Constitution of India and Environmental Governance Administrative and Adjudicatory

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Lecture 32

Forest & Wildlife Law: Introduction to Indian Forest Act 1927

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This seventh module is devoted to a discourse of Forest and Wildlife Law. The law concerning the forest and wildlife is anticipant to the biodiversity law discussed in the previous module, the difference between the two is that the biodiversity law was the direct result of our international commitments through an international treaty arrangement. Forest and Wildlife Law have a colonial backdrop to it.

It was evolved basically as part of a natural resource management legal regime during the British period, survived for a pretty long period of time, even after independence, without much change and the changes that have taken place have been fairly recent. So, it will be interesting to see a legal order concerning the greener aspect of the environment, which passes through different legal regimes having more colonial pattern and independent spirit in view in this body of law. We will first start with the forest law.

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And in discussing the forest law and the policy in relation to that we need have to familiarize as to why a law was planned and put into to application with regard to forest over a period of time right from the British to the present day. In terms of perceptions, forests have been considered as one of the basic risks for economic development, meeting industrial demands, the timber and other resources that are available in the forest.

And in addition, one of the very peculiar features of forest is, underneath the surface you find plenty of mineral deposition for us characterized by the presence of mineral wealth as well. So here, we have an ecosystem, which is full of wealth, both above ground and below ground, and so it is going to be something which will be hide by every developmental motivated government to make use of these resource to the maximum level.

Mega projects of multipurpose kind have come into existence in the forests, even leading to the restoration of forest and things like that and so one perspective is from the economic angle for a second part. The second major dimension of viewing forest from the ecological angle, it is something which is full of life, breathing with life. And conservation of life is an integral aspect of Forestry, and the kind of service that forest could render both visible and invisible, which are referred to as ecosystem services.

They are the natural carbon sinks, then the source of rivers and water bodies and take away the forest, these would get affected seriously and so this has very late ecological significance. And forest, since primarily normally have been the source of sustenance and survival for a large community of people who have been living within the forest or in the close vicinity of the forests in India. It is a source of livelihood; it is a social shelter for a large number of

people. So how much all these dimensions of perceptions find plays in the policy and get accommodated in the law is the subject matter of the inquiry law.

In terms of the policy, if you view the position before the British came to India, forests were considered as a seat of learning and an abode of outlaws. Maybe a contradiction. Yes, it was a seat of learning because all learned sages and seers live there, have their paatshalas there, gurukuls. And to these places, the people from the cities, the civilized part of the state, including the royals would send their children for education and higher learning. So, this was the place of higher learning, in tranquil atmosphere amid civil soundings, it was a place to be enlightened.

It is also a place that it was also populated by wild animals, and also outlaws those who are not behaving in a civilized manner as in a civil society one should, were banished and put into the forests. So, it is a very interesting mix of being a seeker learner and an abode of outlaws. But by and large forests were, considered as a common property of the communities of people who live and around that area, and the state hardly interference in the activities within the forest area, it was less concerned. So, state had minimal interference there, this changed with the coming of the British Empire.

During the colonial period of the British in India, the forests were viewed as a very great economic resource, as a primary state property. And so, as a state property, the state wanted to exercise control and so it started coming out with policies and laws to exercise its eminent domain over them. And they used the public purpose as the basis upon which the state could take control over them. And if you want to know the western notion of management of forest, wherein the state would have an exclusive control, and those who live there, live there just because the state allow them.

If the state does not feel like allowing them, they have to go, they did not have any right, entitlements, or ownership over anything there. So, the states exercise control and authority over the forest is something that we got through the British in India. Even the state did not stop it, the forests that were there in the public domain even those that were under the exclusive private control that were private forests.

Certain people did take a liking for maintaining and managing forests all by themselves on their property. And even the state started looking into those properties as well. And so, the rights and entitlements of the people and communities got restricted, becomes a state intervention control and management, something that was customarily enjoyed by a large

number of people. So, as you see the evolution of the policy, the British came up with a forest policy way back in 1894.

And much later, when we became independent, we came up with our own independent India's forest policy document in the year 1952, but by and large, the 1952 policy document of independent India follow the same footsteps of the British, of considering people as those who are permitted, given some license to be there in the forest and make use of forest resources, and without state authorizing them, they had no claim over that, that kind of an attitude of viewing forest, apart from people and not people in forests as having a symbiotic relationship was not something that was considered a normal thing in the British rule.

And this reflection in both the policy and the law document, people had reduced interests in privileges with regard to the forest over the time. The state coming up with a number of measures of not only restricting people's claim over these, but there were certain times when the state board by certain popular sentiments started allowing people to have some access, a limited access, some entitlement, some right in relation to them more as a client, more as a concession over a period of time, even after we became independent the same practice continued. Limited access, limited use, and limited management at the discretion of the state is essentially the main feature of the policy and law in relation to forest till around the year 1988 in India.

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It is only in 1988 when a new forest policy came bringing and integrating people in first management and also recognizing their rights, their traditional wisdom and putting those traditional native wisdom into application of the forest area was given a new thrust only after

1988, it is a new forest policy that we had in independent India. And so, the basic idea, as you could see of the state centric approach to forest management is quite at variance with what we develop under the constitutional scheme.

The Constitution of independent India is something which views resources, the people and the government differently of considering the government as a public trustee, the resources belonging to the people of India, and so engaging involving people in some form or the other in access to management, and even control over resources which the constitution commands, and even contemplates, was not very much reflected, and continues to be not reflected in major part of the forest law that is in operational in India

There are a few exceptions to this, but it is not in the forest area, till around the 1980s development. That is just with this as a background of a policy pronouncement and a policy biases, how the forests are to be maintained and managed. Initially Forests were part of the Ministry of Agriculture. It only in the year 1980, forests were made part of environmental administration. And so, with the result that the influence, both in the making of forest law, and the policy of the Agriculture Department is very clearly evident.

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Now, let us have a quick look at the Indian Forest Act of 1927 - The law that was made during the British period, and the law that has been brought into application and continue to be in operation even long after our independence. This is the major framework law concerning forests in India, each state can make their own laws, but that has to come within the framework of the Indian Forest Act of 1927.

An Act having 13 chapters and 86 sections, deliberately forests are not defined under this law so as to give enough liberty for the state to decide on when, how and what manner, they needed to decide on what should be a forest area in the state. Forests are created and are classified on the basis of different kinds of utility, value, significance and also the nature and extent of access and entitlement the people will have in relation to the forest.

The second thing is that forests are under the exclusive control of the state and both in the creation and the declaration area of the forest; it follows the same pattern of the land acquisition law. So, under the land acquisition law, the procedure is very similar to what you have here as well, much of the earlier part of the Indian forest act. In each and every category of the forest area, being it the reserve forest, whether village forests, or protected forest, it comes through the notification, first have an intention of acquisition and then later the grievance redressal and then much later the state, settling of the claims in relation to the piece of land or whatever the area under consideration for creating a particular category of forest.

And when once that is done, the state will take possession of it and declare it is the area for which it was to be named as either reserve forest, village forest or protected forest. In fact, the same pattern is followed also in the wildlife law. Now what is the reserve forest? The three categories of forests which comes within the realm of the government control, the first one is the reserve forest; it is by and large, an exclusive government property. It can be any forest land, or even a waste land with a reserve forest and it is the usual procedure, as I was mentioning, under the land acquisition law, which leads to the proclamation and then complete freezing of rights.

And ultimately, after the state takes control over that, extension of all rights in relation to that, any claims that anybody has would get certain either compensation, or any other kind of relief that is provided, and the state will have complete control over them. Normally, the idea behind creation of reserved forest as during the British type, which continues even nowadays, the state should have liberty of knowing whichever kind of plantation that they would like to have there, primarily the major timber to satisfy that requirement this area is called.

But it is not necessary that the reserve forest will have only the major timber. It could be non-timber forest also. But the requirement is through a declaration of the state it should be categorized as a reserve forest. Now distinguishing reserve forest from other kinds of forest is simply this, that it depends upon the different kinds of rights, entitlements and claims that are recognized in this area. It is the least as far as reserve forests are concerned when it comes to any kind of access of any individual or community of people there within the reserve forest

area.

The law lists a number of activities which are prohibited in the reserve forest area. Nobody can enter the reserve forest without you authorising the permission, those who are allowed they do not have much of a right in relation to the reserve forest area, except for some basic livelihood requirements that are subject to the State authorizing it, the state agency that is the forest department authorising certain kind of thing. There cannot be any permanent structure that has been created wherein one would actually stay there. Nobody can enter in the reserve forest area other than authorized people there, and in that plantations would be included. So, there are certain do's and don'ts with regards to the forest that came in the local community living in the vicinity entering in as and when they want to, they need to take permit and permissions to get in there.

This was an exclusive control of the state all the while, and it is only in the year 1980 a new law was made called the first conservation act about which we will be discussing it a little later, wherein the state has the power of de-reserving a reserved forest, of treating it as of any kind so that the relegate of the conservation or protection of this from any kind of human element is reduced through a process of de-reservation.

And for that, the state government will have to take the permission of the central government and they needed to give reasons as to why they are going to de-reserve it, and only upon authorization by the centre, the state can create this as a de-reserve forest area. More about that as we get into the particular part of our discussion.

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The second category of forest is what is referred to as Village forest. The lawmaker did not consider the forest as something which will be out of homes for the common man; the lawmaker knew fully well, that certain parts of the forests are very useful for meeting the livelihood requirements of the people, those who live within and the close vicinity of the forest area. And so, some kind of an access, some kind of a provision need have to accommodate and facilitate such a kind of livelihood interests of groups of people being met.

And for that, one more category of forest was created called as the village forest. Under this, a part of the reserve forest may be carved up by the state; this is under section 28 of the Indian Forest Act where we have an assignment to the village community. So, it is an assignment by the state to the village community, so the state would identify a particular community of people that look, this area you can maintain, manage, and derive benefits out of it exclusively for yourself to meet your basic needs and requirements.

That is what is referred to as a village forest area. Interestingly, there is a separate law, a separate provision in this part which actually provides for joint management of the forest between the forest department and the village community; this is under Section 80 we will see about that later. And this provision has never ever been invoked, but what the government has done is, it has not even made the laws the village forest whereby assigning forest to the village community, but through the 1980 forest policy documented, wherein a mandate was imposed upon the state to engage communities of people in forest management, and to give effect to that a particular kind of a program was launched by the Government of India called as the Joint Forest Management Program.

In this, the state can assign any part of the forest area to a handpicked group of people from a village community to maintain, manage that patch of the forest land in the manner prescribed and determined by the forest department. And the benefits derived there from can be put to use by the village community. But this is under direct supervision, control and authority of the forest department.

So, it has nothing to do with the village forest, but this is under a program called the JFM Program launched by government of India in late 1990, a program, which includes people into the mainstream of forest governance. The joint forest management program had its genesis in something that a very enterprising forester did a good experiment of using his discretionary power of involving local communities of people in an area called as Arabari in West Bengal.

And through this experiment, the forest conservation effort was a major success, something that was done some 30 years back of so. The government thought it fit to replicate that template that was created in Arabari and transformed into a national program as JFM whereby at the local communities at the state level can be involved in managing patches of forest land, it did not create any right in any community.

It was something that would by way of a grant and the grant so given by the state can be withdrawn anytime, for whatever reason that the forest department would deem fit, to take it back. And so, it was once again a concession, nothing to do with the Village Forest idea or forests that are jointly managed between the forest department and the communities of people under contractual arrangement between the two as has been provided under Section 80.

So, basically the Joint Forest Management Program has its roots in the 1988 Forest policy document, has no statutory backing. And some of the states over a period of time incorporated it in the rules that they made, and under the rules this program was made part of the law as well. Then you have the time category of forests called as the Protected forest. There are provisions that are mentioned on the slide here. In terms of description it is any forest land or wasteland, which is not a reserve forest.

That means any forest land, other than reserve forest is a government property and the government can declare this as a protected forest. But what are the markers in determining something as a protected forest? The only marker is that the state either for any purpose of conservation or for facilitating certain kinds of plants and animals to get reared there, maybe during the breeding season or anything like that, for parts of those forest area, which are

known for that particular phenomenon, maybe earmarked and called as the protected forest area.

Protected because human intervention would disrupt the natural process there that is the only scientific reason not explained that, but you had to borrow from science to really understand the idea of a protected forest. But not just that. There is a provision also for reserving trees, certain trees which are considered to be very valuable, and are very great ecological and geomorphological significance and our ecosystem by themselves, like the big banyan tree can be reserved and the reserve tree wherein it is a no-go area, no member of human community can meddle with it, it is under complete protection of the state forest department.

So, there can be protected forest, there can be protected trees as well, which are referred to as reserved trees. The state governments have the power of making rules with regard to the protected forest area. It is an interesting proposition that is one full chapter under the Indian Forest Act wherein the state not only exercises complete exclusive control over the forest that comes under the government property, it also exercises power even beyond the government forest property and that has been very clearly identified and enlisted under one full chapter under this Act.

Number one, any land, it may be a forest land or it may be a private property, which is not a forest area, but all of them are private properties, which are very close to a forest area in order to protect the forest that is under the exclusive control of the state, the state can impose certain conditions on the kind of use of a private land that will be put into, why should the state impose restrictions or use of private land because I have complete ownership over that, I can do whatever I want to do with that particular property?

The reasoning behind this provision is that yes you have you the ownership; you have a right to use your property the way you like. But it is under subject to this particular limitation, that human activity should not in any way affect the integrity of the forest. Suppose if yours is a low-lying area which is prone to flooding during the rainy season then the state may say that look, whatever flood that comes on your land, how do you channelize, how do you allow it to run off is your lookout, but do not allow the water that flooded your land to flood the forest area is under your direct control.

So, you have an embankment, you have some kind of a construction to prevent such a kind of a spill over. Like that, the state can impose conditions on the use of private to protect the forest, which is the control of the state, this is one problem. The second one is that the state

can prescribe conditions as to how you are going to manage your property so that your management and your use of your property will not harm the forest that is being managed by the forest department.

But when such conditions are laid down, and if the owner expresses difficulty, that look you have laid down conditions, I cannot manage the way that you asked me to manage, then in that event the state would actually manage that land for him. So, it assumes the management of that land to fulfil the requirements of the rules that they had laid down for that particular purpose. While the ownership prevents that the owner, the private owner, the Management is taken over by the finance department. This is the second situation whereby the government can have control over private lands.

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The third situation, the third situation is for a particular purpose, the state may require a private land to be put to use, maybe for a few months' time, or a few years period of time or anything like that, and after having taken control over that as provided under this law, when it seeks to return that land, the owner may refuse to take it back, it is a temporary acquisition and after temporary acquisition, the purpose is achieved, the state wants to return that land to him and the owner says that you have already used this land, now this has become useless for me or I have lost interest in this particular land, you take it over and you expropriate this land,

The state will have to take that land, there is no choice left for the state there. I as a private owner, I do not want to have any more use of this, because you have affected certain changes in it and now we are returning it with some compensation of course but that is inadequate for me, I am no longer interested in managing this subject to those conditions that you have laid

down, takeover, that is the third situation.

The fourth situation where the state can take absolute control over the property and not only expropriation. But it can also be done at the behest of the request to the owner, that look I have a land which is close to the forest area managed by you. I have a fear that my management of this particular land, the manner in which you want me to use my land will not be met with whatever resources, with whatever knowledge and skills that I have. Do one thing, all these conditions are acceptable to me but I cannot manage.

You manage it all the while for me, you protect it at my request and for which, whatever the charges are, you can recover it from whatever overflow that comes from the land and the rest of the money you can hand it over to me. So, I am like an absentee landlord. My land is managed by you, you maintain and manage that, you use all the resources there. And from whatever that you get the overflow your administrative costs are met, and you return the excess whatever that remains out of it. And this is a provision that has been made very significantly for a particular purpose.

The government wanted to have more control over private lands and this provided the device, means and mechanisms for the state to exercise control over land which is not with the forest area or the government. So here is a very unique law, the forest law, which not only gives complete control over the forest area under the government as a government property, it can also give certain powers for the state and state agencies to exercise control over private lands to protect the forest.

If you look to the subsequent provisions, quite a large number of provisions are devoted primarily for the purpose of regulating activities concerning timber, because timber is considered as a major forest produce. The new nomenclature that has been given to timber produce. So for growing timbers for a survival, that is idea that the British made this law and that is the reason why they created a large number of provisions which deals with cutting of trees, seasoning them, transit of trees, the wood out of the forest area, the licensing system in that regard, the mode, method of cutting, seasoning and then taking it to the market, the kind of inventory that has to be maintained, levying of the duty of use of that, collection of the drift, the stranded timber, all these are provided in as many as 3-4 chapters under this law.

It is about timber cutting, timber transit, timber which is drift, which is stranded, and which is

confiscated so there are penal provisions also, and which are put to auction and different kinds of uses by taking to the marketplace and then later sale and all that, this has been a major part of the forest law. There are also provisions, penalties and procedures in relation to them. These include seizure and release of forest product, anything that is there in the forest, even when it is brought from outside the forest.

Once it is found in the forest area, it is the state property and anybody who is going to take it out of the forest area is guilty of a forest offence. And so, there is provision for seizure, criminal law provisions are here for confiscation and if there are any grievances, within this law there is a grievance redressal mechanism for getting appeal. The property is completely with the state, and punishments are there for violation of it.

There can be not only monetary sanctions that could be imposed, even arrest could be made, there can be preventive action if the forest authorities suspect somebody at a later point of time would come and do the thieving activity, there are provisions for trial, there is provision for compoundable offences. There is an interesting provision with regard to what is called as cattle trespass, it is already been explained that no human being can transgress, interfere, enter into the forest without authorization, it becomes trespass of an individual liable for legal action.

But there is also a provision for what is called as cattle trespass. And here the expression cattle does not mean cattle alone as we know in common parlance, it could be any animal, any animal other than the human being. So, an ant and the elephant apart from the cow can come under this category, which is not to be found in the forest area but was outside that, getting in there is considered to be a punishable act.

Supposing, cattle transgresses into the forest area, the cow herder accidentally allows the cattle to go there and the cow gives the cow dung there, leaves it there. You want to get the cattle out of the forest area, this guy need have to go to the forest officer with a request that these were unintentional and there is no desire of any trespass there and to get the cow dung he will not get it because once it is found in the forest area, whether it is done by bringing something else into the forest area or that was very much there within the forest earlier, it becomes a forest property.

That is a very interesting provision; anything found in the forest is government property. So, you have provisions with regard to the creation of different cadres of forest officers. And as I was mentioning earlier, there is a separate provision for joint forest management under section 80. And what actually amounts to public purpose are mentioned here.