

## CHAPTER 4

### Forest Policy & Evolution of the Community-Forest Relation in India

#### 4.1 The Debate in Indian Forests History

Ancient historical evidence from the Indian subcontinent does not suggest any extensive intervention or complete usurpation of local resources especially forests by the state. The rulers controlled a limited area or few species of high commercial or strategic importance, leaving the remaining resources to be used by the local community. Such limited control and exploitation by the state in the pre-colonial period did not pose a serious threat to either to the ecology of the forests nor to its customary users, and thus ensured continuity and sustainability of natural resources (Guha and Gadgil<sup>i</sup>, 1989). But, it is also true that there were numerous conflicts over land, pastures and forests between the customary users and more powerful strata of the society prior to the colonial rule.

Expansion of the agricultural area in the Indian subcontinent was made possible through deforestation of forest lands over the centuries during the pre-colonial period (Guha<sup>ii</sup>, 1996; Parasher<sup>iii</sup>, 1998). Such expansion of agriculture frontier was encouraged by the rulers especially for revenue, as forests yielded less or at times no revenue to the state. This prompted the imperial forest historians to conclude that much of the denudation of forest resources in India to have predated the commencement of colonial rule in India (Stebbing<sup>iv</sup>, 1922). Taking cue from the argument put forward by the colonial scholars, extension of state charge over forests was thus accepted to be of a mere historical continuity and not something alien to this part of the world.

In the Indian sub-continental environmental history literature, the most debated issue has been whether the extent of forests denudation in the colonial period exceeded in comparison to that under the pre-colonial period. On the one hand the imperial historian religiously defended their argument that most of the forest resources were denuded or destroyed prior to the commencement of colonial rule, and on the other hand, *swadeshi* historians did not leave any opportunity to put the onus for large scale loot of the forest resources on the “Un-British” rule in India. It is true that, while the earlier rulers had failed to understand the full commercial significance of forests as well as its strategic importance and had thus taken little or no interest in its conservation; the colonial government had exploited the forests to the fullest extent possible by bringing it completely under the state control. It has been rightly pointed out in this context by Saravanan<sup>v</sup> (1998,1999) that irreparable damage and large-scale

deforestation was done to the forests by the contractors who were engaged to exploit the forests under the colonial rule prior to the enactment of any forest legislation by the state. The colonial policy encouraged clearing of forests land not only for its produce, but also to bring those lands under agriculture for revenue settlement.

Diversion of land from forest to non-forest use not only had a direct effect on the livelihood of forest communities, but it also gave rise to a large gap between supply and demand for forest produce especially timber. The latter required introduction of some forestry practices to ensure steady supply of timber for commercial and military purposes. Scientific management was introduced through nationalisation of forests, which ultimately led to alienation of the dependent communities. It is but quite surprising that there was virtually no concern on the part of the scholars to understand the impact of nationalisation of forests (read *forest legislations* and *forest policies*) on the forest resources in general and on the livelihood of forest dependent communities in particular. These issues were however brought to the forefront only recently by scholars like Ramchandra Guha, Madhav Gadgil, Richard Grove, Richard Tucker, Ajay Rawat, Chetan Singh, David Arnold, David Hardiman, Mahesh Rangarajan and others. That the process of systematic alienation of people from forests was a gift of the colonial rule becomes obvious if we trace the history of forest administration in the Indian sub-continent.

#### **4.2. Forestry in Ancient India (upto 1000 A.D.)**

Perhaps the earliest reference to forests was found in the Vedic text written before 1000 B.C. The *Atharvaveda* is an important *ayurvedic* document and all the other Vedas have *slokas* depicting the man and nature harmonious relationship. The Vedic tradition of intellectual pursuit in forests better known as *Tapovana* produced rich text which came to be known as *Aranyakas* (Poffenberger<sup>vi</sup>, 2000). Much later during the Mauryan Period (321 to 236 B.C.) the historical account of forests in the Indian sub-continent can be traced in Kautilya's *Arthashastra* written in 320 B.C. and later in Ashoka's inscription dating 273 – 236 B.C. Chandra Gupta Maurya had a Department of Forest under charge of *Kupadhyaksha*, who was in turn assisted by number of *Banopals*. The functions and responsibilities were well specified by law (Kamal<sup>vii</sup> et. al., 1999; c.f. Mustafa<sup>viii</sup>, 2002).

The Mauryan ruler had classified forests into three categories, namely, reserve forests, forests donated to distinguished Brahmins, and public forests. Reserve forests were further classified into (a) reserve forests exclusively meant for the use of emperor, and (b) reserve forests under

the administration of the state. Afforestation programmes were undertaken in reserve forest for specific purpose and public rights to such forests were strictly regulated. People had access and usufructuary rights in public forests. There was prohibition in killing animals in the forests on *Purnima*, *Chaturdashi*, *Amabasya* and *Pratipada* days (Diwedi<sup>ix</sup>, 1980; *c.f. ibid*).

After the fall of the Maurya Empire the Kushans succeeded them, and they were in turn succeeded by the Guptas. The Guptas considered the forests to be an important source of revenue for the state exchequer and therefore, appointed *Gaulmikas* who were entrusted with the responsibility to collect forest revenue. Forests provided timber, bamboo, cane, natural and medicinal herbs (Kamal et al. 1999; *c.f. ibid*). From the account of the Chinese pilgrim Hieun Tsang's for the period 629 to 645 A.D., it appears that there was abundance of forest and wildlife in the sub-continent. This implies that though the state allowed extraction of forest resources, yet, the extent of exploitation of natural resources was kept at a manageable limit so as to protect the environment and as well as secure the livelihood of the people.

#### **4.3. Forestry in Medieval India (1000 to 1700 A.D.)**

In the first part of the medieval period i.e., 1000 to 1206 A.D. the sub-continent witnessed number of invasions and absence of a unified government. Later under the Delhi Sultanate (1206 to 1526 A.D.), and the Moghul Empire (1526 to 1700 A.D.) there was a central authority covering much of the subcontinent. As waves after waves of people entered the subcontinent from the west, more and more lands were cleared of forests to meet the growing need for homestead and farm lands. It was considered that the stock of forest was unlimited and forests to be the perennial source of revenue. Also lands cleared for agriculture was an important source of revenue for the state exchequer. Therefore, various dynasties of the medieval period encouraged expansion of the agriculture frontier. The Moghul's had introduced an elaborate system for the collection of tax revenue both from agriculture and forest lands.

The Mughal rulers took interest in forest not only for revenue but also for game. Certain tracts of forests were declared as *sikargarh*, exclusively reserved for hunting (Rangarajan<sup>x</sup>, 1996). Sher-Shah Suri, Jahangir and Akbar planted trees along roads and established botanical gardens which had both exotic and indigenous plants. All this does not suggest that the medieval rulers were more conservationists or were concerned for their posterity. Yet, it is true that the magnitude of forest resources exploitation by the dominant class and the state

during this period was nothing as compared under the colonial rule (Rangarajan, 2002). Even when mindless destruction of forests was taking place during this period to finance war or for strategic reasons, the state however never pursued a policy of systematic alienation of the people from forests. Grove<sup>xi</sup> (1994) on the other hand argued that clearing of forests land was a state sponsored programme during the period and it was a declared policy of the state to increase revenue through conversion of forests land to agriculture.

If we accept that the medieval rulers considered that their sphere of influence extended even in forest lands, it does not mean that they failed to recognise the customary rights and the importance of natural resources in rural lives. King Shivaji of Maharashtra was concerned about reckless felling of trees whose produce helped people to meet their basic needs (Poffenberger, 2000: 14). The Indian rulers left these forests dwellers undisturbed, as their ambition to succeed was focused on fertile river plains and in villages and urban settlements (Poffenberger and McGean 1996: 58)<sup>xii</sup>. That the Indian rulers managed forests sincerely for common good was even recognised by Brandis (Guha<sup>xiii</sup>, 1996: pp. 89-90).

#### **4.4 Colonial Forest Policy**

At the beginning of the 19th century in India more than two-thirds of the land mass in India was uncultivated (Singh, 1986)<sup>xiv</sup>. As forests lands close to the villages were enough to satisfy the subsistence needs of the people, the forests distant from the locality were generally left untouched. Often these virgin forests were concentrated in remote difficult terrain, where India's indigenous communities lived. The ownership of forests was mainly with the local rulers. The local communities, however, had largely unhindered access and use of forest resources to meet their requirements. Many of these communities had evolved their own informal norms and customs for protection and sustainable use of forests. In the early years, the British also had considered forests and other wastelands to be the property of village communities under whose boundaries they fell, and did not interfere much with the local customary usage.

Forests are of immense importance to economic and cultural life of the rural communities. So a change in the forest quality<sup>xv</sup>, as well as any changes in the institutional arrangements governing their use affects the livelihood of the rural community in general and that of the forest villagers in particular (Arnold & Guha<sup>xvi</sup>, 1998). Usurpation of forest rights in India has been identified with the nationalisation of forests under the colonial rule. State forestry

developed during the British rule when colonial interests had metamorphosed from mercantilist trade to revenue administration.

#### **4.4.1 Early Colonial Forestry (1806-1865)**

In the beginning of the British rule, the “revenue-producing capacity”<sup>xxvii</sup> of the forest wealth and their importance to people was largely unrecognised. Till the middle of the nineteenth century, traditional dues and cesses were the main source of forest revenue to the colonial ruler<sup>xxviii</sup>. The British, like the earlier rulers, were interested in the revenue that the land earned. Land as an asset earned more revenue if brought under cultivation<sup>xxix</sup>. So forest was considered as an obstruction to the expansion of agriculture and was therefore considered to limit the revenue earning opportunity of the state. In the initial years of the British rule more and more forest land was encouraged to be brought under agriculture with the sole objective to increase the revenue of the exchequer (Stebbing<sup>xx</sup>, 1922). The early British interest in the sub-continent forest had nothing to do with forest conservation but was rather guided by its military designs (Agrawal<sup>xxi</sup>, 2005). It was the growing deficiency of oak in England that compelled the King’s Navy to meet its need by substituting teak for oak. In 1800, a Bengal-Bombay Joint Commission was appointed to enquire and recommend measures to conserve teak of the Malabar constituency. In 1805, the Court of Directors<sup>xxii</sup> sent a despatch enquiring to what extent the King’s Navy might rely on the supply of teak timber for its ships. The first step towards creation of a forest department was thus taken with the age old British realisation that the safety of the empire was dependent upon its “wooden walls” The immediate outcome was government assertion that the royalty right on teak trees enjoyed by the Indian princely states earlier would henceforth be vested in the Company along with a prohibition of further felling of teaks in the South. Further pressure from the navy demanded that an officer<sup>xxiii</sup> be appointed to ensure uninterrupted flow of timber for shipbuilding. The manner in which the supply of cheap timber was ensured led to discontent and the Conservatorship was abolished in 1823. In 1831 the Indian Navy Board recommended the re-establishment of the Conservatorship (Stebbing<sup>xxiv</sup>, 1922: 65). It was not until 1838 that suggestion was put forward to appoint a Revenue Officer to conserve teak forest and he be authorised to prevent unauthorised felling of small timber and undersized trees (Stebbing<sup>xxv</sup>, 1922). The need was soon felt to seek scientific advice in the management of forests and only in 1847 that Dr. Gibson was appointed Conservator of Forests in the Bombay Presidency.<sup>xxvi</sup>

#### 4.4.2 The Period of Forest Reservation (1865 – 1927)

From early 19th century, forests were under immense pressure, largely due to the commercial interest of the imperial power. The British presence from the late 18th century started to change land and forest usage in India. The state took control of the forest alleging destruction, unscientific traditional practices and inability of the local communities to manage these resources with care. As a result the Imperial Forest Department was established in India in 1854, and a year later the first Indian Forests Act 1865 was passed. The 1865 Forest Act, had obliterated centuries old customary rights of the local communities and established exclusive state control over forest resources. The British rationalisation for usurpation of the forest resources was the age long tradition under the Indian custom that all property held in common belonged to the king, and hence as a present ruler that property now belonged to them. The colonial rulers viewed forests as Crown lands, limiting private property rights only to cultivated lands. Often such forests were under community management, and their annexation by the government alienated the people from their former common pool resources.

The basis of the colonial forests policy is a Memorandum of the Government of India issued on August 3, 1855. This Memorandum was based on the report submitted to the Government of India by Dr. McClelland in 1854 suggesting certain restrictions on the unchecked exploitation of forests by the private parties. This pronouncement has been termed as “an act of farsighted statesmanship and marked the first concrete step towards scientific conservation of the forests”.<sup>xxvii</sup> This policy was further elaborated and its implementation further consolidated by the Resolution No. 22F of the Government of India, dated October 19, 1894. The main objectives of the forests management, according to it were to promote the well-being of the country and to fulfil the needs of the people (Joshi,<sup>xxviii</sup> 1983; p. 47).

To attain these objectives, it was suggested that permanent cultivation should get priority over forestry. The satisfaction of the needs of the local population at non-competitive rates should over-ride all considerations of revenue. Only after these needs were adequately satisfied was the revenue consideration to be emphasised.<sup>xxix</sup> In practice, under the colonial rule revenue from the forests has been the main objective of the forest management policy; this explain the dwindling forest wealth, in spite of the whole organization of forests administration presumably meant to conserve forests. The decimation of forests reached gigantic proportions during the WW II when Indian forests were ruthlessly exploited for military purposes (Joshi, 1983; p.47).

There was debate within the British bureaucracy between those who argued that the state should annex and take complete control of all forests, and administrators who argued that where customary use existed it should also be granted legal rights. According to Guha, by the middle of the 19th century three distinct schools of thought had developed with regard to rights over forests resources and forests land. The first school advocated absolute state control over all forest areas and is therefore clubbed as *annexationist*<sup>xxx</sup>. The second, whom Guha referred to as *pragmatic*<sup>xxx</sup><sup>i</sup>, were in favour of state control of forest lands in areas which were ecologically sensitive and strategically valuable, allowing other areas to remain under communal systems of management. The third school known as *populist*<sup>xxx</sup><sup>ii</sup> was completely against state intervention, and forcefully argued in favour of protection of sovereign rights of the indigenous communities over woodland (Guha,<sup>xxx</sup><sup>iii</sup> 1990).

Sir Thomas Munro, the governor of Madras, was totally opposed to the idea of state control over forests and had complete faith on the abilities of the local communities to manage forests successfully. If state had any role in management of the forests it should rather be subsidiary in nature. He was of the opinion that there would be no dearth in supply of timber if private trade<sup>xxx</sup><sup>iv</sup> in wood is restored under a *laissez faire* exchange regime than under any restriction (Ribbentrop, 1900, p. 100).

Dietrich Brandis supported the idea of creating government forests, but strongly urged to restrict them to areas of compact valuable blocks in the interiors that could be obtained without impinging on forest rights of communities. He in fact, advocated leaving aside rest of the areas under the control of village communities as village forests (Guha, 1998). The first Inspector General of Forests, had prescribed a limited take-over of forests by the state, and was in favour of common regulation of forests and advocated not to disturb the extended network of sacred forest groves. He favoured limited rights in forests for the indigenous communities. Brandis could not successfully persuade the colonial government to create village forest, which he considered essential for a successful forestry programme in the sub-continent (Guha<sup>xxx</sup><sup>v</sup>, 1996: 90). This view was however defeated by the real hard-liner like Baden-Powell as he emphasized that uncultivated or "unowned" land belonged to the state, and that local people's uses of the forest and its products were concessions from the state rather than rights. Citing the precedence where Indian rulers had claimed their rights of absolute ownership, he argued for the absolute control and ownership right of the state on all common land, whether inhabited or not. In order to rationalise his argument, he invoked the rights of the conqueror, who obtained automatically all the rights as sovereign from the

erstwhile oriental sovereigns, i.e., native chiefs. He conveniently set aside the settled law in England that no property could be taken over from the citizens by the state. As a result Brandis lost out, and the subsequent 1878 Indian Forest Act set the scene for another century of forest administration by granting forests and punitive sanctions to the forest department.

The 1878 Act made forest settlement mandatory before constituting a reserved forest. The procedure for such settlement began with publishing in local language asking people to put forward their claims of rights of user if any in areas of forests to be reserved. If after enquiry the Forest Settlement Officer appointed for the purpose of settlement accepts such claims as valid then he may admit them in whole or in part, and terminate the rights by paying compensation, or transfer their rights to another part of the forest. The officer must in each case specify the limits and extent of rights granted<sup>xxxvi</sup>. Shifting cultivation was a 'privilege' which could be carried out only if the settlement officer admitted its exercise and specifies the extent of the forest for such purposes. It was argued that the growth of forest rights in India had been analogous to growth of similar rights of users in Europe and so, the method of termination of such rights by means of compensation must be analogous to such provisions under the forests law of Europe (Stebbing, Vol. II, p. 468).

To being with, the colonial forest policy provided that the declaration of an area as government forests should not abridge or affect any existing rights or practices of individuals or communities, who were given three months to contest reservation. In practice, the illiterate communities were seldom able to do so and consequently the annexationists triumphed. What followed was that under the 1878 Forest Act and later 1927 Act, the forests were divided into two broad categories: Reserved Forests (RF) and Protected Forests (PF)<sup>xxxvii</sup>. The PF were also managed by the FD, but the basic difference between the two is given in the table below:

<b>Reserved Forest</b>	<b>Protected Forest</b>
Intended for timber production, in which rights were to be recorded and preferably extinguished later.	Intended both for timber production and other use, in which existing rights were protected but not formally "settled". People have certain rights within them, such as gathering fruits and other produce of trees specifically for household use (but not for sale).

Produce obtained can be bartered or sold only with prior permission.	These can be converted to reserved forests.
Offenses are punishable by fine, imprisonment, or both,	Offenses can be punished but it was not as rigorous as under reserved forest
Compensation for damage demanded from offenders	No compensation demanded from offenders

Besides, there were also two more categories of forests mentioned in the Act, (i) unclassed forests in which existing rights were protected against trespass or against development of new rights, and (ii) village forests (Maslekar<sup>xxxviii</sup>, 1983). To create village forests, it was required under the Act that the lands be first constituted as reserved forests; this aroused suspicion among the people and thus it remained a “dead letter” in the sub-continental forestry history. In all categories of forests, the Forest Department had the authority to exclude grazing and any other practices of local communities that it may feel to be damaging to the growth of forests.

Armed with the Forest Act the colonial government progressively extended state control over forests areas. In 1878, there were 36,000 square kilometres of state forest. By 1890, this had increased to 197,000 square kilometres, three-fourths of which were reserved forests. Ten years later, there were 210,400 square kilometres of reserved forests and 21,000 square kilometres of protected forests. To meet the ever growing demand for timber both for railways and other commercial purposes, the state not only increased the forest areas under its control but also converted protected forests to reserved forests.

But, by the turn of the twentieth century some twenty million hectares of land was brought under the category of Reserved Forests<sup>xxxix</sup> (Stebbing, 1926). These were exclusively for the use of FD and the communities had no rights other than those explicitly permitted by the State. These permissions were not rights but privileges that were granted as concessions to graze and collect firewood. Progress<sup>xl</sup> of Forestry in India in 1870-1900 was to a considerable extent shaped by the German knowledge of forests management under the first three Inspector-Generals of German nationality. The German system of forestry applied in India was rather “hard-and-fast method based on axiomatic dicta and calculations”. Under this system emphasis was given on the financial aspect of forestry operations by the Department “as a purely commercial and revenue-making concern to the detriment of progress in work of

a professional nature". Over the years the forest department evolved into a revenue-raising department, rather than a resource manager, and its success was judged on revenue generated rather than the stock of biodiversity maintained. But, excessive concern for revenue had in fact been detrimental to the progress of forestry and financial loss in periods to follow (Stebbing, 1922: 463-64).

The imperial quest to reorganise forest use in terms of large-scale commercial timber extraction, revenue generation and selective forest conservation was undertaken with all seriousness in India and other colonies, with policies to intensify and defend their stand. All Forest Acts enacted under the colonial rule deliberately identified "prescriptive rights" to be analogous to "traditional rights" enjoyed by the people over centuries. Under all such Acts there was no provision for local customary rights to exploit natural resources – a blind spot that persisted for more than a century. Abrogation of rights and denial of access to livelihood sources imposed in the name of scientific forestry has been resisted by the dependent communities ever since its inception.

#### **4.4.3 Introduction of Scientific Forestry**

The introduction of scientific forestry<sup>xli</sup> practises in India can be traced from the British experiences with scientific forestry in Burma. The important aspects of the imperial scientific forestry practises were; (a) proper mensuration of the valuable species, (b) demarcation of the forest boundary for which an accurate map was drawn of the forest areas, (iii) extraction of commercially valuable species predicated on the basis of elaborate working plans specifying the sequence of harvesting to be done over several years in a given area, (iv) expand the production of valuable species to increase the financial return of the FD, (v) conservation of forest to halt degradation and thereby ensure sustainable yield of forest resources. If the first four aspects of scientific forestry were primarily concerned with the satisfaction of imperial timber-sourcing and revenue generation objectives, the last can be equated with the assertion of the state's proprietary rights over forests lands (Bryant, 1996). The emphasis of the colonial foresters for conservation was concerned with only a few commercially valuable species like *teak*, *sal*, *deodar* etc. The imperial policy to maximise the extraction of forest resources and revenue was in conflict with the objective of conservation. Conservation as mentioned earlier amounted to usurpation of community's rights over use of forest resources. The traditional rights enjoyed by local communities were thus obliterated by a piece of legislation.

Drawing selectively and self-servingly upon pre-colonial indigenous tradition, the colonial state took up with great vigour the royal prerogative to the control of the teak tree and to forest lands not cleared for agriculture (Baden-Powell, 1882; Guha, 1990)<sup>xlii</sup> Conservation in practice meant an intensive land management programme to generate maximum revenue from the proceeds of commercially valuable forest in lands exclusively earmarked as state forests. The new practice made management of forests lands a state prerogative and denied any role of the local communities in its management. Thus, conservation entailed and justified the expansion of state's control over forests.

Demarcation of reserved forests was the first step towards conservancy under the colonial forestry system. What followed immediately were numbers of measures to enhance the commercial value of the state forests. These measures in a nutshell had two elements. First, to protect forest resources from human intervention and natural hazards. Second, to enhance the long-term commercial value of the forests through regeneration of selective species, like teak (Bryant<sup>xliii</sup>, 1996). The former involves not only restriction of human activity in the forests but also, measures to arrests fire in the forests as it was believed to be detrimental to growth of teak. So, more and more forests were being brought under the FD and within this many years .... acres of land was brought under forests.

The latter, implied creation of timber plantations like teak and *dhupi* to maximise the commercial value of the output<sup>xliv</sup>. The colonial policy thus gave thrust to expansion in the area under plantation either through clear felling or through improvement felling designed in manner to maximise optimal growing conditions for particular species. Forestry is labour intensive and since its inception as a policy matter the cost of labour has been kept deliberately low. Various labour management methods were employed to enhance the growth of plantation forestry in the country<sup>xlv</sup>.

#### **4.4.4 Nineteenth Century Colonial Forestry (1927 – 1947)**

The Indian Forest Act of 1927 has often been identified as a piece of legislation solely oriented towards timber. This Act continues to the basis of Indian forest legislation. The term conservation finds no mention in the Act and this nakedly exposes once again the exploitative designs of the Colonial Government. That this legislation was in fact the remnant of the previous Forest Act of 1878 has been highlighted by Hazra<sup>xlvi</sup> (2002) in his study. Section 64 of the Indian Forest Act 1927 once again reiterates in unequivocal terms the state policy of alienating the people from the forest. The section empowers a Forest Officer to arrest any

person without a warrant, thus making any violation of the Act a cognizable offence. While the 1894 policy spoke of 'rights', the Indian Forest Act 1927 turned them to 'rights and privileges'. Section 3 of the Act considers the state to be the *ipso facto* right-holder of all forest produce. In Section 2 of the Act the definition of the term 'forest' is rather vague and has been kept wide open for the government to consider what constitutes a forest (*ibid*, 27).

The period also witnessed authorisation of Forest Officers to allow maximum extraction to generate revenue for the war machinery. The extent of forest worked and surplus that accrued to the FD during the Second World War period is unprecedented in history and is shown in the table below:

**Table 4.1 India's Forests and the Second World War**

Year	Outturn of timber and fuel(m.cuft)	Outturn of MFP (Rs m)	Revenue of FD (Rs.m)(@ current prices)	Surplus of FD (Rs. m) (@ current prices)	Area sanctioned under working plans (sq.m)
1937-38	270	11.9	-	-	62532
1938-39	299	12.3	29.4*	7.2*	64789
1939-40	294	12.1	32	7.5	64976
1940-41	386	12.5	37.1	13.3	66407
1941-42	310	12.7	46.2	19.4	66583
1942-43	336	12.9	65	26.7	51364
1943-44	374	15.5	101.5	44.4	50474

\* Average for the period 1934-5 to 1938-9

Source: Gadgil and Guha (1992)

#### **4.4.5 Usurpation of rights under colonial forest policy**

The nefarious colonial design to mould property structure in India was not only meant to fill the coffer of the state but it also manifested as a new political order of the society (Field<sup>xlvii</sup>, 1989). By a stroke of executive pen the "fencing of forest" was complete, and all hitherto customary rights (access and usufructuary rights) enjoyed by the local community were either appropriated or relegated as mere privileges and concessions. Using the provisions under the former government selectively, the colonial government claimed royalty rights over teak as early as in 1807, and forbade any unauthorised felling of teak by private individuals. At the advent of the Company rule, ownership of forests was primarily with the local princes or chiefs. Local communities however, enjoyed ample access to forests to meet their needs and has evolved norms and customs to prevent any destruction of forest through improper use.

That the forest was a store of huge wealth was not realised during the early period of Company's rule in India. As a result little attention was paid to forest and its conservation for

posterity was not under consideration. Instead, the colonial administration of the time was more generous in granting permission for clearing forest land for agriculture. However, all this began to change when Britain was finding it difficult to keep its naval supremacy intact due to fall in supply of quality timber from the continent. Till the mid 19-th century British interest in the forests has been confined to only few commercial valuable species like teak, deodar (*cedrus deodar*) and sal (*shorea robusta*). For the rest of the species the local community continued to enjoy all earlier rights of use without any interference from the state (Stebbing, 1922; pp.83-4).

The imperial quest for timber had ensued serious debate amongst the British bureaucrats on how best to procure it. At least two or three options were contemplated; whether to procure all timber at the prevailing market rate from the contractor, or, to enter into lease contract with local princes/land-lords for exclusive right to grow and cut timber on forests lands. Alternatively the annexationist favoured in bringing all forests under state control to ensure uninterrupted supply of timber through “Scientific Forestry” (SF) practices. State control would help stop destruction of forests from profit seeking contractors and protect it from all damages caused by mismanagement by the local communities.

At any point of time SF involved simultaneous decision to invest by replanting and to disinvest by harvesting mature trees in a sustainable manner. The term “Scientific Forestry” refers to silvicultural practices, thinning, cutting climbers, estimating the length of rotation and other forest management practices of the FD. Modern SF has its origin in continental Europe mainly in Germany and France. The genesis of Imperial Forestry was the direct consequence of the imperial focus on timber forestry to sustain maritime interests initially and later for the development of railways. Two major discourses on forestry have since evolved over time. The first of these studies the forest-people interface, also studying the change in this relationship over time. The second discourse considers forestry to be an empirical extension of capital theory, where standing forest is considered to be a ‘capital’ stock of timber. The decision is then how to achieve the maximum ‘capital returns’ or maximum sustainable yield [MSY] from forestry operations. To ensure maximum ‘capital returns’ Faustmann (1949) had suggested that the optimal age of harvesting the trees is when the net cumulated discounted value of an infinite sequence of harvests is maximum if all harvests occur at the same age (Khazri and Lasserre<sup>xlviii</sup>, 2008).

Being an extension of capital investment theory, the second approach attempts to secure the highest economic returns from forests land. To ensure that the investor’s investment is safe

and does not suffer any loss due to leakages, it is necessary to enclose forest lands from human intervention. Thus introduction of SF was accompanied by the creation of access regulations and restrictions on the use and harvest of forest timber/products.

Lying at the very core of such investment theory, land constitutes the most important resource for forestry. Land may be put to various alternative uses. Economic theory informs us that land will put to such uses where its returns are highest. For simplicity, we therefore consider that land may be put into two alternative uses, i.e. (i) for forestry and (ii) for agriculture. In the two districts of Darjeeling and Jalpaiguri, which comprise our study region, another alternative use of land is for tea plantation. Moreover, land comes under progressive urbanisation over time. So, at the very initial phase when forests yielded low revenues and/or when the supply of forest produce was so abundant as to fetch very low to negligible prices, there was no official attempt to bring forests under State control. Rather, people were encouraged to clear forests and bring more land under agriculture, as a deliberate measure designed to increase the land revenues for the State. Expansion of agriculture along the extensive margin thus meant more revenue for the Revenue Department (this department was never referred to as the 'agriculture' department in the forest history literature).

#### 4.5 Impact of railway expansion on forests of India.

Expansion of railways had dual impact on Indian forests. First the rate at which forests was exploited for railway was unprecedented in history, and second it increased the need to conserve forests to meet the future needs. That the Indian forests are not repository of an inexhaustible resource<sup>xlix</sup> was evident during the period of railway expansion as shown in the table below:

**Table 4.2 Railway Expansion in India**

Year	Railway tracks (km.)
1853	32
1860	1349
1870	7678
1910	51658
1921	60000

Source: Guha & Gadgil (1989), Troup (1940)

Immediately after India's first war of Independence in 1857, railway has expanded at a rapid pace. For laying of 1 kilometer of railway track 860 number of sleepers were required per mile their average life being 12 to 14 years. Thus, the demand was not just for onetime but

repeated overtime. For this in each period trees had to be cut to ensure regular supply of sleepers.

To meet the growing need of the railways what followed was a change in the direction of the policy towards forest management to ensure a sustained flow of timber over time. This resulted in the creation of the Forest Department followed by Indian Forest Act 1865 which made an attempt to reverse the deforestation of the earlier periods through curtailment of use rights of the village communities. (Guha and Gadgil<sup>1</sup>, 1989, p. 145). However, this Act was found wanting and to ensure state control over forest the IFA 1878 was passed with more stringent provisions. This Act served as a model piece of legislation in British colonies and as Guha and Gadgil (1989) mentions that this Act “by one stroke of the executive pen attempted to obliterate centuries of customary use of the forest by rural populations all over India”. This piece of legislation ensured (i) strict curtailment of customary usage of forest resources by the people, and (ii) scientific management of forests for assured flow of timber. The Act allotted a specified quantity of timber and fuel wood to “rightholders” but sale or barter of the produce was forbidden, thus giving a limited claim on the produce. (Guha and Gadgil, 1989: p. 146).

#### **4.6 Post Colonial/Independence Forest Policy**

At the time of Independence in 1947 the area under RF and PF were 31 and 15 million hectares respectively. Since the net<sup>ii</sup> area under the control of the FD has further increased to 67 million hectares through several means. First, after the abolition of princely states and landlordism, all uncultivated lands under their control became vested in the State. The larger tracts were handed over to the FD, generally as PF, and the rest were vested in the village *panchayats*<sup>iii</sup> which are under the overall supervision of the Revenue Department<sup>iiii</sup>

The second process of extending government control over forests was through acquisition of private forests. These laws were passed by various State governments in the two decades following Independence. Massive felling of trees took place in these forests because of the fear that they would be nationalised, as indeed they were in the 1950s and 1960s. [Even several years after this the impression in the village is that if trees are planted in private land then it would belong to the government and also the land on which it is planted]

The second process of extending government control over forests was through acquisition of private forests. These laws were passed by various State governments in the two decades following Independence. Massive felling of trees took place in these forests because of the

fear that they would be nationalised, as indeed they were in the 1950s and 1960s. [Even several years after this the impression in the village is that if trees are planted in private land then it would belong to the government as well as the land on which it was planted]

The process of expanding state control over forest continued even after Independence. This entire exercise of nationalisation of forest inevitably sidelined the local communities from forest management and generated a strong feeling of bitterness against the forest department. Thus, the very people who could have been the best bet in restoring the forests were left-out and made them hostile to any forest department initiatives.

The so called “scientific forestry” was not only insensitive to the needs of the poorer community but also lacked concern for the forests, and had little regard for occupancy and use rights that forest dwellers have enjoyed for generations uninterruptedly. It is a well known fact that Britain had totally deforested the most of Eastern United States and large areas of South Africa in 18th and 19th century. So there is no reason to believe that the same Imperial power would ever introduce a rational forest management practice for benevolence of the natives (Sagreiya<sup>liv</sup>, 1967). The deliberate disruption of the symbiotic relationship between people and forests had in fact failed to protect forests.

The over emphasis of the FD to produce commercially in order to maximise revenue from forest lands required a clear separation of areas under forest from that under agriculture. This separation has led to the alienation of the agrarian population from the benefits of the forests which was criticised even from the ranks of the colonial intelligentsia. Dr. Voelcker<sup>lv</sup> (1897) in his report was concerned of the FD’s objective which was guided by fiscal considerations at the cost of exclusion of the agricultural community. In his report he urged for the creation of fuel and fodder reserves, and defended that loss of revenue from timber operations would be more than compensated from increased revenue from land tax. This report clearly brings forward the issue of opportunity cost in land use decisions. The optimal result of land use could only be achieved if all costs that go into its determination are considered. Increase in the intensity of land use for commercial purposes entails social as well as environmental cost. Though forests and forest communities have been subjected to pressure from settled cultivators of the great plains of India, the dimension and magnitude of state usurpation of users rights in forest had a larger economic, social, environmental, and cultural intervention in the day to day life of the rural communities. Denial of access to the erstwhile *de facto* if not *ipso facto* commons as a result of state monopoly over waste lands affected the life of people mainly due to (i) loss of access to a resource base, (ii) radical change in the definition

in property rights, and (iii) the change in species composition especially the conversion of mixed forest into a pure stand of commercially valuable species.

#### 4.6.1 Constitutional basis of Forests Legislation under Indian Constitution

The Constitution of India has been the basis of all legislations in India, and forest legislations are no exception. Forestry matters from its inception were a subject of Government of India. It was partially transferred to the Provinces in 1921, but under the 1935 Act of India the management of forest went into the hands of the provincial government and even after Independence the Forest Departments of the respective State Government were entrusted with the management of the forest that lie within their jurisdiction.

However, on the recommendation of the Agriculture Commission 1976, forestry was shifted to the concurrent list under the 42nd Amendment Act 1977. The following provisions in our Constitution quoted from the *Report of the National Forest Commission* (2006), have a direct bearing on Indian forest laws and policies:

- (i) In Section 10 of the Constitution after the 42nd Amendment Act 1976, Article 48A reads as under:  
*“Protection and improvement of environment and safeguarding of forests and wildlife – The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”*
- (ii) Under Section 11 of the Constitution (42nd Amendment) Act 1976, a new Article 51 A Fundamental Duties under Part V-A, was introduced to the Constitution in 1976, which read as under:  
*“It shall be the duty of every citizen of India - (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”*
- (iii) Besides the above two Articles of the Constitution, the Supreme Court of India has given its verdict in cases concerning forest and environment under Article 14 (Equity before Law), and Article 21 (protection of Life and Personal Liberty).
- (iv) The 73rd Amendment of the constitution in 1993 and its extension later to the Schedule Areas through Provisions of the *Panchayat* (Extension to the Schedule Areas) Act, 1996 (PESA) upholds our constitutional commitment to decentralised decision making and devolution of authority to village institutions.
- (v) Under the devolution of power to local self-governing bodies as per the 73rd Amendment Act, the provisions in the Act pertaining to the *Panchayat* read:  
*The devolution of power may be with respect to:*

- a) *the preparation of plans for economic development and social justice.*
- b) *The implementation of the schemes for economic development and social justice as may be entrusted to them, including those in relation to the matters listed in Eleventh Schedule.*

As has been pointed out by Vani (2002), out of the 29 listed subjects in the Eleventh Schedule 14 are directly related to natural resource management. Under Articles 246, 248-254 there is clear demarcation of legislative fields of the Centre and the State. But there is no provision in the Constitution for the local self-government to legislate on any matter in general and subjects related to natural resource management that may require attention particularly at the local level.

It would be not out of context to mention the role of a non-constitutional<sup>vi</sup> body like the Planning Commission *vis-à-vis* the forestry sector. As a central government agency responsible for judicious utilisation of national resources, it plays an important role in formulating the priorities of the forestry sector plan based on the National Forest Policy.

#### **4.7 1952 National Forest Policy**

The National Forest Policy of 1952 formulated by the Ministry of Food and Agriculture of the Government of India replaced the earlier Forest Policy of 1884 by the erstwhile Department of Revenue and Agriculture of the Government of India. The need for a new forest policy was felt not only due to the changing political and economic aspirations of the country but also to better incorporate the role of forests in national development. The fundamental differences in perception of the role of forests in the two forest policies are visible

On 12 May 1952, by a Resolution No. 13-1/52-F, the New Forest Policy of India was declared. This Policy was formulated to meet six important needs of the country. These included:

- (i) evolving a system of balanced and complementary land use;
- (ii) to check the denudation of mountain regions, the erosion of space along the treeless banks of the great rivers leading to ravine formation, and the invasion of sea sand on coastal tracts;
- (iii) establishment of tree lands, wherever possible;

- (iv) ensuring progressively increasing supplies of fodder, small wood for agricultural implements and in particular firewood to release cattle-dung for manure;
- (v) to ensure sustained supply of timber and other forest produce required for defence, communication and industry; and
- (vi) finally, the realisation of maximum annual revenue in perpetuity consistent with the fulfilment of the needs enumerated above<sup>lvii</sup> (100 Years of Indian Forestry 1864-1964, Vol. II: p. 63, *c.f.* Joshi<sup>lviii</sup>, 1983: p. 48).

Under this policy a four way classification of forests was prescribed, namely, protected forest, national forest, village forest and tree lands. As has been the case under the colonial administration, “village forest” has remained a non-starter even after independence. That the concept of “village forest” would be kept aside was clearly evident from the Forest Policy, 1952 when it states in unequivocal terms that, “*The accident of a village being situated close to a forest does not prejudice the right of the country as a whole to receive benefits of a national asset<sup>lix</sup>*”. National interest which came to be identified with defence, communications and key industries were given priority over local needs. The policy thus remained silent on people’s rights to forest use and the considered success of “scientific conservation” of forests laid in its ability to convert a “low-value” mixed forest into “high-value” monoculture of valuable species like teak, *dhupi* etc. to meet commercial needs. However, this policy was not in favour of relinquishing forestland for non-forest activities totally, and prescribed for the first time that at least one-third landmass of the country must be under forests.

That after independence the government considered the natural resource base as a means to jump-start economic development, is quite obvious from the Forest Policy of 1952. Forestry in India even after independence continued to create “timber mine” instead of managing the forest biodiversity. The fact is, forest administration remained captivated in colonial frame of mind and hence continued to be a revenue generating department, instead of managing the forests for dependent communities and safeguarding the ecology. This resulted in decline of forest areas, which not only sharply declined the supply of forest output but also threatened the ecological balance (GOI<sup>lx</sup>, 2006).

#### **4.7.1 Wild Life Protection Act 1972**

As the very name of the Act suggests, Wild Life Protection Act 1972 was meant to protect the flora and fauna from the threats of extinction due to loss of their habit. The perceived

assumption was that such threats emerge from the community who lives in close proximity with the forests. Once again the silent assumption of the Act was the State being the only responsible agency that could successfully curb deforestation and encroachment in forest areas (Gupta, 2005). Under this Act the government could declare a certain tract of land as protected area and thereby could either evict or seriously curtail human activities in those newly designated areas. The Act has provision for three categories of protected areas, namely national parks, sanctuaries and closed areas. In a national park, grazing is totally restricted, nor is any private land holding permitted within the park. The sanctuaries have relatively less stringent rules so far as human activities are concerned. The Act however permits certain forest activities of the communities that are considered to be beneficial to wildlife. In the final category the Act secures has provision to declare any area as closed from all hunting activities for a specified time. However, the third and final category has hardly been invoked in practice. It is thus clear that this Act was another step towards alienation of the local communities from forest.

#### **4.7.2 Report of the National Commission on Agriculture (NCA)-1976.**

As mentioned earlier, the forest was transferred to the concurrent list from the state list on the recommendation of the Report of the NCA (1976). It however approved that forestry must be oriented towards more dynamic programme of production forestry. It further suggested conversion of mixed forest into fast growing species to yield higher returns per unit of land. The report held the view that meeting of industrial demands was the *raison d'être* for the existence of forests. NCA wanted that on a priority basis allocation of forest raw material to the industries be made from the enhanced forestry work. It once again reiterated the colonial view, that the FD should be commercially viable. Though, NCA was against leasing of forest lands to industry (para 42.3.18), it however had prescribed that out of the 64 million ha. of forest lands in the country, 48 million ha. should be kept aside for production forests and the rest to be assigned to maintain biological diversity. It was on the recommendation of th NCA that a separation was made between production forestry and social forestry. However, there was no provision mentioned in the Report for forests to be used for grazing and subsistence needs of the people.

The NCA recommendations were based on narrow understanding of the role of forests in preserving the ecological balance, the success of which depended on the symbiotic relationship between nature and people rather than through alienation of people from forests. Total biomass transfer in forest lands through clear felling and later supplanted by

monoculture plantation, not only threatens the ecology of an area but also jeopardises the livelihood of the local communities. Forestry during the period 1952 to 1988 had moved towards “high” forestry in which plantation found prominence rather than management of existing stand of forest trees

#### **4.8 Forestry Practices between 1980 - 1988**

Serious concern was raised about the dismal rural energy scenario of the developing countries in 1970s. This was primarily because of increasing demand for fuelwood without adequate regeneration of forests. The implication of a large demand supply gap in fuelwood production was massive deforestation of forests and subsequent environmental problems related with it. The loss of forest area and fall in its density in turn has affected the life of millions of people who depend on forest by increasing the time required to collect forest produce, fall in energy consumption with serious implications for nutrition and health. The energy gap models (.....) were the basis for new intervention during the 1980s to increase the supply of biomass and take measures to reduce the dependence through substitution of energy sources.

The policy makers after independence failed to view forest in totality and confined themselves to timber and other marketable produce. If the colonial policy is liable for usurpation of forest lands without private individual rights, the subsequent Forest Acts made its rightful users as encroachers. The high-handed attitude of the State continued even after independence which ultimately led to a loss of forest cover of approximately 35 million ha. between 1950 to 1990. The Forests Conservation Act of 1980 has been rightly identified by Hazra (2000: p. 30) as a crisis driven response. The Act was legislated in haste to halt further degradation of forest and to increase forest cover as well. Between 1950 and 1980, the diversion of forests land per annum to non-forest purpose has been 150,000 hectares on an average, which fell drastically to 25,000 hectares on an average after the Forest Conservation Act, 1980. The transfer of forests from state to the concurrent list equipped the Government of India to promulgate a Forest (Conservation) Ordinance that forbade all state governments from allowing the use of forest lands for any other purpose without concurrence of the central government. This Ordinance was later passed as Forest Conservation Act, 1980.

The provision to arrest loss of forest area under the 1980 Act came at a very high cost to the forest community. This Act not only reproduced 81 out of 84 sections of Forest Act, 1878 (Guha, 1983) but also incorporated provisions for more draconian measures of policing with

stringent arrest laws and confiscation measures. The Act can be better described in unequivocal terms to have a bias against urban rich but in reality was anti-poor.

To increase the biomass base a 'social forestry' programme was introduced on the advice of National Commission of Agriculture Report, 1976. The idea of social forestry was mooted as early as in the silviculture conference of 1946 (Sagreiya<sup>lxi</sup>, 1967) It was aimed to reduce the pressure away from recognised forest boundaries by creating plantation for fuel, fodder and grass. During the 1980's, an area almost equal to 1.4 million ha. per year were planted with fast growing exotic species (Ravindranath and Hall, 1994). However, the programme was flawed since inception on many counts, primarily because of wrong selection of species (Gadgil and Guha, 1995), low participation rate of rural community, poor performance and as a consequence its inability to reduce pressure on natural forests (Poffenberger and McGean, 1996).

The two page Forest Conservation Act of 1980 which had sole intention to restrict diversion of forest lands to non-forest activities and conserve forests, in fact had plenty of provisions for such diversions on case by case basis. Though such loopholes were exploited to the fullest extent to allow forest lands to be transferred for commercial purposes, what essentially suffered was development programmes like construction of roads, schools and other physical infrastructure. Mass protest in the form of *Jangal Kato Andolan* was organised against the repressive Act. The Act was however amended in 1988 in keeping with the spirit of Forest Policy of 1988 and incorporated a provision to stop use of forest lands by private parties to establish plantations.

#### **4.9 From 1988 to 1996**

A reappraisal of the Forest Policy of 1952 was suggested by the Estimate Committee (1968-69) of the Fourth Lok Sabha in its 76th report to the Parliament.

##### *National Forest Policy 1988*

The forest policy underwent a paradigm shift in 1988 in which the role of rural community in conservation and management came to be recognised. The primary objectives of the Forest Policy 1988 have been stated as follows: (i) maintenance of environmental stability through preservation and restoration of ecological balance, (ii) conservation of natural heritage, (iii) check on soil erosion and denudation in catchment areas of rivers, lakes and reservoirs, (iv) check on extension of sand dunes in desert areas and along coastal tracts, (v) sustainable increase in forest tree cover through massive afforestation and social forestry programmes,

(vi) steps to meet requirement of fuelwood, fodder, minor forest produce and timber of rural and tribal populations, (vii) increase in productivity of forest to meet the national needs, (viii) encouragement to efficient utilisation of forest produce and optimum substitution of wood, and (ix) steps to create massive people's movement with involvement of women to achieve the objectives and minimise pressure on existing forests.

#### **4.10 Abrogation of Rights under Colonial Rule**

“Utilitarian” philosophy of Bentham justified state intervention for common social good over indiscriminate individualism to reform city life, impose new sanitation rules, police laws, education, and work standards. The move from Victorian “individualism” to “collectivism” culminated into a new environmental policy under Lord Dalhousie that was radical, exploitative and previously untried. If the principal driving force behind conservation of forest in Europe and in America was to reserve it exclusively for elite use and preservation of biodiversity respectively; in the Indian sub-continent instead, the new environmental policy was meant to serve the colonial exploitation of natural resources. Dalhousie persona had often been described as a great combination of contradictions of a Tory gentleman and a Benthamite administrator (Barton<sup>lxiii</sup>, 2000). He was not only an annexationist *par excellence* but an equally capable of consolidating the administration of the new territory. Under him, superintendents were appointed in all new areas annexed to manage forests. It was in 1854 John McClelland superintendent of Pegu in Burma (now Myanmar) in his report proposed for a more efficient forests management system. His plan had identified gains from the new proposal so convincingly that its credibility could not be questioned. One of his two prescriptions was reservation of forests by the government, considered necessary for the safeguard of a growing capital. As McClelland noted:

*... forest may be regarded as a growing capital, the resources of which are the young trees ... The loss occasioned by the removal of an undersized tree is not merely the difference of value as compared with a full-grown tree as a piece of timber, but must be estimated by the number of years the forest may be deprived, by its removal, of the annual distribution of seeds, and the time it would otherwise have taken to arrive at maturity...* (Burton, 2000)

This clearly shows that the main concern of colonial forestry was to safeguard the asset (natural capital). It thus required a well defined boundary protecting its value which otherwise may be diminished by forays into forest lands. Thus the subsequent forest policy and Acts not only prohibited all unauthorised human entry but also restricted livestock from

grazing. Permission to collect minor produce or graze animals for livelihood hitherto enjoyed unhindered was now available only at a price (entry fee). The use of forest that was erstwhile enjoyed as a right now became a privilege only to be enjoyed at the discretion of the state. Instead of concession being conferred to a community it was individualised under the forest laws. All these were done by redefining the property rights on forests.

A clear intention of the new forest laws is evident when by 1901<sup>lxiii</sup> grazing was prohibited in an area equal to 35,000 square miles (56,325.5 km) in the Indian sub-continent, of which 15,000 miles (24,139.5 km) were in Burma where cattle are few. The area closed to browsers (principally goats) in the same year stood at 33,000 square miles (53,106.9 km), most of it being in Madras and Central Provinces. It would be interesting to note what the state gained from restricting access of local communities in forests. In 1901<sup>lxiv</sup>, through sale of timber and fuel, the state exchequer was richer by Rs. 1,47,00,000, from minor produce (NTFPs) Rs. 29,00,000 and from grazing fees Rs. 12,00,000. Forest revenue increased from an average of Rs. 36,29,000 (Rs. 13,99,000)<sup>lxv</sup> between 1864 to 1867 to the quinquennial average of Rs. 1,10,59,000 (Rs. 71,42,000) in 1887 and further to Rs. 1,74,50,000 (Rs. 96,57,000) in 1897 respectively (Imperial Gazetteer<sup>lxvi</sup>, 1908).

For the fullest exploitation of the land resources, the colonial legal system made a separation of private land from public land, the latter being state property and had its domain extended to waste lands as well. No doubt the colonial forest laws were in fact mere reproduction of a legal mechanism to control access to forests that has worked so successfully for them in imperial land.

#### **4.10.1 Abrogation of Rights after Independence**

The land-reform measures were undertaken immediately after independence to remove the institution of landlordism, yet the Forest Department remained to be in charge of the largest *zamindari* in India. Not only the fundamentals of the colonial forest management was retained; vast tracts of private forest were now brought under the FD and its wealth added to the imperial coffer.

The increasing loss of forest cover in the early years of independent India had a serious impact on the livelihood of the rural community, which however does not seem to be of any concern of the government as reflected in its prioritisation under the Forest Policy 1952. The Policy stated:

*'...Village communities in the neighbourhood of a forest will naturally make greater use of its products for the satisfaction of their domestic and agricultural needs. Such use, however, should in no event be permitted at the cost of national interests. The accident of a village being situated close to a forest does not prejudice the right of the country as a whole to receive the benefits of a national asset.'* and;

*'Restrictions should be imposed in the interests not only of the existing generation, but also of posterity...'*

This policy has been widely criticised for further curtailing the legitimacy of rural community's rights and strengthening the right of state on the forest (Guha, 1983; Gadgil and Guha, 1992). Post independent forest policy and subsequent forest related legislation in India appears to be deeply-rooted on the basic principle that the health of forest is best maintained when human interventions are the least. The Wildlife Protection Act 1972, Acquisition of Private Forest Act 1973, and Forest Conservation Act 1980, bears testimony of this principle. Jewitt (1995) considers the postcolonial forest policy to be more imposing, insensitive to needs of the people and more authoritarian than earlier colonial regime. The passing of the Forest Conservation Act at the stroke of mid-night on 25 October 1980, made thousands of indigenous people illegal residents on lands they have lived for generations

None of the forest policies and legislations enacted till 1990 had shown faith in the ability of the local communities' to manage the commons. The only difference between the colonial and independent government is that, while the former's design of natural resource exploitation was related to strategic needs (shipbuilding and railways) the latter's interest was directed towards fulfilment of commercial-industrial sector (Gadgil and Guha, 1992). Further comparison of the two regimes shows that while the 1854 Forest Policy mentions local communities right over forest produce, it was changed into rights and privileges in the Indian Forest Act 1927; whereas the postcolonial Forest Policy 1952 spoke of rights and privileges. In subsequent periods all access were either restricted or revoked and subsequently became concessions under the Forest Conservation Act, 1980.

During 19th century, forest legislations were thus introduced to save natural resources from what Hardin refers to as "tragedy of the commons", but in the end it culminated into what may be best described as "tragedy of enclosure".

#### 4.11 Participatory Management: A New Paradigm

Tragedy of the enclosure built on “guns-and-guards” approach may be best described as accelerated loss of the commons even when *de jure* access rights to commons have been prohibited. The rapid loss of forest cover continued unabated and was clearly visible from Forest Survey of India data. Almost 174 million ha. of forest lands were considered degraded by 1990. From researchers, foresters, to organisations representing forest communities, all raised the alarm about the impending danger of such large scale loss in biodiversity. It was also recognised that by marginalising the local community from natural resource management, it would not be possible to safeguard and also to afforest large areas of forest land. The process for a change in government policy was initiated as early as in 1983 (Gupta, 2005) which was ultimately pronounced in government declaration of National Forest Policy 1988. The new policy reversed the earlier state management priorities from revenue generation to “meeting the requirements of fuelwood, fodder, minor forest produce and small timber of the rural and tribal populations” and “creating a massive people’s movement, with the involvement of women, for achieving these objectives” (Government of India, 1988). Later it was followed by a 1 June 1990 circular (No. 6.21/89-FP) from the Ministry of Environment and Forests providing guidelines for the “Involvement of Village Communities and Voluntary Agencies in the Regeneration of Degraded Forests”.

The focus was shifted from production forestry by alienation to conservation forestry through participation of the rural community. Instead of commercially valuable monoculture of exotic species it advocated mixed forest of native species to increase soil fertility, reduce soil erosion through increased undergrowth and increased water retention of the soil. The new experiment in forest management with participation of people more popularly came to be known as Joint Forest Management or JFM in short. The primary objective of JFM is to ensure sustainable use of forests to meet local needs equitably while ensuring environmental sustainability. The central premise is that local women and men who are dependent on forests have the greatest stake in sustainable forest management.

Immediately after the 1 June 1990 circular, the, MoEF issued additional six circulars on September 18, 1990 regarding settlements of disputed claims, *pattas*, leases, grants involving forestlands, guidelines regarding regularisation of encroachments, conversion of forest villages into revenue villages, settlement of other old habitations, payment of compensation for loss of life and property due to predation/ depredation by wild animals and payment of fair wages on forestry works. These circulars taken together were a good package for the

resolution of old disputes over claims on forestlands and other problems and thus had the potential to reduce the deep distrust of people towards the forest department. The circulars have in fact deliberately been avoided under one pretext or the other by the Forest Department. Instead selective provisions of the circular on encroachment were used to evict the rightful settler of the forest especially the tribal.

#### **4.12 Period of Judicial Activism (1996 Onwards)**

Along with the legislature, the judiciary's intervention has an important role in interpreting and giving direction to any legislation in India. The direction of Forest legislations have also been constantly shaped and interpreted by the Supreme Court of the country. An important law suit was brought before the Supreme Court of the country to enforce provisions of the National Forest Policy 1988. A series of order were passed under this case, having far reaching consequences:

- (i) Definition of forests had been widened, and accordingly the Forest Conservation Act 1980 was made applicable not only to government forests, but to any area recorded as forests in land records irrespective of its ownership.
- (ii) The forests were to be managed strictly in accordance with the prescriptions of the approved working plans.
- (iii) Environmental audits for compensatory afforestation and their publication was made compulsory.

The Supreme Court verdict in the popularly known "forest conservation case" of 1995<sup>lxvii</sup>, seems to have totally reversed whatever progress has been made in participatory system of forest management under the National Forest Policy 1988. The Court was of the opinion that decimation of the forest has been caused by encroachment, that is, illegal or unauthorised occupation of forestlands. The Supreme Court indicated some steps to be taken by the state to stop encroachment. Without fail, the MoEF sent a circular of May 3, 2002 to all States and Union Territories to evict all encroachers by September 30, 2002, even though the SC had not ordered eviction of encroachers. Such a move, as expected, faced stiff resistance from the forest dwellers. This proactive role of the MoEF was again a bitter reminder of the conflict of vision between those who view humans as outsiders in the natural ecosystem and the others who consider them as integral to the ecosystem.

That this is an example of a poor jurisprudence by the court is evident from its interpretation of elevating working plans to a status that has no bearing with the provisions of the Forest

Conservation Act 1980. Nowhere in the forest law, is there a need for the working plans to be approved centrally. The Act is all about regulating the conversion of forest to non-forest purposes. Working plans are meant for management of forests at the Divisional level – whether for timber, firewood or wildlife (Rosencranz and Lélé<sup>lxviii</sup>, 2008). This resulted in centralisation of forest management rather than decentralisation with scope for greater participation at the grass-root level. The court order is not only vague as to what constitutes a non-forest activity but for all such activities that require central clearance has in fact reversed what has been achieved through struggle. Moreover the aftermath of the Godavarman case was that the process of regularisation of revenue village was stopped on 23 November 2001 and tribal rights were effectively extinguished.

#### **4.12.1 Conferment of Tenure Rights in Land**

A National debate was initiated on the behest of those who considered that the future of forest in India was very much based on the recognition of people to be an integral part of the forest system. After much public debate the government was forced to table the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 which was re-christened as “The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006” and came into force after the President of India assented to the Bill on 29 December 2006. However, the passage of the bill was not smooth as it faced opposition from two quarters, the first being the self proclaimed guardian of the forest the “environmentalists”. Second, the MoEF which claimed (based on an unfounded study) that 16% of the forest shall be depleted in the process of conferment of land rights to the tribal’s. That their opposition is baseless is quite obvious from the fact that it is contrary to Rio Declaration (1992) and recommendations of the United Nation Forum on Forest. Also, as data reveal that 60% of the forests cover in 187 tribal districts of the country a reflection of their conservation culture. On the contrary the MoEF has diverted 73% (9.81 lakh ha.) of total encroached forest lands for non-forest activities (AITPN<sup>lxix</sup>, 2005). The direction of future forest policy lie in the reconsideration of the tenure rights in forests as a whole.

---

#### **Chapter Notes and References**

<sup>i</sup>Guha, R. and M. Gadgil (1989): ‘State Forestry and Social Conflict in British India’. *Past and Present*. No. 122, pp. 148 – 157.

<sup>ii</sup> Guha, R. (1996): ‘Dietrich Brandis and Indian Forestry: A Vision Revisited and Reaffirmed’. in M Poffenberger and McGean (eds) *Village Voices, Forest Choices: Joint Forest Management in India*. Oxford University Press, Delhi.

<sup>iii</sup> Parasher, A. S. (1998): ‘Of Tribes, Hunters and Barbarians – Forest Dwellers in the Mauryan Period’, pp. 173 – 191, in Sumit Guha (eds), *Environment and Ethnicity in India, 1200 – 1991* Chapter 5, Cambridge.

- <sup>iv</sup> Stebbing, E.P. (1922): *The Forests of India, Vol. I*. John Lane, Bodley Head, London.
- <sup>v</sup> Saravanan, V. (1998): 'Commercialisation of Forest, Environmental Negligence and Alienation of Tribal Rights in Madras Presidency: 1792- 1882', *Indian Economic and Social History Review*, Vol.35 (3), pp.125 - 146.
- Saravanan, V. (1999): 'Commercial Crops, Alienation of Common Property Resources and Change in Tribal Economy in the Shervaroy hills of Madras Presidency during the Colonial period' *Review of Development and Change*, Vol.4 (2), pp.298-317.
- <sup>vi</sup> Poffenberger, M. (ed.) (2000): 'Communities and Forest Management in South Asia'. *A Regional Profile of Working Group on Community Involvement in Forest Management*, IUCN.
- <sup>vii</sup> Kamal, A., M. Kamaluddin, and M. Ullah (1999): *Land Policies, Land Management and Land Degradation in the HKH Region: Bangladesh Study Report*, ICIMOD, Kathmandu, Nepal.
- <sup>viii</sup> Md. Millat-e-Mustafa (2002): 'A Review of Forest Policy Trends in Bangladesh – Bangladesh Forest Policy Trends', in *Policy Trend Report*, pp. 114-21.
- <sup>ix</sup> Dwivedi, A.P. (1980): *Forestry in India*. Jugal Kishore and Company, Dehra Dun.
- <sup>x</sup> Rangarajan, M. (1996): *Fencing the Forest: Conservation and Ecological Change in India's Central Provinces 1860-1914*.
- <sup>xi</sup> Grove, R. (1994): *Green Imperialism, Colonial Expansion, Tropical Edens and the Origin of Environmentalism, 1600-1860*, Cambridge.
- <sup>xii</sup> Poffenberger, Mark and B. McGean, (eds.) 1996. *Village Voices, Forest Choices*. New Delhi, OUP.
- <sup>xiii</sup> Guha, R. (1996): 'Dietrich Brandis and the Indian Forestry: A Vision Revisited and Reaffirmed', in Mark Poffenberger and Besty McGean (eds.) *Village Voices, Forest Choices: Joint Forest Management in India*, OUP, New Delhi.
- <sup>xiv</sup> Singh, C. (1986): *Common Property and Common Poverty. India's Forests, Forest Dwellers and the Law*, OUP, Delhi.
- <sup>xv</sup> By quality of the forests I not only mean the density of the forests cover but also the variety of flora and fauna i.e., the bio-diversity present in a forests.
- <sup>xvi</sup> Arnold David & Ramachandra Guha (1998): *Nature & Culture & Imperialism: Essay on the Environmental History of South Asia*, OUP, Delhi, p10.
- <sup>xvii</sup> Stebbing, E.P. (1922): *The Forests of India, Vol. I*. John Lane, Bodley Head, London.
- <sup>xviii</sup> Hazra, A.K. (2002): 'History of Conflict over Forests in India: A Market Base Resolution'. *Working Paper Series*, Julian L. Simon Centre for Policy Research, p. 19.
- <sup>xix</sup> Commercial motivation for any land-use policy is guided by the familiar portfolio decision theory.
- <sup>xx</sup> Stebbing, E.P. (1922): *The Forests of India, Vol. I*, John Lane, Bodley Head, London, p.62.
- <sup>xxi</sup> Agrawal, A. (2005): *Environmentality: Technologies of Government and the Making of Subjects*. OUP, New Delhi, p.11.
- <sup>xxii</sup> The British seems to be aware of the utility of teak in shipbuilding from the Arabs who imported teak from Bombay
- <sup>xxiii</sup> Captain Waston of the Police was the officer selected, and he was the appointed the first Conservator of Forests in India on 10th November, 1806.
- <sup>xxiv</sup> Stebbing, E.P. (1922): *The Forests of India, Vol. I*, John Lane, Bodley Head, London, p.65.
- <sup>xxv</sup> Stebbing, E.P. (1922): *The Forests of India, Vol. I*, John Lane, Bodley Head, London, p.65.
- <sup>xxvi</sup> Dr. Gibson held the responsibility of Conservator in addition to his duties in connection with the Botanical Garden, at Bombay
- <sup>xxvii</sup> *100 Years of Indian Forestry, 1864-1961*, Vol. II, p. 63.
- <sup>xxviii</sup> Gopa Joshi (1983): 'Forests and Forest Policy in India. *Social Scientist*, Vol. 11, No. 1.
- <sup>xxix</sup> *Ibid*, p. 63.
- <sup>xxx</sup> First group was led by B.H. Baden-Powell.
- <sup>xxxi</sup> Second group was led by Brandis.
- <sup>xxxii</sup> Last group was led by Sir Thomas Munro.
- <sup>xxxiii</sup> Guha, Ramachandra. 1990. "An early environmental debate: the making of the 1878 forest Act". *Indian Economic and Social History Review*, 27(1), pp. 67-84.
- <sup>xxxiv</sup> Munro was of the opinion that supply of private timber will be increased by good prices, and the need of the imperial state can be met easily under this system (Ribbentrop. 1900, pp.84-85)
- <sup>xxxv</sup> Guha, R. (1996): 'Dietrich Brandis and the Indian Forestry: A Vision Revisited and Reaffirmed', in Mark Poffenberger and Besty McGean (eds.) *Village Voices, Forest Choices: Joint Forest Management in India*, OUP, New Delhi.
- <sup>xxxvi</sup> Such rights include the number of cattle to be grazed, or headloads of fuel allowed per family, or number of bamboos per family etc.

<sup>xxxvii</sup> Such PF declared under the IFA 1927, which were basically for local use need to be distinguished from Protected Areas (PAs) for wildlife.

<sup>xxxviii</sup> Maslekar, A.R. 1983. *Managing the Forest*, Jugal Kishore & Co., Dehra Dun.

<sup>xxxix</sup> Between 1878 and 1900, the area of designated state forest grew from 36,000 to 200,000 square kilometres, of which 40 per cent comprised protected forests. By independence, the total area under forests had grown to 250,000 square kilometres.

<sup>xl</sup> Progress of forestry is not a discourse in “forestry”.

<sup>xli</sup> To many scholars the argument for monopoly control over forests wealth under the guise of scientific management of forests was dictated more to suit the imperialist design to exploit forests. Monopoly of state over forests was ensured by declaring state-property rights over forests. The justification of state-ownership of forests is based upon the notion of the ‘tragedy of commons’.

<sup>xlii</sup> Baden-Powell, B.H. 1882. *A manual of jurisprudence for forest officers*, Calcutta, Superintendent of Government Printing and Stationary. Guha, R 1990. An early environmental debate: the making of the 1878 Forest Act. *Indian Economic Social History Review*, 27 (1): 65-84.

<sup>xliii</sup> Bryant, R.L. 1996: Romancing Colonial Forestry: The Discourse of ‘Forestry as Progress’ in British Burma. *The Geographical Journal*, Vol. 162, No. 2, p. 173

<sup>xliv</sup> In this context mention I would like to mention that, the investment decision in plantation was guided by the financial return on such investments. The surplus from the sale of the output would depend on exact timing to extract the trees and also in keeping the expenditure at minimum.

<sup>xlv</sup> One such plantation method is known as the *taungya* forestry. It was implemented in Burma with the “cooperation of Karen shifting cultivators who, in return for financial remuneration and the right to designated lands for their personal use, agreed to plant and tend teak in their hills clearings or *taungya*. The cultivators would then move on to a different plot repeating the process as they left in their wake teak plantations.” (Bryant, 1996, p. 174) This system of land management resulted in sporadic conflict between foresters and shifting cultivators who felt that their itinerant lifestyle would ultimately be jeopardise as the planted area was increased. But from the foresters’ view point, progress in forest conservation was defined in terms of acres successfully planted. Bryant (1996)].

<sup>xlvi</sup> Hazra, A.K. (2002): *History of Conflicts over Forests in India: A Market Based Resolution*, Working Paper Series, Julian L. Simon Centre for Policy Research, Liberty Institute, New Delhi.

<sup>xlvii</sup> Field, B.C. (1989): ‘The evolution of property rights’, *Kyklos* 42(3): pp. 319-45.

<sup>xlviii</sup> Khazri, O. and P. Lasserre (2008): “Forest Management: Are Double or Mixed Rotation Desirable”. *Scientific Series*, © 2008 Olfa Khazri, Pierre Lasserre

<sup>xlix</sup> As early as 1862 Lord Dalhousie had estimated that nearly a million sleepers were required annually to meet the demand of the railways for which a separate department was required to be established.

<sup>i</sup> Guha, R and M. Gadgil 1989: “State Forestry and Social Conflict in British India”. *Past and Present*, No. 123, pp. 141-177.

<sup>ii</sup> The increase is notwithstanding the fact that between 1952 and 1980, an average 154,571 ha per year of Forest land was converted to non-forest use, mostly irrigation, and power dams and agriculture. Since 1980, according to official data, this average has declined to 14,351 ha per year, presumably due to stringent provisions of the Forest Conservation Act 1980 (Shyam Sundar, 1993:24). The validity of the latter figures has been challenged (see Saxena, 1995a).

<sup>iii</sup> *Panchayat* is the lowest tier of rural local government, and consists of elected members headed by a chairperson.

<sup>iiii</sup> This department is in charge of policies relating to non-forest public and private lands. It is called Revenue Department as land revenue was the principal source of State’s revenue before Independence.

<sup>lv</sup> Sagreiya, K.P. (1967): *Forests and Forestry*, National Book Trust, India.

<sup>lvi</sup> Voelcker, J.A. 1897: *Report on Indian Agriculture*, Calcutta, pp. 135-6.

<sup>lvii</sup> The Indian Planning Commission was created by a statutory provision of the Parliament.

<sup>lviii</sup> The six points has been directly taken from Gopa Jhosi (1986), but it was taken from *100 Years of Indian Forestry, 1861-1961*, Vol. II, p. 63.

<sup>lix</sup> Joshi, G. (1983): ‘Forests and Forest Policy in India’, *Social Scientist*, Vol. 11, No. 1, p. 48.

<sup>lx</sup> Note that forest was considered as national asset and rights of local community never acknowledged.

<sup>lxi</sup> Government of India (2006): *Report of the National Forest Commission*, Ministry of Environment and Forests.

<sup>lxii</sup> Sagreiya, K.P. (1967): *Forests and Forestry*, National Book Trust, New Delhi.

<sup>lxiii</sup> Barton, A.G. (2000): *Keepers of the Jungle: Environmental Management in British India, 1855-1900* ©2000 Phi Alpha Theta, History Honour Society, Inc.

<sup>lxiiii</sup> DSAL printout “Forest: The Indian Empire”, p.116.

<sup>lxv</sup> DSAL printout “Forest: The Indian Empire”, p.122.

---

<sup>lxv</sup> Figures within parentheses are expenditure incurred during the same period.

<sup>lxvi</sup> The Imperial Gazetteer of India: The Indian Empire Vol. III Economic (1908). Oxford. Clarendon Press.

<sup>lxvii</sup> The T N Godavarman vs Union of India case in the Supreme Court (1995), also known as the “forest case”, is an example of the judiciary overstepping its constitutional mandate.

<sup>lxviii</sup> Rosencranz, A. and S. Lélé (2008): ‘Supreme Court and India’s Forests’. *Economic and Political Weekly*, 8 February 2008.

<sup>lxix</sup> Report of the National Consultation on the Draft Forest Rights Bill, 2005, Asian Indigenous and Tribal Peoples Network (AITPN), October 2005.