

Shift from Production Forestry to Sustainable Forestry in Assam, India: An Analysis of the Regulation on Forests under Indian Jurisprudence

¹Jayanta Boruah, ²Prof. (Dr.) Chintamani Rout, ³Junu Das

¹Research Scholar, ²Professor & HOD, ³Assistant Professor
Department of Law,
¹North-Eastern Hill University, Shillong, India, ³Dhubri Law College, Assam

Abstract: In Assam, state regulation on the forest is common since the Ahom rules itself. However, during the Ahom rule, the State only regulated the territory of the forest and the rights over the resources of the forest were enjoyed by the local communities. But after the British invasion of Assam, the Colonial Rulers took absolute control over both the territory and the resources of the forest and practiced the policy of exclusion by declaring most of the forest tracts as Reserved Forest. The Imperial Government initiated massive exploitation of forest resources for commercial gain through their various laws and policies ignoring the native practices of management of forest as well as the ecological needs. This policy of the state affected the socio-cultural functions of forests and also their ecological functions. However, after independence, the state considered the conservation of forests as a necessary factor for biomass conservation and favored scientific management of the forest. But the legacy of the colonial policies continued for a long time. As a result of which the needs of the local forest-dependent communities remained unrecognized. But subsequently, concerns for recognition of the rights of those people were given in the laws of the land considering such recognition vital for sustainable forestry and ensuring community participation in the management of the forest. However, the shift from production forestry to sustainable forestry under the Indian Jurisprudence has undergone a severe transformation in the policy discourse of the state. These transformations need careful observation since they have been facing several criticisms, for which research becomes important. Therefore, this paper shall analyze the various laws and policies that are responsible in bringing the above-mentioned transformation for introducing sustainable forestry in Assam.

Index Terms: Community Participation; Forest of Assam; Indian Jurisprudence; Production Forestry; Sustainable Forestry; State Regulation

I. INTRODUCTION

The state of Assam is known as the 'Land of Jungles' which indicates that the state has plenty of forests and forest resources. Assam has a significant proportion of land area covered by forests and is also known for having a large stock of biodiversity.[1] Although a large amount of the forest landscape of Assam has been deforested, the State still possesses a significant amount of such forests. The forests of Assam have passed through several phases over a long period of the journey from wilderness to ordered jungles, from small businesses of forest produce to large-scale businesses in the international markets, and from hunting areas to national parks.[2] Similarly, management of these forests also changed from community management to state management but such a shift was not a smooth one in most parts of present-day Assam. Even the territorial boundaries also changed over the years to a significant extent.

For understanding the contemporary developments in the management of forests in the state of Assam, an analysis of its historical background becomes important. It can be said by looking at the history of India particularly in Assam that forests were open for all members of the society for the maintenance of livelihood. But gradually after the British Law, the doctrine of *Terra Nullius* (ownership by seizure of a thing no one owns is legitimate) was exercised and forests were brought under State Control and ownership for the commodification and commercial exploitation of forest products and resources excluding the local communities (LCs) from their historical rights of management over forests were initiated. As a result, massive deforestation and encroachments took place on the one hand, and LCs got deprived of their necessities, making them poorer day by day, on the other hand. [3] It was then realized globally that local communities have a significant role in the management of forest resources since they have the traditional knowledge and are also conscious about preserving the forest resources for future generations. Thus, community participation became a vital aspect of sustainable forest management. [4] The main objective of this paper is to study the evolution of state regulation on forests in Assam and also to study the transformation from production forestry to sustainable forestry in the policy of Assam including the concerns of the LCs in such management.

II. MANAGEMENT OF FORESTS IN ASSAM DURING THE AHOM PERIOD

During the *Ahom* Rule, the *Ahoms* mostly cleared the dense forests within their territory for military engagements with the *Nagas* and there was a minimum occupation. For establishing claims over such areas, the *Ahom* rulers encouraged the settlement of villages in those critical areas. But later when they partially withdrew from those areas, the *Kachari* rulers started settling villages there. The *Kacharies* found those areas highly suitable for cultivation and therefore encouraged the settlement of peasants. But again due to frequent conflicts between the tribes, those places were vacated and soon the forests got regenerated. In those times, it was difficult to trace any evidence about the detailed demarcation of forests between settled areas and waste areas. However, the *Ahom* Rulers retained control over forests territory but the local population were in control of the forest resources which was unique compared to

the rest part of the then-Indian sub-continent. For instance, amongst *Marathas* the Chiefs and the Rulers appropriated the natural resources for their own needs. But the *Ahoms* on the other hand encouraged agricultural expansion. The *Ahoms* preferred settled agriculture rather than shifting cultivation and opted for rice cultivation, a major source of agricultural production. During the *Ahom* period, the rulers considered the forest as royal property and also felt the need for royalty on forests and they also appointed officers to look after the forest. [5]

III. APPLICATION OF THE DOCTRINE OF *TERRA NULLIUS* AFTER THE BRITISH INVASION OF ASSAM

After the *Yandaboo* Treaty in 1826 between the British and Burmese, the Britishers invaded the land of Assam. The British India Government brought forests under state regulation by exercising the doctrine of *Terra Nullius*. The Britishers exploited the forest resources for commercial gain and also initiated massive deforestation for agricultural expansion and for generating land revenue. Although they realized the huge loss of forest resources and considered the conservation of forests as an objective of their policy but such conservation mechanisms were initiated by production forestry which was only to preserve the commercial value of the forests and not for preserving the biomass. [6]

The East India Company started mapping down the forest resources through several surveys within the first decade of their invasion with the motive of determining the nature of the soil, climate, and other factors for the expansion of tea plantations initially. However, the initial surveys were conducted by Botanists who also discovered the immense economic value of the existing biodiversity throughout the region including the valuable trees for timber production. Gradually, the value of forest timber came to be known more popularly, and for attracting, merchant capital further documentation of such resources was felt necessary. With this purpose, John MCoeh, an assistant surgeon was appointed for surveying the value of the trees who indeed reported 90 valuable species of trees with their respective scientific names. [7]

Later in 1845, Captain S.F. Hannay, the Commandant of the *Assam Light Infantry Battalion* discovered the exotic forests of Assam with splendid trees and he explained about 35 timber trees. He started inquiring about the state's and local peoples' rights over the forest resources and found that state restrictions were imposed on the utilization of some species like *joba hingoree* and some oak species used for the construction of houses. He later concluded that with the decline of the *Ahom* Rule, the knowledge of the importance of forest resources and their economy like delivering timbers to long distances through rivers and making boats also declined. The East India Company realized the commercial potential of the forest resources of Assam in the early phase of the 18th Century. The Britishers started realizing the economic potential of the forest's timber and that these timber stocks could meet the demands of timber for the whole of the Indian sub-continent and immediately *Goalpara* was converted to a trade corridor for the delivery of timbers to the markets in Calcutta. In the 1850s, the forest resources of Assam started being valued in terms of Revenue since by then Colonial Rule was firmly established in the province. Several reports were submitted assessing the aspects of forest revenue and even the Board of Revenue in Fort Williams presented a bright picture of the potential revenue that can be charged from these forest resources. [8]

By the mid-19th century, the East India Company established political control over the then territory of Assam. With this, the need for administration emerged, and thereby several arms of the British administration were established. Amongst these, the Public Work Department (PWD) was the most important one whose prime responsibility was to develop better infrastructure for the smooth administration of the region. This department immediately became the highest consumer of forest timbers both for construction and fuel consumption which increased the demand for conservation of the timber trees. At the same time, pressures were felt from the timber traders for a quasi-regulated framework for cutting down trees since in most of the province, valuable timbers were lying uselessly without any attention and the Bengal woodcutters destroyed a huge number of trees while searching for timber. Thus, Dalton who was the in-charge of the administration of the then *Kamrup* region prepared a plan for charging a tax on cutting down of trees which included a tax of Rs.15 per 100 logs and two-and-a-half *annas* per log however, the local peasants were allowed to cut grass, firewood, and house posts without any restriction.[9]

IV. APPLICATION OF THE CONCEPT OF EMINENT DOMAIN OVER FORESTS IN ASSAM

The forests in Assam were brought under the control of Forest Departments in 1874 by the Bengal Forest Act, of 1865 which classified forests into reserved forests and open forests. The Forest Departments had an absolute monopoly over-commercialization of forest resources in the reserved forests, while in the open forests, their powers were limited. After the separation of Assam from the Bengal province in 1874, the Forest Departments were established in Assam for the management of the forests. [6] The Act further empowered the government to declare any portion of land as reserved forests. The Act gave certain basic rights to the local people, like- the right of way, the right to draw water, the right to pasture, etc. but the State Government retained overwhelming powers in deciding how such rights were to be granted which could be exercised without considering the needs of the claimants for whom such rights meant for. It also empowered the government to declare certain portions of forests as village forests for the benefit of the villagers but no rights over the management of such forests were granted to the villagers. The then Britishers introduced the Assam Forest Protection Regulation of 1891, for the conservation and protection of forest lands, and this Act also introduced a new category of forests in the form of Unclassed State Forests which extended State control on open forests also for commercial exploitation.[10]

In the forest management policies of the British-Assam government, wildlife was never considered a priority over the commercialization of forests. The local villagers found significant hardships during their agricultural expansion into the forests from the wild animals. This issue forced the Government to impose rewards for hunting wild animals and immediately hunting became a major sporting event making several species endangered. Therefore, some restrictions were imposed on hunting wild animals in the reserved forests in the latter half of the 19th century and certain pieces of legislation like the Wild Bird and Game Protection Act of 1887 and Indian Fisheries Act of 1897 were passed for the protection of wildlife, but these laws remained dead until the first half of the 20th century. [11]

The creation of forest villages proved to be very successful for the Forest Department (FD) and the number of forest villages was increasing due to the breakdown of the agricultural economy, an increase in the number of poor peasants, and increasing pressure on

lands in the second and third decades of the 20th century. But due to the coercive labor practices, the forest villagers often protested which became more organized after 1930. The Forest Enquiry Committee, therefore, suggested that there shall be no revenue charged on lands cultivated by the forest villages. However, this arrangement could not sustain long for the Britishers and the FD declared these villages as un-classed State Forests in 1932. [12]

Since the administration was not certain about the revenues that can be realized from these forests, several rules like *Cachar River Rules*, *Bhutan Timber Rules*, etc. were framed to deal with different situations in different regions in the 1980s. The provision of Protected Forests was submerged into the category of Unclassed State Forests through the Assam Forest Regulation of 1891 but the system of Protected Forests resumed in 1908 when *Jalpaiguri* was added as a district of Assam. Several restrictions were also imposed on the LCs in the name of protecting the forests with the help of the laws. For instance, Section 25 of the Assam Forest Regulation of 1891 stated that if any person makes any fresh clearing of the reserved forest, set fire to the reserved forest, fells, cuts, girdles, marks, or injury by fire to the trees shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees in case rhinoceros killed. Further, this Regulation provided that if any person having a right in a reserved forest and has permission to practice *jhum* cultivation in the reserved forest caused harm or willfully caused a fire in the forest then the state government has the power to extinguish such rights for a period as the state government thinks fit and also can suspend the practice of *jhum* cultivation. [13] Thus, the colonial rulers took ownership over the forests in the name of public interest ascertaining the implications of the concept of *Eminent Domain* in the forestry sector of Assam.

V. FORESTRY SECTOR IN ASSAM AFTER INDEPENDENCE

After India gained independence, the state of Assam faced serious issues of land settlement from the landless peasants. Events like the 1950 earthquake and subsequent floods in Assam increased the number of landless peasants. Accordingly, forest villages were settled and many areas of grazing reserves, tea gardens, as well as reserved forests were opened up for the local landless peasants. The Assam government adopted a policy whereby landless peasants were granted 10 *bighas* of land in the adjoining forest tracts in *Nambor* and *Doiyang* and this policy was known as the 'half-a-mile settlement. The Bimalprasad Chaliha government opened more forest tracts for land settlement. Again the Forest Standing Committee of the Provincial Congress in the Legislative Assembly strongly advocated for land settlement in the areas of Unclassed State Forests of Assam and this continued till 1980. [14]

The 1971 K.V.K. Sundaram Committee's report on the Assam-Nagaland Border dispute made the Assam government to depopulate the forest tracts and subsequently, the FD evicted the peasants from the forest lands. But by the time All Assam Students Union (AASU) entered rural politics and they started mobilizing these peasants and at the same time, the Bengal *Naxal* Movement also started showing its influence in those areas where the *naxalites* attempted to mobilize these peasants. Although the FD initiated the eviction process with much aggression, it was still not supported by the State government since it was still not in favor of any stringent conservation mechanism. [15]

In 1978 the *Janata* Government came to power and they declared peasants' rights over the *Doiyang* Forests and supported the realization of the forests. The peasants even organized the *Doiyang Bijoy Utsav* in celebration of their victory. The short-lived *Janata* Government failed to provide any permanent rights to these peasants but it provided a sort of security to them. In the 1990s forest lands were opened for small tea plantations and the cultivators were designated as small farmers. Thus, again the state reaffirmed the colonial practices. [16]

VI. EVOLUTION OF PARTICIPATORY APPROACH IN THE MANAGEMENT OF FORESTS IN ASSAM

Subsequently, to address the conflict between agriculture and forests, the government implemented the Joint Forest Management (JFM) scheme where the responsibility would be shared between the local peasants and the FD for establishing an environment of sustainable forestry considering the livelihood needs vis-à-vis production forestry. But again the JFM is alleged to have favored the state policies of commercialization of forests rather than appreciating shared responsibility. All these factors left open questions on the governance of forests at the end of the 20th century highly putting the state-sponsored agenda of forest conservation in doubt. Since 1980 there has been a shift from exclusive policy through state regulation to community participation. [17]

In 1981 the Indian Planning Commission emphasized further diversification of forest-based markets and realized that traditional methods of production forestry will not be efficient. Thus, after independence, timber trade significantly reduced but simultaneously trade in softwood resources increased, and diversified markets for forest produce increased in number which was mostly funded by Marwari capitals. The extraction of these resources reduced the control of the FD which further led to the decline of the forests. Later Assam Forest Policy of 2004 was adopted based on the lines of the National Forest Policy of 1988 recognizing the unique biodiversity of the state. Four major reasons were highlighted to be the factors for deforestation which included: natural disasters like the earthquake of 1950, population explosion, overgrazing, and failure of the forestry programs in addressing these social realities. [18] Although the environmental movement gained popularity these forest policies remained as advocates of both conservation and production forestry where the government gained superior rights over the forests and a two-fold approach of both conservation and exploitation of forests continued. But due to huge public awareness environmental issues became subjects of public debate and state institutions like the Supreme Court had to impose several restrictions on the felling down of timbers in the Northeast like in other parts of the nation. [19]

Although community participation in the management of forests gained popularity through various national and state-level policies like Assam Joint (Peoples' Participation) Forest Management Rules, etc. the rights of LCs were rarely recognized over the management of forest areas. Assam Joint Forestry Management Rules 1990 reveals that while recognizing the importance of people's participation and also the need to confer usufructuary rights to them, the participation, as well as the customary rights of the participants over forests, would be regulated through the intervention of the state. The joint forest management should be in a manner that serves the needs of society and industrial developments without compromising forest health. [20]

VII. A STEP TOWARDS RECOGNITION OF THE RIGHTS OF THE FOREST DWELLERS

In 2006, a historic legislation named The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act, 2006) was passed for addressing the historical injustice with the forest dwellers in India. The Act has

provided for the recognition of both individual as well as community rights of the forest dwellers in India. [21] The same legislation was implemented in Assam. Yet, the Forest Rights Act of 2006 does not acknowledge this circumstance in States like Assam. According to Section 2(c) of the Act, Other Traditional Forest Dwellers (OTFD) must live permanently in the forest for 75 years before they are eligible for the rights granted by the Act. Since the majority of the local illiterate population lacks any legitimate records attesting to their 75-year possession of forest lands, this rule is meaningless in the context of such states. Even worse, Assam had serious clashes as a result of the Gauhati High Court's 2009 decision that there are no forest residents in the State. There is a distinction between Scheduled Tribes and Other Traditional Forest Dwellers according to the Forest Rights Act of 2006. Yet, it seems there is little variation in the economic and political conditions between those two communities in Assam and if such discrimination is implemented then it might lead to serious injustice with the OTFDs who were residing with the tribal communities in harmony. Such a rule might further imply the policy of 'Divide-and-Rule' in the context of Assam. The Panchayat (Extension to Scheduled Areas) Act, 1996 (PESA) served as the model for the Forest Rights Act's implementation; however, in many States including Assam, the PESA itself has not been put into full practice. The Forest Rights Act also leaves room for the State to violate key provisions that were meant to ensure a transparent, open, and democratic system of resolving claims under the Act. These provisions include determining the position of the *Gram Sabhas* responsible for recognizing the rights under the Act in various types of villages.[22]

VIII. COMPARING THE MANAGEMENT OF FORESTS IN ASSAM WITH SUSTAINABLE FORESTRY

Sustainable Forestry has evolved at present to include three core aspects namely, the ecological, economical, and socio-cultural aspects. To achieve such a holistic framework of management, it is necessary to involve multiple stakeholders in such management. Sustainable forestry aims to derive commercial benefits by strengthening production forestry without compromising the health of the forests and also to empower the LCs dependent on the forests. The main agenda of sustainable forestry is to engage the LCs in the management of forests to serve both the livelihood benefits of such communities and the conservation aspects of the forests.[23]

The concept of "people-free zones" over forests in India progressively gave way to policies that encouraged local communities (LCs) to actively participate in the management of forests and grant them access to their traditional rights. Yet, these policies caused misunderstanding among the LCs, Conservationists, and State authorities. The JFM system was introduced to support the involvement of LCs in forest management. However, this arrangement ran afoul of the Forest Rights Act of 2006 and the PESA's rules. The National Forest Rights Act Committee even suggested putting an end to the entire JFM program once the rights under the Forest Rights Act, of 2006 get settled. Both the Acts of 2006 and 1996 have failed to recognize the validity of JFM which was already implemented at the country level with heavy financial investments.[24] Further, the recent draft of the National Forest Policy of 2018 again intended to shift this approach back from community participation towards productive functions of the forests in India as a whole. Thus, an analysis of the Indian jurisprudence provides an insight into the fact that the nation is still lacking a consolidated ideological stand for implementing the principles of sustainable forestry in practice which is even relevant, particularly in Assam.[25].

IX. CONCLUSION

State regulation on forests in Assam has undergone a tremendous shift from the British Colonial period till the contemporary phase. This shift has been witnessed not only in the ideology but also in the mechanisms of implementation of laws and policies and the impact and consequences on the different stakeholders engaged in the management of the forest. During the British colonial period, the regulatory framework had focused more on production forestry and exploitation of natural resources. However, subsequently, after independence, although the legacy of such regulations continued yet a change was witnessed in the ideology behind the framing of regulations and the focus was shifted to sustainable management of the forest. Sustainable forestry requires the involvement of multiple stakeholders including local people. However, in the major part of the state regulation the concern has been paid to including local peoples in the management of forest yet a lot more is required to be done. Settlement of claims of local people and making them aware of their role in the management of the forest are to be considered as soon as possible. In Assam, the claims of the OTFDs shall be considered on the same lines as that of the tribal communities and the year 1980 shall be considered for determination of encroachers. Those who have migrated inside the forests after 1980 shall be evicted. After settlement of the claims, the LCs shall be engaged in the management of the forests and the criteria for such engagements shall be provided by the law considering the geo-physiological conditions of the forests and the socio-cultural conditions of the local forest dwellers.

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