



FOREST RIGHTS ACT – 2006: IMPLEMENTATION AND ITS IMPACT IN WARANGAL (RURAL) DISTRICT – A STUDY

Koram
Gnaneshwari

Department of Political Science Kakatiya University Warangal, Telangana State

ABSTRACT

Forest is the natural wealth. No one can deny its need to be preserved. Destroying forest is easy; but growing it takes decades. Preserving forests is therefore of utmost importance. Environmental law covers preservation of forests as its important wing. Until 1976, the subject of forest belonged in the State List of the Constitution and state governments regulated forests in accordance with the Indian Forest Act of 1927. The Forty-Second Amendment Act of 1976 transferred forest to the concurrent list, thereby empowering the central government to play a more direct role in the management of forest and the regulation of activities in forest lands.

Nowadays the area covered by forest has reduced tremendously. To conserve forest areas, the government launched joint forest management and social forestry schemes, with some success. Judiciary had to deal with cases involving conflict between need to preserve forests and the need for developmental activities. In most of the cases, the Supreme Court and the High Court emphasized the need to preserve forests, as against the need of industry.

KEYWORDS : Constitution of India, Department, Environmental, Forest, Ministry etc.

INTRODUCTION

In the Constitution of India it is clearly mentioned that it is the duty of the state to protect and improve the environment and to safeguard the forest and wildlife of the country. It imposes a duty on every citizen 'to protect and improve the natural environment including forests, lakes, rivers, and wildlife'. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. Later this became the Ministry of Environment and Forests in 1985.

Safeguarding the forest and wild life of the country is the duty entrusted to the State as per Article 48A of the Directive Principles of the State Policy in the Constitution of India. It is the fundamental duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life as envisaged by Article 51 A of the Constitution.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 has been passed by Parliament to address the injustice done to tribal and adivasi communities and other forest dwellers. It confers legal entitlements on the lands they were cultivating for centuries. This looks at various issues with regard to implementation of the Act in the state of Telangana. It investigates why the Act emerged in relation to TS. It also reviews the range of forest rights deprivations and how they came about. The authors consider the likely livelihood impact of such a pro-poor institutional reform on the people of the state.

Telangana (TS) is the fifth largest state in India, both in terms of geographical area (2,75,069 square kilometres) as well as in terms of population. TS had a population of 75.73 million in 2001, of which 55.22 million were rural, and 10.67 million people lived within forested lands, many of these may be considered "forest people". An estimated five million were indigenous or tribal people. TS contains extensive forest lands, and has the third largest forest cover among the states in India (Forest Survey of India 2009). A long-term historical process of the state extinguishing forest people's rights and expropriating them has led to severe livelihood insecurity and poverty.

The forested lands contain the highest concentrations of poverty. The relationship between the state and the forest people has been conflicted for at least a century, as the colonial state and the Nizam's client state sought to take over control of the forests and delegitimize forest people's use of the

forests. After Independence, though these people became citizens, the conflictual relations continued, and indeed have been the root of much civil strife and insurgency across forested areas to this day.

The Forest Rights Act (henceforth FRA) was passed by India's Parliament in 2006, finally recognizing, 60 years after Independence, that across almost one-quarter of India's land, "historical injustice" has been perpetrated by the state forestry bureaucracy against rural populations:

The Act provides the legislative basis for redressing this injustice, and so has major implications across states, promising a more secure basis for forest people's livelihoods. However, is it realistic to expect after more than a century of state oppression of the forest people, that the relationship can be reversed at a stroke of the legislative pen? Particularly given that the forestry establishment of the colonial regime seems so securely entrenched in its control of the extensive state-enclosed lands (about 23% of TS) which it annexed in this way. Does the FRA really signify a fundamental change in the political position of forest people in India? Or will the reform turn out to be more symbolic than material? The FRA process is an important case of parently pro-poor contemporary institutional reform, and its implementation is clearly a central determinant of just how pro-poor it turns out to be in practice.

DEPLETION OF FOREST

Over the years, the area cover under forest has decreased steadily, as forests have been cleared for agriculture, industry, housing, and other development activities like the construction of roads, railways, and hydroelectric plants. Today, the method of cultivation causes extensive damage to the area. Due to the increase in population, people are compelled to cultivate on the same plot of land more frequently as there is very little forest area available. Forests are also being converted to permanent settlements. Thus, forests cannot regenerate, and, in some cases, forest areas have become wasteland within a few years due to frequent cultivation.

Animals usually graze in forests. But if their number is large, they hamper regeneration when they trample on the young shoots and seedlings or eat them. This makes the soil prone to erosion. Apart from forest loss, one also has to contend with forest degradation. Communities living in and around forests remove fuel wood from forests. As long as the population was low, the forest could meet the demand and yet remain healthy.

But the increasing population has severely depleted the forest.

A Historical Institutional approach

Institutional theory tells us that social, political and economic institutions, both formal and informal, not only behavior and opportunities, but also define rights and distribute power. They therefore have major implications for poverty and its alleviation. Historical institutionalists (such as Harriss 2006; Sanders 2006) hypothesize that institutions (i.e., "the rules of the game" by North's (1990) definition) are inevitably framed in the context of power relations, and hence, institutional formation and change is essentially a political process which has far-reaching economic implications. Historical institutionalists take a politically realistic approach to the link between the authorship and distributional outcomes of institutional reforms. Those with the power to prevail in negotiations can organise institutions best suited to their interests and can ensure they endure, even if this leads to divisive or dysfunctional outcomes for wider society or particular sections of it.

This approach commonly applies two central analytical concepts – critical junctures and path dependency. The idea of "critical junctures" suggests that there are moments ("junctures", similar to the concept of bifurcation points in the natural sciences) when sharp institutional changes can be made. At these points, contestation and power struggles play a critical determining role. Obvious examples of this are wars, colonial annexations, revolutions, coups d'état, and so on. Of course, the extent of criticalness can clearly vary greatly, as can the mix of precipitating causes, which may be due to environmental, political, or economic crises and may be internal to a polity/economy, or brought about by external events.

Fundamental changes in property and tenure regimes are good examples of a "critical juncture". In terms of forest tenures, we will see how the colonial concern to secure sustainable timber supplies led, in the mid-19th century, to the creation of forest bureaucracies and legal provisions to create a national forest estate. This may be seen as the key "critical juncture" in India's, and specifically Telangana forest lands.

Explaining why this is the case brings us to the second and complementary key idea which historical institutionalists use, that of "path dependency". This alludes to the pattern by which a consolidated institution becomes very hard to change so that once it is established it has a profound proclivity to remain in place even when regimes change. The sharp historical institutionalist in political science would recognize two aspects of this institutional "stickiness". First, an institution is often embedded in a network of associated and complementary institutions (formal and informal). It is hard to change one without having effective change in others; moreover, there will be a culture of familiarity with a particular institutional network. Also, there may be strong ideological/political attachments to an institution and what it represents. Second, underpinning the resistance to change and hence sustaining the path dependency are questions of incumbent power and politics. Power is involved because there will be deep vested interests committed to defending the institutions ("an organization's biggest output is itself", to part Stafford Beer's 1995 Ser); politics is implicated because there may be wider electoral considerations which governments do not want to threaten.

This study applies this historical institutional approach to help make sense of the complex historical processes and contemporary contestation over institutions relating to forest rights in the Indian context.

FRA Coverage

The FRA was the result of an intensely contested drafting

process (Bose 2010). The subsequent implementation of rules to bring the Act into force, were issued on 1 January 2008.

Overall, the FRA's key institutional reform is that legal rights will be accorded to private occupation, and to village common property resources currently in state forest land, subject to checks and proofs. It thus promises to redress the main rights deprivations listed above.

In all our study villages, the local people eagerly anticipated that under the FRA, they could receive private land titles or pattas to the land they presently are cultivating without titles. Private land is not the only rights issue that the local people are eager to have reformed. Access to common lands has also been legally denied by the state through a range of policies. Under the FRA, the local people have the right to their common resources, and are hoping to secure these rights through its implementation.

The Act, however is not a panacea. It is constrained in the extent to which it can redress rights deprivations. The specific wording of the Act leads to indeterminacy over how far it provides for such redressal. Furthermore, its provisions are limited in some significant ways.

First, the rights ensured under the Act remain subject to the state's eminent domain in acquisition of lands in the name of development projects (as is true of any land rights, although acquisition has been a particular problem in upland areas).

Second, the forest land titles assured under the Act are inalienable, and as such, the titles granted to the claimants contain no absolute and alienable right over the property. Private titles awarded under the forest settlement rules of the TS Forest Act created absolute title over the forest lands under occupation by claimants during the forest reservation process. Titles granted under the FRA are not creating ownership over lands in the same way.

Third, although the private rights to be granted are heritable under Section 4 clause (4), there is no provision to promote gender equity in inheritance. The FRA ensures joint title in the name of spouses in case of married persons. In the case of a single head, and in the absence of a direct heir, the heritable right shall pass on to the next of kin. However, who that successor would be is not specified. Neither the Hindu Succession Act nor the Indian Succession Act is applicable to the scheduled tribes (STs) in view of specific bars under the said laws. Only customary law is applicable for tribal communities in succession of properties, and in most tribal communities, customary law ensures matrilineal succession. These customary laws exclude tribal women from claiming a share in inherited property. This is a clear case of gender discrimination.

Fourth, the FRA is not explicit about whether the claimant should be in actual possession of or control over the land. Section 4(3) of the act gives eligibility for forest rights to STs and other traditional forest dwellers if they had occupied the forest land before the 13 December 2005. However, Section 4(6) restrains the claimant from claiming forest lands which are not under cultivation. The provision ensures title to the "actual occupant" of forest land to the extent of four hectares or nearly 10 acres. But tribal's typically shift their cultivation plots from place to place over time to allow fallows.

Fifth, the FRA has put a cut-off period, i.e., 13 December 2005, which means that rights deprived after that time will not be considered for redressal.

Finally, the rules made under the Act, specifically Rule 11, fix a three-month period for filing claims. Although Rule 14 enables

the aggrieved party to file appeals against the resolutions passed by committees at various levels within a limited period of 60 days, the law is silent about the communication of the decision of such bodies to these parties.

Thus, there are a range of concerns over the extent to which the Act can redress rights deprivations. Evidently a major part of its potential remains contingent on how it is interpreted and followed during implementation. Yet, the implementation provisions in the 2008 rules themselves also leave a large number of ambiguities to the discretionary power of the implementing agencies, as discussed in Sarin and Oliver (2010).

FRA Implementation in Telangana

This section considers the processes through which the nationally mandated institutional reform of forest rights is being implemented in TS, and the extent to which the letter and spirit of the Act is being realized at the local level and whether the anticipated rights' redress is actually occurring.

At the state level, there has been transparency efficient response very soon after the Act came into force on 1 January 2008, the TS government distinguished itself as one of the quickest to start FRA implementation. Summarises the state-level process. Early in January 2008, the TS Chief Minister, Y S Rajasekhara Reddy, requested the coordinating principal secretary of the tribal welfare department to develop an implementation road Telangana, in consultation with the forest department and the collectors. This was issued later in January. The plan originally required that title deeds be issued as improbably early as within 10 months by 30 October 2008, which to most observers familiar with the complexity of the issues involved seemed an absurdly brief period. This unrealistically said schedule required gram sabhas to be convened for forest.

Protected Forest

- Protected Forest an area or mass of land notified under the provisions of India Forest Act or the State Forest Acts having limited degree of protection.
- In Protected Forests all activities are permitted unless prohibited.
- Protected Forest is an area or mass of land, which is not a reserved forest, and over which the Government has property rights, declared to be so by a State Government under the provisions of the section 29 of the Indian Forest Act, 1927.
- It does not require the long and tedious process of settlement, as in case of declaration of a reserved forest.
- Indian forest act was established in 1972 for the protection of all the flora and fauna.

National Forest Policy (1998)

- The National Forest Policy, 1988, (NFP) is primarily concerned with the sustainable use and conservation of for-ests, and further strengthens the Forest Conservation Act (1980).
- It marked a significant departure from earlier forest policies, which gave primacy to meeting government interests and industrial requirements for forest products at the expense of local subsistence requirements.
- The NFP prioritizes the maintenance of ecological balance through the conservation of biological diversity, soil and water management, increase of tree cover, efficient use of forest produce, substitution of wood, and ensuring peoples' involvement in achieving these objectives.
- The NFP legitimizes the customary rights and concessions of communities living in and around forests, stating that the domestic requirements of the rural poor should take precedence over industrial and commercial demands for forest products.

ITS CONSEQUENCES

None will acquire any rights in or over reserve forest. No one can make fresh clearings in that forest. Setting fire to the reserve forest is prohibited. None can trespass even for pasture of cattle. Felling or cutting trees in the forest area is prohibited. Quarrying stone etc is barred. Removing any forest-produce is not permitted. Hunting and catching elephants are barred. All prohibited acts are made punishable, for the purpose of effective control. It may be noted that the formation of reserve forest and its safety are well taken care by the law, provided the authorities effectively enforce it.

CONCLUSION

It is of no doubt that there are quite a number of legislation in India regarding forests, its conservation and preservation. It is also worth mentioning that the judiciary has also ruled for the conservation and its need. But still in India, there are lots of deforestation activities going on as well as cutting down of trees; and until and unless the government wakes up and takes up some serious steps for the proper enforcement of the laws, rules and regulations; our dream for a greener tomorrow will remain unfulfilled. Preserving forests is part and parcel of environmental protection, which is the need of the present day industrialized world. The legislative and judicial response in this field needs examination to find out the effectiveness of its roles. Such examination will enable to find out where the fault lies and to suggest remedies.

REFERENCES:

1. Environmental policy-making in India – The process and its pressure, TERI report.
2. Indian Environmental Legislations, list from the MOEF web site.
3. "India's Forest Conservation Legislation: Acts, Rules, Guide-lines", from the Official website of: Government of India, Ministry of Environment & Forests.
4. Wildlife Legislations, including - "The Indian Wildlife (Protection) Act" from the Official website of: Government of India, Ministry of Environment & Forests.
5. "Legislations on Environment, Forests, and Wildlife" from the Official website of: Government of India, Ministry of Environment & Forests.
6. <http://www.eic.or.jp/eanet/en/soe/tropical.html> |
7. www.enr.com/enr-features-archive/1998/07/071598/0715fec_224614.asp