

Session 9: Lecture Notes on
Legal and Policy Frameworks related to Forest Conservation

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FOREST CONSERVATION LAWS AND POLICIES

There have been three forest policy announcements in independent India; the Forest Policy of 1952, The National Commission on Agriculture, 1976 (NCA) and the 1988 Forest Policy.

The National Policy 1952 was formulated out of the need for a reorientation of forest policy in light of the changes that had taken place since the enunciation of the 1894 policy on forests. Forestry in India, whether state or privately owned, was classified into four categories of Protection Forests, National Forests, Village Forests and Tree Lands.

The Policy laid down “that India, as whole, should aim at maintaining one third of its total land area under forests.” village communities should under no circumstances be permitted to use forests at the expense of the “national interest”, which was identified with defence, communications and vital industries. The policy emphasised scientific conservation. Emphasis was laid on the conversion of low value mixed forests to high value plantation of commercial species.

The National Commission on Agriculture also stated “there should be a change over from the conservation oriented forestry to (a) more dynamic

programme of production forestry.” The NCA recommended that the national forest policy should be based on optimizing forest resources for goods and services, preventing erosion and denudation, maximising forest productivity and augmenting employment potential for national prosperity.

Forest Policy of 1988 (NFP) represented a major paradigm shift from the earlier policies and this shift began to take some shape through the introduction of *Joint Forest Management* in India in 1990 both of which are discussed in detail in a subsequent section of these notes.

In addition to the policies mentioned above there are some key central legislations that regulate the Forestry sector in India and these are discussed next.

Forest Conservation Act, 1980

The Forest Conservation Act of 1980 (FCA) can be seen as a single biggest legislative initiative in Indian history to slow deforestation caused by the conversion of forestlands to non-forest purposes. Under this Act, no State Government can authorise such conversion without securing Central Government’s approval.

Note that the FCA does not itself ban any non-forest activity or the de-reservation of forest land. What the law says is that any such non-forest activity requires that the permission of the Central Government be secured for such actions. The Act has been given credit by some for slowing the rate

of deforestation in India, in part by providing a defence against political pressures –where the State Governments may be particularly vulnerable - for converting forest areas to other uses.

BOX - I

Name of the Act	Objective	Essential Provisions	Applicability	Remarks
Forest Conservation Act, 1980	To check further deforestation and conserve forests	<ul style="list-style-type: none"> -Restricts use of forest for non-forest purpose -Restricts de-reservation of reserve forests - Regulates diversion of forest land by way of lease to private industries and individuals. - Restricts clear felling of trees - Constitution of Advisory Committee for grant of approval for any of the activities above. 	Whole of India except the State of Jammu and Kashmir	The State of Jammu and Kashmir has its own Forest Conservation Act, 1990 on the lines of the FCA 80

The Biological Diversity Act 2002

The Biodiversity Act 2002 has been enacted in pursuance of the United Nations Convention on Biological Diversity 1992. The preamble to the Act borrows the objectives as laid down in the Convention and says that the Act

is to “provide for conservation of biological diversity, sustainable use of its components and equitable sharing of the benefits” arising therefrom.

The Act creates a three-tier structure of authorities to manage the biodiversity of the country. This includes the National Biodiversity Authority (NBA), the State Biodiversity Boards at the state level and the Biodiversity Management Committees at the local level.

Box - 2

Name of the Act	Objective	Essential Provisions	Applicability
The Biological Diversity Act 2002	Conservation of Biological Diversity, sustainable use of its components and equitable sharing of the benefits of biological resources	<ul style="list-style-type: none"> - Provides for establishment of National Biodiversity Authority. - Makes use and regulation of biological diversity subject to the approval of National Biodiversity Authority. - Provides for establishment of State Biodiversity Board - Requires the Central Government to develop National Strategies, plans, programmes for the objectives of the Act. - Requires the Central Govt. to notify threatened species and the State Govt. to notify biodiversity heritage sites. - Mandates every local body to constitute 	The Act extends to the whole of India.

		Biodiversity Management Committee. - Provides for establishment of Local Biodiversity Funds.	
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Indian Forest Act, 1927

The Indian Forest Act of 1927 (IFA) and its progeny in the various states provide the overarching framework for forest management in India. The preamble to the Act states that the Act seeks to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce.

The Indian Forest Act establishes three categories of forests. The most restricted category is "reserved forest." In reserved forests, most uses by local people are prohibited unless specifically allowed by a forest officer in the course of "settlement."¹ In "protected forests," the government retains the power to issue rules regarding the use of such forests, but in the absence of such rules, most practices are allowed.² Among other powers, the state retains the power to reserve specific tree species in protected forests which has been used to establish state control over trees whose timber, fruit or other non-wood products have revenue-raising potential³. A third classification is "village forests" in which the state government may assign to "any village-community

¹ Indian Forest Act, Sections 3-26.

² Id. Sections 29-34

³ Such reservation has been done extensively in the State of U.P which will be seen the section on Uttar Pradesh and biodiversity

the rights of Government to or over any land which has been constituted a reserved forest."⁴ Little use has been made of this provision.

For the basic objectives, its extension and main provisions of the Indian Forest Act see **Box 3**.

Box - 3

Name of the Act	Objective	Essential Provisions	Applicability	Remarks
Indian Forest Act, 1927	To consolidate laws relating to forests, transit of forest produce and duty leviable on timber and forest produce	<ul style="list-style-type: none"> - establishes three classes of forests namely Reserve Forest , Protected Forest and Village Forest - has elaborate procedure for constituting the above categories with a detailed process of settlement of rights through the FSO - Ch.V deals with control over forests not being the property of the Government - Chapter VI deals with duty on timber and other forest produce - Ch. VII deals with timber and forest produce in transit. - The object of Ch. VIII is to regulate the rights of the owners in drift and stranded 	In the states as follows: Ajmer-Merwara (Now merged with Rajasthan), Berar (Partially), Bombay, Delhi, Dadra and Nagar Haveli, Goa, Daman and Diu, Orissa, Gujarat, Madhya Pradesh, Manipur, Tripura and Vindhya Pradesh (Vindhya Pradesh is now a part of Madhya Pradesh), Minicoy, Laccadive and Admindivi Islands, New Provinces and Merged States, Pondicherry, Punjab, Haryana and Chandigarh Himachal	Several States have its own Forest Act such as Andhra Pradesh, Karnataka etc. Others have adapted the IFA. However the basic principle remains that the spirit of the National law reflects in them.

⁴ Indian Forest Act, Section 28.

		timber. - the power to reserve specific tree species in protected forests	Pradesh,	
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The Forest Policy of 1988 and Joint Forest Management (JFM)

It has been pointed out above that *Forest Policy of 1988 (NFP)* represented a major paradigm shift from the earlier policies and this shift began to take some shape through the introduction of *Joint Forest Management* in India in 1990 and these are discussed here. Unlike, the use oriented policy of 1952, the Forest Policy of 1988 (NFP) gives major emphasis on the ecological roles of forests, and envisages that the rights and concessions from forests are to be primarily for *bona-fide* use of communities living within and around the forest areas, especially tribals. Such communities are required to be motivated to protect and develop such forests from which they derive their benefits⁵. The NFP also stipulates that the rights and concessions relating to forest produce of tribal community and other poor living within and near forests must be fully protected. The domestic requirements of fuel-wood, fodder, minor forest produce and construction timber should be the first charge on forest produce. It is envisaged under the Policy that these and substitute materials shall be made available through appropriate means⁶. In the field of domestic energy, fuel wood needs to be substituted as far as practicable with alternative sources like biogas, solar

⁵ Section 4.3.4.2 of the Forest Policy, 1988

⁶ Section 4.3.4.3 of the Forest Policy, 1988.

energy, LPG, etc⁷. The NFP further stipulates that any diversion of forest land should be subject to most careful scrutiny by specialists and must take into consideration the social and environmental costs.

Some of the laudable objectives of the NFP began to take root through the introduction of *Joint Forest Management* in India in 1990. The Ministry of Environment and Forest issued a circular in June 1990 to various State Departments of Forest (vide no.6-21/89-F.P) encouraging the involvement of village communities and voluntary agencies for regeneration of forest land and this circular officially launched JFM in India. Some of the main elements of the JFM Circular are discussed in the box below

Box-4

Main elements of Circular on Joint Forest Management (JFM)

- JFM should be implemented under an “arrangement” between the village community (i. e. the beneficiaries), NGO’s and the State Forest Departments. The selected area should be managed in accordance with a working scheme “prepared in consultation with the beneficiaries.” The working scheme is to cover such matters as steps for inducements of natural regeneration, seeding, soil conservation methods, fire protection, maintenance of boundaries, weeding, tending, thinning etc.

⁷ Section 4.3.5, Forest Policy

- Beneficiaries should essentially be village communities and not commercial or other interests. They may be entitled to usufructs like grasses, lops of branches, and other minor forest produce, as prescribed by the State. Subject to successful protection the user group is also entitled to a portion of the proceeds from the sale of mature trees. They may also plant fruit trees to fit into the over all scheme of afforestation and grow indigenous medicinal plants as per the requirements of the beneficiaries.
- Access and usufruct rights are limited to people who organise themselves as groups such as co-operatives or village forest committee and in no case shall access or tree pattas (leases) be given to individuals.
- Neither the beneficiaries nor any NGO may acquire ownership or lease rights over the land in question. No grazing or agriculture is allowed on the selected area.
- The selected site should be free from any existing claims or rights, privileges, or concessions. Thus a site burdened with existing claims is not favourable for JFM. In the alternative, for a given site any one who has a claim to forest produce should be given the opportunity to join the beneficiary group.
- The work of the beneficiaries is to be closely supervised by the forest department. If the work has been done in an unsatisfactory manner “the

usufructory benefits should be withdrawn without paying compensation to any one for any work that might have been done prior to it.”

Almost all the States have now issued notifications pertaining to Joint Forest Management (hereinafter JFM) in line with the Central Government circular. However the legal bases of these notifications and its place in legal hierarchy have been a major concern to ensure real benefits to the people along with sustainability of forest products. The numerous legal issues on JFM relate to institutional arrangements, impacts of other legislations, tenurial security and benefit sharing mechanisms. The JFM specifically needs to address these issues if it has to sustain itself legally as well as administratively and these are of crucial significance if the forests are to be jointly managed by the people and the agencies of the State.

Panchayats and Forests: The Case of PESA

The Parliament extended the 73rd Amendment Act to the Scheduled Areas in ten states by legislating the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996. (hereinafter PESA). The PESA alongwith its State Adaptations has to be seen as one more definitive indicator of increasing attempts at carving out the role of the PRIs in Natural Resource Management.

The PESA endows special powers and authority to the Panchayat at appropriate level and the Gram Sabha in order that they function as

institution of self government. It has been mandated that State Legislature shall ensure these powers to the Panchayat at appropriate level as well as to the Gram Sabha. The PESA is especially remarkable for the vast and wide-ranging powers that it vests with the Gram Sabhas in Scheduled Areas. These include, inter alia, approval of the Gram Sabha of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level; Gram Sabha would be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes. Further, State-Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specially with the ownership of minor forest produce. This has direct implications for the extent of empowerment of the Gram Sabha vis-a-vis its right relating to forest and forest produces. Although the PESA is restricted in its application to the Scheduled Areas alone, its logic of conferring “ownership of Minor Forest Produce” to the Panchayat Raj Institutions cannot be missed. Generally speaking, in most of the states this power seems to be restricted to the local areas of the Panchayat of the respective Gram Sabhas.

OTHER CONSTITUTIONAL AND CENTRAL LEGAL PROVISIONS FOR FOREST CONSERVATION

A. Constitution of India

The Constitution of India has significant provisions for environmental protection and environmental rights and duties of the people. Under the Directive Principle of State Policy, Article 48-A of the Constitution, enjoins that the State shall endeavour to protect and improve the environment and to

safeguard the forests and wildlife of the country, and Article 51-A (g) which proclaims it to be the fundamental duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Thus, by raising environmental concerns to the constitutional level, India has provided its citizens with a powerful legal tool to protect wildlife, maintain health standards and curtail government and private sectors including trans-nationals corporations, from degradation of natural resources. The constitutional mandate can certainly be invoked in case of threats to ecosystems or any rich biodiverse region..

B. The Environment Protection Act, 1986

Another important general framework of environment protection is provided under the umbrella legislation of the Environment Protection Act, 1986 and this law can be of a great value in sustaining legal action for forest conservation. The Environment Protection Act, 1986 was the response to a widely felt need for a general legislation for environment protection. Under the Act, the Central Government is vested with power to take all such measures, as it deems necessary or expedient for the purpose of protecting and improving the quality of environment and preventing, controlling and abating environmental pollution. (Section 3) The Central Government has been empowered to issue directions including the power to direct closure, prohibition and regulation of any industry, operation or process or stoppage or regulation of the supply of electricity or water or any service. (Section 5) Subsequent to the enactment of the Environment Protection Act, the Water and Air Acts were Acts were also amended and the Pollution Control Boards were clothed with powers to direct closure, prohibition or restraining of any

industry operation or process. (Section 33 Water Act 1974 and Section 31-A Air Act 1981) Though these Acts do not have specific action points on biodiversity, their liberal interpretation and use can have wide implications for biodiversity conservation. This is specifically true in case of areas of biodiversity importance that are not protected under the existing legal regime. For example the corridors of protected areas that are vital to genetic continuity in PAs are not covered under any law may be protected zones under the Environment Protection Act.

C. Wildlife Protection Act, 1972

The Wildlife Protection Act, 1972 (WLPA) is the single most significant statute on wildlife conservation in India. Under it, over five hundred National Parks and Sanctuaries termed protected areas (PAs) in common parlance (though this is not a legal term), have been created or given legal protection. Though there were several laws relating to wildlife prior to 1972, as discussed above, the WLPA was India's first comprehensive legislation, covering the whole country. This law has been explained in detail in another module of the Course.

AN OVERVIEW OF THE RANGE OF STATE FOREST LAWS

Forest is a 'Concurrent' subject under the legislative lists of the Constitution of India which means that both the Centre and States are competent to enact laws for forest conservation and use in India. The States therefore have introduced a range of legal instruments that regulates Forestry in the

respective states. This section gives an overview of the range of such laws at the State level.

Indian Forest Act, 1927 (as applicable to State XYZ...)

The Indian Forest Act as applicable to the States and the rules made thereunder is the most significant statute that governs the use and management of forests in any State. Typically several rules are enacted at the State level under the above Act . These ranges from rules regarding protected forests, transit of timber and other forest produce, collection and disposal of drift and stranded wood and timber to regulation and establishment of saw mills and grazing rules. Each of these rules are discussed briefly below.

The State Transit of Timber & Other Forest Produce Rules: Such rules regulate the transit of timber and other forest produce within the state by means of passes. An official of the forest department or any person duly authorised under such rules may issue a transit pass (TP) for the movement of forest produce to any rule and in accordance with any conditions that may be imposed. However, any forest produce that is removed for *bonafide* consumption in exercise of a privilege granted by the state or through a right recognised under this Act does not require a transit pass.

The State Establishment & Regulation of Saw Mills Rules: These rules typically provide that no person would establish or operate any saw mill or machinery for converting or cutting timber and wood without a license from the concerned Divisional Forest Officer at the state level.

State Protected Forest Rules: In areas that are declared as protected forest the *Protected Forest Rules* is applicable whereby no person is allowed to cut, saw any tree or forest produce in protected forests. Further, the clearing and breaking of land for cultivation for creating any temporary or permanent structure, cutting of grass pasturing of cattle or burning of any fire near such protected forests is prohibited unless the Forest Officer permits to do so.

The Rules Regulating the Grazing of Cattle: Most of the States have also formulated rules regulating the grazing of cattle in the reserved forest and to other forests or lands that Conservator of Forest of the state may direct. Under the said Grazing rules areas that are open to grazing are earmarked. Further, grazing is prohibited in certain blocks in accordance with the working plans of the said area. The rules also provide for grant of permit for grass cutting and the conditions on felling or lopping of any tree.

The State Forest Corporation Act: The Act provides of the establishment of a corporation for better preservation, supervision and development of forest including better exploitation of forest produce within the State. The Act empowers the Corporation to undertake removal and disposal of trees and exploitation of forest resources entrusted to it by the State Government. The Corporation is also required to prepare projects and under take research programs in forestry within the State. Every local body is mandated by the Act to extend full support to the Corporation furnishing all the requisite information including examination of records, maps , plans and other documents relevant to the local area

The State Tendu Patta (Vyapar Viniyaman) Adhiniyam: These Acts restrict the sale, purchase and transport of Tendu leaves to the state

government or an authorised officer of the state government or an agent in respect of the unit in which the leaves have grown. The Act also defines the grower of Tendu leaves and includes the state government in respect of the RF and the PF, the Gaon Sabha and tenure holder on whose land such leaves are grown. The State Government is empowered to fix the price of the Tendu leaves and also register growers and manufacturers of bidis and exporter of Tendu leaves. The rules under the above Act prescribes the manner in which agents are appointed, the manner in which Tendu leaves would be collected, the authority who would issue transport permit etc

State Private Forests Act and Rules: The State Private Forests Act was enacted immediately after independence in most states to check the denudation of tree growth in ‘private forests’ due to extensive over felling as a consequence of high prices of fuel.⁸ The objectives of the Act include conservation of forest for providing fuel and fodder resources, prevention of erosion, the interest of future generations and also develop Private Forests as national assets. It is provided under these Acts that the owner of Private Forests has the option to manage such forest in accordance with a working plan approved by a Forest Officer and in case the owner fails or refuses to manage the forest in accordance with the working plan the management of forest would be done by the Forest Officer in lieu of profits for such management. The State Private Forest Rules, enacted under the State Private Forest Act, prescribes a manner in which notified area of private forest may be managed.

⁸ Private Forests typically exclude (a) any land which is vested in the Government (b) any land in respect of which notifications and orders issued under the Indian Forests Act, 1927, are in force.