CHAPTER5

GENESIS OF COLONIAL LAWS IN FORESTRY

5.1: Evolution of Forest Laws- An Indian Perspective

By 1860, Britain had emerged as the world leader of deforestation, devastating its own woods and forest of its colonies to draw timber for ship-building, iron smelting and farming. For the British, the destruction of forest was used to symbolize political victory (Gadgil and Guha, 1992: 118). The early treatment of Indian forest by the British Raj confirmed the view held by many that the British were responsible for the beginning of the process of depletion of India’s forest wealth (ibid.: 119). The earlier British administrators were more occupied with the building up of an empire and therefore never thought of the important part forest have played, and would play in the household of nature, or of the immense influence forests exercised on the physical well-being of the country. The building of the railway network in 1853 was a crucial watershed in the history of Indian Forestry. The demand for timber was intensified for railway sleepers; hence large numbers of forests were filled leading to deforestation in many provinces. From the latter part of the 18th century, the Indian Forest Department was entertaining repeated request from the British admiralty for supply of Madras and Burma teak (ibid.). The earliest record of such attempts was the formation of the timber syndicate in Malabar in 1796. It did not last for long but some other agencies, purely connected with the supply of timber for navy, were opened, closed and reopened from time to time (Ribbentrop, 1889:62).

Keeping in view the importance of natural resources and commercial significance of forest resources, certain regulations were formulated and implemented during the colonialadministration to appropriate revenue benefits from the forest-based resources. Thebeginning of a forest policy in pre-independent India started in 1855 when the then Governor General, Lord Dalhousie, issued a memorandum on forest conservationrestricting the customary rights of the forest dwellers on the use of forest resourcesthrough a ban on their movement in the forest (Sarangi, 2013: 15-16). Then the conservancy of Indian Forest was started with the appointment of Conservators in the Malabar (1806), Bombay (1847) and the Madras Presidencies
The first attempt at asserting State’s monopoly was through the Indian Forest Act of 1856 (Ribbentrop, *op. cit.*: 64-66). This law simply established the government’s claims over forest. The government blamed deforestation on the practice of shifting cultivation. Tribals were discouraged from hunting and their use of forest products was severely restricted although it was governed and regulated by community sanctions. Further, the Indian Forest Act (IFA)1865 was enacted which empowered the government to declare authority on such resources for national interests. Within a few years of the enactment, there was complaints that there was inadequate state control over forest lands. The British colonial administration therefore, enacted Forest Act of 1878, which classified all forests of India into three categories, i.e., reserve forest, protected forest, and village forest keeping in view the national forest policy. This Act also gave foresters powers to determine how forests were to be managed. Later, the 1878 Act was replaced by Indian Forest Act of 1927 (Sarangi, *op. cit.*: 16). The Act codified all the practices of the forest officials and regulated further people’s rights over forest land and produce. The Act embodied all the major provisions of the earlier Acts, extending it to include those relating to the duty on timber. The Act also deleted the references to communities’ rights over forests, which were made in the 1878 Act. A clear emphasis on the revenue-yielding aspect of forest was therefore drawn through this Act.

The Imperial Forest Department was formed in 1864, with the help of German foresters. The Forest department was started because the government became aware that the magnificent forest of India and Myanmar were being worked by private enterprise “...in a reckless and wasteful manner and were likely to become exhausted if supervision was not exercised” (Guha, 1983: 184). The colonial intervention, especially in deforestation and subsequently in forest conservation, irrigation and soil protection exercised a far more profound influence over most people than the more conspicuous and dramatic aspects of colonial rule that have traditionally preoccupied historians (Deori, 2005: 33).

The Forest Act of 1865 was introduced (Mohapatra and Mohapatro, 1997: 72). The act empowered the government to appropriate any land covered with trees, however, notification could only be effected, if existing rights of individuals and communities were not impinged upon (ibid.). This initial act was superseded by a more inclusive piece of legislation, in the Indian Forest Act of 1878, which was
particularly concerned with removing the ambiguity about the ‘absolute proprietary right of the state’. The new act was designed to facilitate strict state control over forest resources, and was distinctly ‘annexationist’ in nature. Baden-Powell, in whose charge the drafting of the forest act lay, put forward a ‘legal sleight of hand’ that sought to remove all concessions and ‘rights’ that were not explicitly granted by the state (Gadgil and Guha, 1992: 133-140). The British colonial government had presided over the unprecedented denudation of the vast forest cover to meet commercial as well as strategic needs of the empire, in utter disregard for the rights of forest-dwellers and users (Guha, 1983: 186). Indeed, the colonial forest policy had not only destroyed subsistence farming, but also made ineffective the traditional methods of managing forests (Buchy, 1998: 669). In other words, the efforts aimed at conservation have failed to recognize the customary rights of the forest-dwellers, and it also becomes evident that the colonial administration had actively pushed forward commercialisation of forests (Guha, 1983: 185).

The National Green Tribunal (NGT) established under the National Green Tribunal Act, 2010 on 18th October, 2010 for the effective and expeditious disposal of cases related to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. It is a specialized body equipped with the necessary expertise to handle environmental disputes involving multidisciplinary issues. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.\(^1\)

5.2: Beginning of the Colonial Forest Policy in Naga Hills
Prior to the coming of the British, there was no Forest Policy in the Naga Hills. The mid nineteenth century with the growth and development of the British administration under the British Government of India, forest administration and conservancy efforts were administered in the Naga Hills, which was a district of Assam till 1881. The British directed their policies primarily towards practical and pressing problems such as establishment of law and order, the foundation of administrative system and the dispensing of justice and not the least for the raising of the revenue necessary for the discharge of the functions of the government. According to Verrier Elwin, “The
British Government inclined, on the whole, to leave the tribesman alone, partly because of the task of administration, especially in the wild border areas was difficult and unrewarding, partly from a desire to quarantine the tribes from possible political infection, and partly because a number of officers sincerely held the view that the people were better and happier as they were. Moreover, the proprietorship of the forest land at the time of British occupation varied in accordance with the political and historical developments of each province (Ribbentrop, 1889:97). Where the population also had settled in joint village communities, any forest or wasteland that fell within the boundaries of the village was considered as a rule to be common property. This had been recognized in all settlements made after the British occupation of the country. In the case of the other un-united villages, no right to the waste was ever recognized (ibid.). Besides, there were parts of Assam such as the Garo, Khasi, Jaintia and the Naga-Hills the whole of which remained more or less forest or waste, with next to no permanent cultivation, and where a sparse and scattered population lived almost entirely by jhuming (ibid.).

The Forest Department of Assam was formed in the year 1868. Initially it was a part of the Forest Department of Bengal. The Government Forest in Assam managed under the Bengal Forest Rules, sanctioned by the Supreme Government, which were gazette under Act VII of 1865, either as “reserves” or “open-forest” (Handique, 2004: 32). The government gained control over the reserved forests and their products and in the open forest, the authority of the Forest Department extended only to the protection of some species of trees. Even in the remaining un-classed forests, the government retained monopoly rights over trade in forest produce. With the reorganization of East Bengal and Assam in 1912, the forest of Assam was organized into eastern and western circles. While the former consisted of the forests of Lakhimpur, Sibsagar, Lushai Hills, Cachar, Sylhet and North East Frontier Tracts (Present Arunachal Pradesh) and it also dealt with the forestry issues of the Naga Hills district and the princely state of Manipur. Upto 1957, the whole of Nagaland were in the charge of the Chief Forest Officer (Deori, 2005: 52).

The early colonial Forest Policy in the Naga Hills was directed to the Forest management of Assam and was directed to the exploration of its economic resources. As early as 1845, Francis Jenkins, the Agent to the Governor General of North East Frontier Agency, send Captain John Bulter to Naga Hills on a commercial mission.
He was received at Mezoma, Khonoma and Birema where allegiances to the Government were renewed by the chiefs who promised to remain tributary with the British. An outpost at Chumukedima was therefore opened; trade with the Naga villages was extended and communications with Sibsagar were improved (Bareh, 1970: 27). However, for the colonists, compared to extensive rich forests of Assam plains and foothills, much of the hill forest has less commercial potential. Therefore, all the regular administration especially, the land use policy in the Naga Hills District by 1891 would be expected to be far less intrusive in the Naga Hills. During the British administration, management of the forests was done according to the Assam Forest Regulation of 1891 by which the extraction of timber was regulated under terms and conditions of agreements drawn up with the coupe-holders who paid a certain amount of security. Felled trees were measured and marked with government passing hammers and with serials and allowed to be extracted under cover of transit pass and chalan issued by the forest conservator officials (Deori, *op.cit.*: 53). The Regulation III of 1946 was framed and passed by His Excellency, the Governor of Assam, F.C. Boure, in order to safeguard and regulate the rights of Nagas to *jhum* land in the Naga Hills districts (Stebbings, 1992:266). The Naga Hills Jhumland Regulation, 1946, contained provisions for the prevention of soil erosion. The provisions under the said regulation provided the land conservator with a wide range of powers for the conservation of land and forest. Violations of the regulation in any manner resulted in the form of imprisonment of either for one month or with a fine not exceeding five hundred rupees or with both (see Appendix-3). The Act also contained that village forests belonged to the people who had absolute rights for cultivation and other purposes. But the erstwhile Assam forest regulations have been replaced by the Nagaland Forest Act 1968 which entitles government to carve out forest reserves on the basis of awarding compensations to the holders or authorities who own the forest, after assessing the existence, nature and extent of any rights claimed by them (Bareh, *op.cit.*: 108). The steadily growing restrictions on forest right and dispossession of customary rights, particularly after the passing of the 1878 Forest Act, all had it in fact, ended notions of flexibility. The introduction of colonial forest and land management structures, albeit designed to check climate change and promote sustainable resources use, actually brought about frequent clashes and contest over land use. These typically involved the colonial state, private companies
and local people, as separate and competing actors in the context of governance, protest and manipulations (Deori, op.cit.: 78).

Although there was no policy imposed as such on the Naga Hills, the Forest Policies such as the Government Forest Act, 1865, the Indian Forest Act of 1878, The Indian Forest Act of 1927, strengthened the State’s control over the forest area and resources through the regulation, hampering the Customary Rights of the people. Upto 1957, the whole of Nagaland was under Forest Division of Assam. From 1961 to 1963, forests of Nagaland were in the charge of the Chief Forest Officer. It was on 1st February 1963 that the Directorate of Forest came into being (ibid.).

5.3: Forest Legislations: Post-colonial Era
i) The National Forest Policy

India is one of the very few countries of the world where forest policy is in operation since 1894. In 1952 and 1988, revisions were made in the forest policy of 1894. The National Forest policy of 1952 recommended that the country should aim at coverage of one-third of the total land area under forest (60 per cent in hilly and mountainous areas, and 25 per cent in the plain). It has suggested the extension of tree-lands on river/canal banks, roads, railways, cultivable waste and which are not suitable for cultivation. It has classified the forests of the country into four categories; i) Protected forests (essential for physical and climatic needs), ii) National forests (to be utilised for the economic needs of the country), iii) Village forests (to meet the fuel and domestic needs of villages and neighbouring towns), iv) Tree lands. The policy envisaged the annual organization of Van-Mahotsava and tree plantation week in the month of July and August.

The National Forest Policy 1952 lays emphasis on:

1. Weaning the tribal people by persuasion to desist from shifting cultivation.
2. Implementation of forest laws more effectively
3. To provide adequate facilities for the management of forest resources.
4. To control grazing of cattle, sheep and goats in forest areas.
5. Providing fuel-wood to rural areas.
6. To improve the availability of timber wood for industrial purposes.
7. To increase the area under social forestry
8. To promote research in forestry (Sebu, 2013:76-77).

In order to ensure that natural resources are conserved in a judicious manner and its exploitation shall have no adverse impact on the environment, a large number of Acts have been enacted over a period of time. The Indian Constitution Article-47, which directs the state “to improve the living standard of living and public health”, a provision has been inserted in the Directive Principles of State Policy (Article 48-A), which declares that “the State shall endeavor to protect and improve the environment and to safeguard the Forest and Wildlife of the country”.

ii) The Nagaland Forest Act, 1968
The Nagaland Forest Act, 1968, is referred to for management of Government Forests. This Act is applicable to the whole State since 1st April 1968. An overview of the Act includes:

Chapter 1: Preliminary (Defines Cattle Reserved Forest, Village Forest, General protection, Forest officers, Forest produce, Timber, Tree etc.).

Chapter 2: Reserved Forest (Notification, Proclamation by forest settlements of claims, appeal against the settlement, Final Notification, Extinction of the rights, Acts prohibited by the Act like fire, felling, girdling etcetera, poisoning, quarrying).

Chapter 3: Village Forest (any land put at the disposal of the government as village forest by the community for its benefit and regulations etc.).

Chapter 4: General Protection of Forest and Forest produce (reserving any tree and its protection, protection of Unsettled Forests).

Chapter 5: Control over the Forest and Wasteland not being the property of the government (breaking or clearing, preservation of soil, public health, maintenance of water supply, power to assume the management of the forest in case of willful negligence).

Chapter 6: Control of Forest produce in transit (import, export, transit, river rafting, transit in water or land, revenue station, penalties etc.).
Chapter 7: Collection of drift, stranded and other timber (certain kinds of timber to be deemed the property of the government until the title is proved thereto, claims and disposal).

Chapter 8: Penalties and Procedure (seizure of property, release of the same on furnishing the bond, court to settle the confiscation etc.).

Chapter 9: Cattle trespass and penalties thereof.

Chapter 10: Forest Officer (State government may invest any officer by name or as holding an office, power to enter any premises, survey, demarcate, etc.).

Chapter 11: Supplementary Provisions.

The Wildlife (Protection) Act, 1972, specified endangered species to be protected regardless of location i.e. all species are to be protected (Annual Administrative Report, 2012-2013:45-46).

iii) Nagaland Jhumland Act, 1970

Nagaland Jhumland Act, 1970, is applicable to the whole of the State since April, 1974. This Act has broadened the meaning of forests. It has brought the jhum land under the ambit of Forest Department as far as movement of forest produce emanating from there is concerned (ibid.: 46 ).


This Act is applicable to the State of Nagaland. This Act adopts a two-pronged conservation strategy: (i) specified endangered species are to be protected regardless of location (ii) All species are to be protected.

The Object of the Act is to arrest the rapid decline and provide protection to the Wildlife population. The Act also strives for regulating hunting of wild animals and birds (Chapter-iii). Procedure for declaring areas as sanctuaries and national Parks are prescribed in Chapter-iv. There is prohibition on hunting of all animals as mentioned in Schedule I to IV. The Act also regulates trade in wild animals, animals’ articles, trophies and subject to the provision of Chapter-v (A), prohibits dealing therein without a license. Through an Amendment Bill, 2002, the amended Act
proposes to create two new categories of protected Areas, i.e., Conservation Reserves and Community Reserves (ibid.).

v) Forest Conservation Act, 1980

The Forest Conservation Act 1980 was enacted by the Parliament with a view to check further deforestation which ultimately results in ecological imbalance. As such, the provisions made therein for the conservation of forests and for that matters connected therewith, must apply to all the forests irrespective of the nature of ownership or classification thereof. The Act has made prior approval of the central government for necessary de-reservation of reserved forest and use of forests for non-forest purposes. However, the said provision cannot override the Constitutional safeguard as guaranteed under Article 371A. As such, the Forest Conservation Act, 1980 which has direct bearing over the ownership and transfer of land and its resources cannot be extended in the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.

In consonance with the National Forest Policy 1988, which lays emphasis on the protection, conservation, regeneration and development of forest, the objectives of Nagaland State’s Forest policy has been designed to:

1. Convert Jhumland areas into economically and ecologically sustainable woodlands.
2. Regulate harvesting of forest resources on principles of sustainability.
3. Protect and conserve fauna and flora including endangered species.
4. Protect, conserve and manage Bio-diversity in and outside Reserved Forest and Sanctuaries based on sound scientific principles for in-situ conservation.
5. Raise and develop commercially important species.
6. Bamboo Policy with valuable and active inputs from the Department has been formulated by the State Government (ibid.:23).

vi) Nagaland Tree Felling Regulation, 2002

In compliance with the direction if the Hon’ble Supreme Court dated 12/05/2001, the Government of Nagaland has framed and approved the “Nagaland Tree Felling Regulation 2002” vide No. FOR/GEN-7/200-ii. Dated Kohima, the 11th July 2002 to regulated wood harvesting in private plantation (ibid.: 47).
vii) **Biological Diversity Act**

Biodiversity, in essence, is the totality of all life on earth. Both in wild and domesticated forms, biodiversity is the source of food, medicine, clothing and housing, most of the cultural diversity, and most of the intellectual and spiritual inspirations. It is, without doubt, the very basis of man’s being. Its conservation therefore is of utmost significance. Convention of Biological Diversity (CBD) 1992 offers a major opportunity to safeguard and conserve the biological capital at global and regional level (Anubhav et al., 2009: 2).

The Biological Diversity Act, 2002, deals with the biodiversity conservation, management, access to Biological resources, sharing of benefits, patent Constitution, power and function of National Biodiversity Authority and State Biodiversity Board. This Act was enacted by the Parliament in the year 2002 and received assent of the President of India on 5\(^{th}\) February, 2003. The Bio-diversity Act, 2002, if extended in the State of Nagaland, shall amount to a fresh and deeper encroachment over the rights of the Nagas as protected under sub-clause 1 (a) (iv) of Article 371A of the Constitution of India and also Section 2(d) of the Nagaland Ownership and Transfer of Land and its Resources Act, 1990 (The Nagaland Act No.1 of 1993).

The following are the thrust areas of the Act:

1. Access to biological resources and information.
2. Benefit sharing with conservers of the biological resources and holder of knowledge and information relating to use of biological resources.
3. Notification of area important from the standpoint of bio-diversity as biological heritage site.
4. Involvement of local bodies in sustainable management of bio-diversity and preparation of bio-diversity register.
5. Establishment of State Bio-Diversity Boards and Bio-Diversity Committees at block/ village levels.

The State Bio-Diversity Board has been reconstituted under the Chairmanship of Shri T. Angami (Retd. Principal Secy) and CCF (EBR) is the Member Secretary of the State Bio-Diversity Board (Sebu, 2013: 76).
End Notes


3. Article 371A: Special provision with respect to the State of Nagaland
   (1) Notwithstanding anything in this Constitution,
   (a) No Act of Parliament in respect of- i) religion or social practices of the Nagas, ii) Naga customary law and procedure, iii) Administration of civil and criminal justice involving decisions according to Naga customary law, iv) Ownership and transfer of land and its resources, shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides.

4. Section 2(d) of the Nagaland Ownership and Transfer of Land and its Resources Act, 1990 (The Nagaland Act No.1 of 1993) “land and its resources” means advantages derived from the surface of the land and all that is below it and which is valuable or is a source of money or income include- Minerals; minerals oils, petroleum and petroleum products (including liquid petroleum) and every other product of mines including forests and forest products.