective of the amendment has been to provide greater power to the forest bureaucracy, rather than affording protection to the rights of the forest dwellers³⁷. These draft amendments have faced severe pushback from civil society leading them to be withdrawn³⁸. But if these inchoate drafts are any pointers to where the governance may head in future, then it presents a picture which is grotesque and grim.

5 Conclusion

Through an analysis of the post-independence laws enacted by the Indian State, we can find that pre-independence, while the colonial narrative in regards to the forest policy was simply the imperial interests of timber production etc, the rights of the forest communities were left suspended. Post-independence, while the anti-colonial perspective of the State was to industrialise the nation and be self-sufficient in all its needs, the entire onus of deterioration of forests was put on the tribes, thereby taking away many rights previously accorded to these communities. While legislations like the FRA, the product of the incessant struggle for the rights of the forest dwellers did manage to create a momentum towards democratisation of governance, it has faced several roadblocks. At the core of these roadblocks lie the lack of political will to implement legislation of FRA. It can be argued that the roadblocks are manifestations of a reminiscent colonial vision that reinforces itself at various junctures in various ways, but its existence is without doubt. Involving forest dwellers in governance, providing them with a voice and addressing their livelihood concerns remains of utmost importance in a country like India, which is characterised by significant income disparities and has such a large number of people who depend on forests for their livelihood. Their involvement as aforesaid may at one end address the questions of their sustenance, on the other they can also supplement the limited resources of forest conservation. On the contrary, if they or their interests are ignored in charting out the future pathways of governance, it will widen the already existing fault lines in the present framework.

³⁷ Government withdraws proposed changes to Indian Forest Act, <<https://www.downtoearth.org.in/news/forests/government-withdraws-proposed-changes-to-indian-forest-act-67774>> (last visited Feb 1, 2024).

³⁸ Ibid

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