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RESEARCH ARTICLE

A CRITICAL APPRAISAL OF FOREST ACTS AND POLICIES IN COLONIAL AND POST COLONIAL INDIA WITH EMPHASIS ON 'FOREST RIGHTS ACT - 2006'

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ABSTRACT

Indian forests have experienced a lot of changes in its management throughout the history. Traditional and customary rights of the forest dwelling people were denied over the forest resources at colonial period. Several forest policies have been announced in colonial India that only protected the financial interest of the colonialists. Stringent acts were enforced to restrict forest dwellers from extracting forest products for their livelihood. Post Colonial India experienced even more stringent acts and laws are being enforced in order to protect country's forest resources. Mass eviction of forest dwellers started without any rehabilitation and compensation. Last two decades of twentieth century have shown first sign of changing mind set of Indian polity upon the forest management. Contributions of aboriginal people regarding protection, maintenance and regeneration of forests have been recognized. But the Forest Rights Act of 2006 presented a paradigm shift in Indian forest management. It has several provisions that can empower forest dwellers and put an end to the century old injustice incurred upon them by the hegemonic society. Present paper appreciates the forest policies and acts taken by the Indian Government in colonial and post colonial period and emphasizes on some of the provisions of FRA – 2006 along with a SWOT analysis of the same.

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INTRODUCTION

Forests are natural resources with immense importance. It acts as a storehouse of biodiversity and gene pool. Apart from its intrinsic values like protecting the environment, forest also plays a part in the national economy. It contributes more than 2 percent of India's Gross Domestic Products (Biodiversity Network, 2011). But more importantly, forests support livelihood of a vast population of India, who are essentially rural community, belong to different scheduled caste and/or scheduled tribe communities and backward economically as well as socially. An estimate shows that nearly 250 million people live in and around forests in India and 'adivasis' or the tribal population constitutes almost 100 million of that population (Wikipedia). From the time immemorial, forests in India were regarded as the property of the common people. Utilization and management was done through a customary right system maintained through oral tradition. These rights and conventions may seem loosely fitted but a strong 'system of belief' acted in the background that protected irrational and rapacious extraction of forest resources. Even at the time of the great kings, Emperors and landlords, these customary laws

were maintained religiously. Kings and 'Zamindars' do have converted forest lands to other uses of their need and used the forests as game reserves but they never imposed their direct control over the forest resources, especially that are part and parcel of everyday life of the forest people. Advent of colonial rules in India experienced paradigm shift in many ways. Implementation of market economy, commoditization of small products like lac, resin, wax etc. and large scale lumbering started at a great vigor. The indigenous rule and self imposed reservations of the forest dwelling communities were now causing great problem to the colonialists in making profit from the forests. Thus they thought of controlling this enormous natural resource in their favour through a statutory body i.e. Forest Department, so that they can preserve the exclusive rights to extract the forest resources at their will. Thus, the very formation of forest department in India bares inherent foci of conflict between the colonial rulers and marginal forest dwellers. Lord Dalhousie, the then Governor General of India, first took the initiative to manage forest resources of India. In 1855, almost hundred years after the establishment of British rule in India, he issued a memorandum on forest conservation that urged for a systematic process for extraction of Indian forest resources. He employed German botanist- cum- forest expert Dietrich Brandis in 1856 as the first Inspector General of Forest in India. Brandis drafted the first forest act for the

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Indian forests in the same year but it had to wait till 1864 for implementation (Biswas, 2002). Present study briefly examines the forest policies and acts implemented in pre and post colonial India with their relevance in the countries indigenous people. Forest Rights Act (FRA) of 2006 has been given special emphasis as it is considered as a paradigm shift in the history of Indian forest management.

Objectives

Objectives of the present study can be stated as below

- Evaluate and examine the policies and acts taken up by the forest department of India in pre and post colonial periods.
- Make a comparison between the pre and post colonial forest policies and acts.
- Enumerate the provisions of FRA with their social implications.

Method and Data

The study is aimed at qualitative appraisal with a critical look. Thus no particular statistical method has been followed in general. The processes of SWOT analysis have been followed to bring out the strength, weakness, opportunity and threats involved in FRA. Data involvement in this paper is very scant. Whatever is used is from secondary sources and collected from the forest department or different published sources, both in electronic and print media.

Pre- independence forest policies and acts in India

The Colonial rulers were only interested in making profit from Indian forests. They targeted specific timber producing species like Sal and Teak in the plains and Deodar in mountain forests; timbers that are used for making railway track sleepers, carriages or naval ships (Basu, 2010). So they gave 'reserved' status to them and proclaimed sole control on extraction of those timber resources. The other forests, rich in biodiversity, was considered 'unproductive' as the British failed to or in better sense of the word, did not wanted to comprehend the value of those forests. Thus they encouraged unprecedented clearing of those forest and 'reclaiming' forest lands for agriculture. So the forest policies only established the imperial supremacy over the Indian forest resources and mass destruction of forests started with the very implementation of the first forest act in 1865 (Gadgil and Guha, 1992). There are altogether three forest acts enforced within pre-independent period in India i.e. in 1865, 1878 and 1927. The forest act of 1927 is still now in effect. Simultaneously, a forest policy was announced in 1894.

Forest act of 1865

First forest act of India recognized two types of forests i.e. 'Reserved forests' where government had the sole right of extracting timbers and 'Protected forests' where common people had the right of entry and collection of forest materials they needed. Private forests under individuals were excluded from the purview of this act. Several provincial acts were formed under this act to fulfill regional demands. 'The Bengal rule' was such an act that formed in 1871 (ibid). Forests of south-western Bengal were considered less valuable and

higher tax was imposed on the landlords to indulge expansion of agriculture by forest clearing. Violation of traditional rights of the forest dwellers started at the same time.

Forest act of 1878

This forest act published under William Schlich recognized three types of forests e.g. 'Reserved forest', 'Protected forest' and 'Village forest'. The last one was outside the direct control of government and thus the inseparable connection of the villagers with their adjoining forest was first time recognized by the British (Biswas, 2002). Certain activities like trespassing and cattle grazing were regarded prohibited within the reserved and protected forests and fines and imprisonment were imposed on the offenders.

Forest policy of 1894

The endorsements of Dr. Voelcar were treated as the first forest policy in British India. It included four categories of forests: a) Forests that deserve protection on physical and climatic ground. b) Timber forests mainly meant for revenue earning by government. c) Minor forests whose products were of lesser significance to government and d) Forest pasture lands (Directorate of forests, 1962). The last two categories certainly accept common people's right to use part of woodland for sustaining their self-provisioning economy at village level. But the policy seems to be a scholar's dilemma to remain loyal to his scientific knowledge or to the crown as it categorically specified that the claims of cultivation were stronger than the claims of forest preservation and whenever an effective demand for cultivable land could be supplied from forest area, it should be ordinarily granted without hesitation (Kulkarni, 1987).

Forest act of 1927

Indian forest act of 1927 was conspicuous for including further regulation on people's rights and also head for the provisions to take over private forests (Directorate of forests, 1962). This act practically gave the forest department monopoly on rights over the forest resources of the country and denied the same to all others. The forest officers were provided with such an enormous power of decision making that they could change the physical setup of the forest by deflecting the river courses within their territory. Activities like entering the forest, cattle grazing, collection of lesser forest products; even fishing from the water bodies within the forest became prohibited and punishable offence under law. The offenders can be arrested, by the provision of this law, without warrant and can be detained up to one month without producing any charge sheet. This rule naturally went on suppressing the rights of forest dwellers and serving the imperial notion of British government but surprisingly it is still in act even after six decades of Indian independence.

Post-independence forest policies and acts in India

Forest policies in sovereign India were announced in 1952 and 1988. The 'wildlife protection act' of 1972 and 'the forest protection act' of 1980 were mere amendments of prior acts (Mishra, 2002), so they are excluded from the present discussion. The latest and most conspicuous one is the 'Scheduled tribes and other traditional forest dwellers (recognition of forest rights) act of 2006.

Forest policy of 1952

First forest policy of sovereign government of India came out in 1952. This policy was based on paramount national needs and emphasized the claims of the communities living in and around the forests should override national interests. But national interests were interpreted in a narrower sense (Biswas, 2002). Rising finance from the forest lands was given more importance than securing the rights of the forest dwelling communities. Even the fifth clause of this policy dictated that it is not the solemn right of the villagers to rip forest resources just because their village is situated near that 'national asset' (Mishra, 2002). Practice of collecting lesser forest products for domestic use or taking them to local market was allowed for the inhabitants of forest margin villages in Baghmundi region within a distance of six miles from their residence, in the colonial period (Biswas, 1978). That provision was banished in the national forest policy of 1952. Thus the new policy in essence became an extension of the colonial policy that only pays interest in making profit from the forests (Kulkarni, 1987).

Forest policy of 1988

Forest department came out of the Ministry of agriculture in 1985 and became part of the newly formed Ministry of Environment and Forest (MoEF). A new forest policy was announced in 1988 that showed, for the first time; shift in view point of the policy makers regarding the utilization and management of forest resources. Keeping up the natural heritage of the country and preserving the bio-diversity was given ardent importance. Rights of the poor people living at forest fringes were recognized by stating the role of fuel wood, fodder, minor forest products and small timbers in sustaining their life. More precisely, the new policy sought to include those people in restoration and maintenance of forests.

Diversion of forest lands to other purposes was restricted with farm rigidity and employment generation from the forests for the local people was emphasized to stop forest destruction by shifting cultivation or lumbering. Extension of forest was encouraged even in private lands (Sagreiya, 2005). Although there were some silver linings in the 1988 policy but the attitude of the forest department is not out of question in translating it into practice. There is still a top-heavy system of planning exist in decision making process regarding conservation and utilization of forest resources where meaningful participation of local people is still absent or in a more true sense, are ignored.

Forest Rights Act – 2006

'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act' mark a paradigm shift in Indian Forest Management. Instead of lending selected privileges, for the first time, forest dwellers were given the 'rights' over resources like land, water, tree etc. that traditionally belonged to them for centuries but denied the same by the Indian Government till the date of enactment of FRA. In official language, this act is aimed at "eradicating the historical injustice" made by the hegemonic people to the forest dwelling communities of the country, most of them being the members of scheduled caste and scheduled tribe families.

Provisions of FRA – 2006

The Forest Rights Act of 2006 has several features that can trigger a potential social change for the forest dwelling individuals as well as communities. Some of its provisions are discussed below -

- i. **Settlement of rights on land:** people dwelling on forest lands for more than thirty years will get lawful right over the parcel of land he/she possesses. Up till now, the people do not have any right on their ancestral lands though they may inhabit that particular part of the earth from pre-historic times. Their existence was depended on the mercy of the forest officials. Moreover, they were treated as 'encroachers' thus cannot sell their harvest to government agencies. FRA can solve this misery for good.
- ii. **Recording of holdings in individual's name:** It means a lot for the forest people. First of all it is a social recognition, from landless to landlord. Secondly, it has a great deal of economic importance. Recording of residential plots and farmlands in individual's name will enable them to access different beneficial schemes offered by the central and state governments including land development, subsidized homes and food grain procurement programs. It has been assessed that altogether, a tribal or scheduled caste family can avail as much as fifty six such schemes extended by central and state governments (Mahapatra and others, 2013).
- iii. **Rights of Communities over forests:** FRA – 2006 offers rights of forest lands to traditional societies those have lived in harmony with their forests from a distant past. For the people, to whom forest is an integral part of life, it is recognition of their livelihood. Forests may be shared by two or more communities or a particular community may reserve sole right over a particular stretch of forest. This enables them to control and manage the forest resources in such way that the community can be benefited most. It will also obliterate the supremacy of the forest department and dependency of forest dwellers over the department in planning and managing their resources will be reduced in a justified manner.
- iv. **People's consent for conversion of land:** This is commonly regarded as 'the consent clause'. Before enactment of FRA, people living in forest lands had no scope to challenge their eviction from those lands before the court of law. Forest Department had the sole authority to establish and evict forest villages as per their priority. Moreover, if the forest land was converted into mines, roads, railroads or reservoirs, the inhabitants were evicted without compensation and relocation. FRA enables the forest dwellers to bargain with the government or the private entrepreneur for their rehabilitation and compensation.
- v. **Conversion of village status:** As per FRA, all forest villages must be converted to revenue villages. This will connect those marginal villages to the main stream of infrastructure development. It will bring the provisions of 'Pradhanmantri Gram Sadak Yojana' to the tribal villages located inside the forests. Other facilities include access to grid power, irrigational facilities, job card under 'Mahatma Gandhi National Rural Employment Guaranty Act' (MoNREGA) etc.

Thus better connectivity, better education leading to better opportunity for the inhabitants of the distant forest villages

The policy – practice dilemma

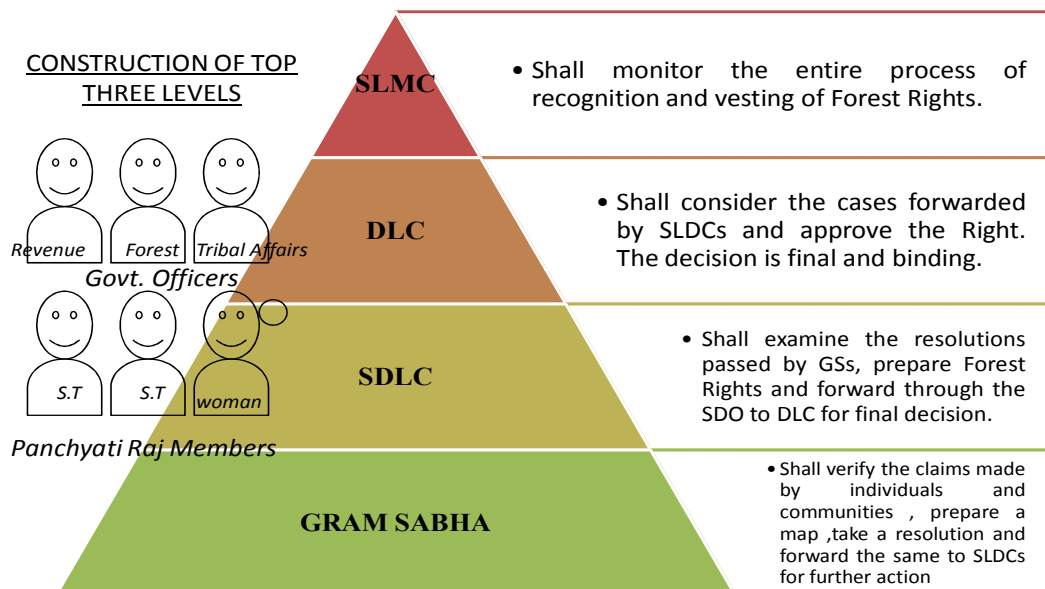
Indian forest management, in reality is historically skewed to benefit a small section of urban elites. These people, with their influence in decision making process, successfully attract state-subsidies for their economic gain and in that process ignores the needs of the majority (Gadgil – 1991). Influence of that nexus, what Gadgil has rightly termed as ‘Iron Triangle’ (ibid), may be an explanation of the otherwise astonishing ‘collective apathy’ of the forest officials in rendering the rights to the forest dwellers. Forest Rights Act has come into force in 2007. Almost eight years after, only 19 states of India has implemented or committed to implement the act within their territory. The states and Union Territories that refused to enact FRA cite different reasons ranging from sub-judiciary causes to absence of proper guideline from the centre. Among the implementing states, collectively 2.8 million title claims has been processed and more than half of them were rejected. Again, most of the 1.3 million processed claims were given between 2008 and 2010, which some scholars suspect to be a poll trick, because major forest –bearing states of India were facing elections within that period (Mahapatra – 2014). The state of West Bengal started implementing the FRA from 2008. The Tribal Welfare Department of the state government was made the apex body for implementation purpose. Till now, only eleven district authorities have taken initiative to implement the act. Puruliya, West Midnapur and Jalpaiguri are among the forest-rich districts of West Bengal that had started recording forest rights. Districts like Bardhaman and Hooghly, where forest is scanty, also have started the process. On contrary, districts of North and South 24 Paraganas, that host India’s largest mangrove forests, the Sunderbans, not yet formed the mechanism of recording rights of the forest dwellers till date (GoWB – 2014).

Implementation of FRA is a layered process. A claim of forest right has to pass three hierarchical levels before getting recorded. As per recommendation of the Central Government, each district authority has formed three-tiered structure comprised of Gram Sabha Level Committee (GSLC), Sub-Division Level Committee (SDLC) and District Level Committee (DLC). An empowered group called State Level Monitoring Committee (SLMC) is also set to co-ordinate inter-district issues regarding recognition and vesting of forest rights. The GSLC is comprised of village representatives of the Panchayati Raj system and the officials from state forest department and Land and Land revenue department. It is the base level of the implementation structure. Every claim of the forest rights shall be first placed before the GSLC. Members of this committee shall verify the claims, meet-up the boundary issues, if any, then prepare a detail location map of the claimed land parcel and forward the same in form of a resolution to the SDLC. SDLC is comprised of six members. Three of them are representatives of Panchayati Raj system, two of them shall be from scheduled caste community and one of them shall be a female person. Rests of the six are government officers from respective department of Tribal Welfare, Forest and Land Revenue. This committee shall examine the justification of the resolution forwarded by the GSLC. After satisfactory inspection, they shall prepare the documents of forest right recognition and shall forward the same through the Sub-Divisional Officer, by virtue of the chair ex-officio member and chairman of the committee, to the DLC. District level committee has the power to approve or disapprove the right and their decision shall be final and binding. SLMC keep in touch with the national level empowered committee and act as liaison between the centre and the state (GoWB, 2014).

SWOT Analysis

It is evident from the above study that Forest Rights Act of 2006 possesses some potential within and faces some threats from external players.

FRA -2006: IMPLEMENTATION STRUCTURE



<p>Strength</p> <ul style="list-style-type: none"> • The act enables weaker part of Indian society to access the virtues of inclusive development. • The act ratifies a kind of social justice that has been long forgotten by the hegemonic society. • Forest dwellers can record their holdings and be the rightful owner of the land they possess. The stigma of being marked as 'encroachers' will come to an end. • Communities can practice their traditional rituals intertwined with forests and manage this resource for betterment of their livelihood. • Forest departments will have little say about the utilization of forest resources. People will not be forced to take permissions to collect every day livelihoods. • This act will end the fear of eviction among the forest dwelling communities. Previously forest department had the sole right over the forest land and they could evict any one any time without providing compensation or rehabilitation from their land. 	<p>Weakness</p> <ul style="list-style-type: none"> • Claiming right of land is a lengthy and tedious process. It may lead to utter dismay of forest dwellers regarding the whole procedure. • There are disputes over boundaries between villages, farm land and forests that should be mitigated first. • Forest dwellers have been asked to submit evidences in paper to prove their claim on the piece of land they are residing. But in most of the cases, forest dwellers do not possess that kind of residential certificate. • Absence of guideline or the modus operandi of change in land records stalls the entire procedure. • Convergence of Government Schemes like MGNREGA, <i>Indira Awas Yojana</i>, <i>Annapurna Antyodaya Yojana</i>, food grain procurement scheme etc. needs proper guidelines from the Central Government as well as modification in administrative level. • Changing status of forest villages to revenue villages has been prescribed in the act. But without proper administrative instruction and reformation it is not possible.
<p>Opportunities</p> <ul style="list-style-type: none"> • FRA got outright support from the social scientists, activists, literary world and most importantly, the forest dwelling communities • Converging provisions of FRA with ongoing social schemes can lead to socio-economic empowerment of the forest dwelling scheduled caste, scheduled tribe and other backward communities living in forest villages. • Social empowerment of the forest people can lead to entrepreneurship and thus economic uplift of the downtrodden. • Improved livelihood of the forest dwellers by virtue of the potential unleashed by FRA can lead to increase in GDP of the nation. 	<p>Threats</p> <ul style="list-style-type: none"> • <i>Gram Sabhas</i> are not properly equipped to demarcate the boundaries and processing the claim proposal. Forest officials are not co-operating with them. • Empowered committees at sub-division and district level are over-burdened, thus the claim processing is taking time. • Claims are rejected on flimsy grounds. Often without stating any reason. • Even the processed claims recognize land parcels much smaller than they actually are. • Land titles given to the forest dwellers are still not recorded. Thus, no Government schemes are available for newly distributed land titles. • Both central and state governments showing their disregards in converting policy into practice. Even some attempts made by the centre shows desperation in diluting the provisions of FRA – 2006.

Thus a SWOT analysis is proposed here to bring out the 'Strength' and 'Weakness' of the act at the same time the 'Opportunities' and 'Threats' it faces from the outer environment. SWOT is a widely used strategic planning tool where first two variables are internal and the last two are external. A consistent study helps in predicting the change and facilitates decision making process.

Conclusion

Indian forest management bears distinct symptoms of colonial legacy. It is clear from the above discussion that forest laws were made more stringent in post colonial India. Various rights over land, resources and revenues enjoyed by the forest dwelling communities of this country under the foreign rule were reduced to near zero in the post colonial era. Most of the forest dwellers actually forced to live under the mercy of the forest officials. Thus the conflict of interest between forest communities and forest bureaucracy translated into decay of livelihood for the former and they almost compulsorily perished under the nexus of power, politics and privileged class. Forest policy of 1988 brought a kind of breather for them through recognition of the role of communities in development, maintenance and protection of forest resources. But the Forest Rights Act of 2006 was something that can be regarded as paradigm shift in both ways i.e. for the forest dwellers and the forest management. It promised to end the social injustice done to the poor forest communities for centuries. But after one decade of enacting FRA -2006, the conversion of promise into practice is unfortunately very slow. State governments are allegedly reluctant in processing the claims, forest officers and district administration are unwilling to cooperate and central government is nonchalant even after huge number of claim rejection throughout the country. Moreover, some scholars fear that government is trying to dilute some of the provisions made in the FRA – 2006 in favour of the corporate world. Thus it can be concluded that, deliberate apathy from the hegemonic people concerned with

deliverance of provisions of Forest Rights Act – 2006 to the forest poor is evident and Indian society is losing its golden opportunity to end up a century old saga of injustice that a country made to a section of its citizens.

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