


8 RMLNLUJ (2016) 48

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006: An Insight from the Field

by
Shailja Singh

I. INTRODUCTION

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 aims, "to recognise and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land"¹. This Act also emphasizes the fact that "forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of state forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Schedule Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of forest ecosystem"². The Act aims to undo the historical injustice to Scheduled Tribes and other forest dwellers, this seems very appealing theoretically but the praxis of law does have a dynamics of its own. This praxis of law is reflected in the Weber's notion of external aspect of law — "external perspectives of law engage in the theoretically driven empirical study of law to examine the characteristics of existing systems of law, including the state and development, the causes and effects, and the

 Page: 49

function and objectives of the institution and practices of law"³. The present paper is based on the field study done in the Tikri forest range of the Gonda forest division, Uttar Pradesh. The paper tries to understand the impact assessment of law as well as the formation of new class frame emerging after the enactment of the Forest rights Act, 2006.

The long term use of natural resources requires a sustainable model where the role of community becomes important; this becomes very true with reference to the forests in India. The dependency of people on forest required a sustainable base where whatever is taken out of forest area is repaid in the form of re-plantation and regeneration. This can only be done by involving the local communities residing in the forest and forest catchment area. Before the advent of British in India, the customary practices involved the local community in the forest management and protection.

The landmark in the history of Indian forestry is undoubtedly the building of the railway network. The large scale of destruction of accessible forestry in the early years of railway expansion led to the hasty creation of the forest department, setup with the help of German experts in 1864. The first task before the new department was to indentify the sources of supply of strong and durable timber such as sal, teak and deodar which could be used as railway sleepers⁴. A prolonged debate with in the colonial bureaucracy on whether to treat the customary use of the forest as based on 'right' or on 'privilege' was settled by the selective use of precedent and the principle that "the right to conquest is the strongest of all rights —it is a right against which

there is no appeal. Since an initial attempt at asserting state monopoly through the forest act of 1865 was found wanting, a comprehensive all —India act was drafted 13 years later in 1878. This Act provides for the constitution of 'reserved' (i.e. closed) forests divested of existing rights of user to enable sustained timber production. The 1878 Act provided for an elaborate procedure of forest settlement to deal with all claims of user, which if upheld, could be transferred to a second class of forest designated 'protected'. The burden of proof to establish 'legally established rights' was on people, the state could grant both 'non established rights' and 'terminable concessions' at its discretion⁵.

Similar observations were made by Karl Marx of the situation of forest and forest policies in Europe. Marx critiqued the new law in Prussia in 1842 regarding gathering of wood in Rhenish forest by the peasants. Though it had been a customary practice for peasants to pick up and use



Page: 50

for their own benefit whatever wood had fallen on the ground⁶. The official justification for the law was that it would protect the forest and prepare the ground for natural regeneration. But Marxian analysis suggests to the fact that wood had become an important commodity in the development of capitalism as wood was used for ship-building, for the development of railroads and for the construction of machines. This has led to the need to control the production of and make the gathering of wood in forests illegal⁷. The law benefitted the elite and the state became the owner of the forest; received the revenue collected by the forest officials. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 accepts the historical injustices done to the forest dwellers and the Act has been adopted to undo the injustice done to forest dwellers, a great step towards creating a just and equal society.

II. THE PRESENT STUDY

The present study is based on the field work done in the district Gonda of Uttar Pradesh. Gonda forest division consists of a number of forest ranges. The different forest ranges are: Tikri, Kuwana, Rehra, Sadulla Nagar, Padri Kripal, Utraulla and Tarabganj. The present paper is specifically based on Tikri forest range.

A. Universe of the study

Gonda district lies between latitudes 26°46' and 27°27' north and longitude 81°31' and 82°37' east, in Survey of India Toposheet No. 63E & 63I. The total geographical area of the district is 3987 sq. km. There are four tehsils and sixteen developmental blocks.

The Gonda Forest Division is situated in the state of Uttar Pradesh, mainly in the two districts of Gonda and Balarampur. It was earlier called the South Gonda Forest Division. A minor part of this division is also situated in Shrawasti and Basti districts. Geographically, the division falls between 26°47'00" and 27°32'30" longitude and 81°37'50" and 82°37'35" latitude. It is bordered by the Sohelwa Wildlife Division (erstwhile North Gonda Division) in the north, Faizabad and Basti districts in the south, Siddhartha Nagar in the east, and Bahraich and Shrawasti districts in the west. Four major rivers, namely, Kuwana, Bisuhi, Manwar and Chamnai, apart from a number of seasonal streams and nallahs, intersect the Division⁸.



Page: 51

This forest division is divided into four historical units namely⁹:

1. Tikri Reserved Forests and Vested Forests.
2. Balrampur (Kuwana) Vested Forests.
3. Utraula Vested Forests.
4. Other Vested Forests.

B. Tikri Reserved Forests and Vested Forests

This forest area lies on the banks of River Chamnai and Manwar. The total cover area of this forest is 5543.79 hectares, which is the maximum in this unit. Along with this forest there are several Vested Forests, which had been vested with the Forest Department after the abolition of the Zamindari Abolition Act was enforced¹⁰.

III. UNDERSTANDING 'TAUNGYA'

The status of the forest dwellers can be understood by considering the relationship between the mode of production and their relationship with the mode of production. The specific relationships of production may be understood with respect to the arrangement of 'taungya' system in the field.

Around 1915, Dr. Dietrich Brandis introduced a variation of shifting cultivation that included some of the characteristics of classical forestry and shifting cultivation in one system. In Burma, this was named as the 'Taungya'. The villages in the forest were inhabited and the villagers were permitted to raise crops for two to five years in clear felled coupes between the lines of the seedlings. As soon as crops grew to shade the space between the tree seedlings, the villagers had to discontinue cultivation and move to similar space in a new plantation. In addition to this they were granted some cultivation area for sedentary agriculture. 'Taungya' no doubt, was a better option but was not extensively used except in Bengal and eastern Uttar Pradesh. Instead of refining and readopting the 'taungya', the dominance of European forestry principles in India finally extinguished it¹¹.



Taungya is a silvo-agriculture system of establishing departmental forest plantations in which agricultural crops are grown on a temporary basis in between regularly arranged rows of a forest tree species. This practice has been adopted by foresters with the main goal of reducing the formation, and maintenance costs of forest plantations, on forest lands under possession of the forest department. *Taungya* is a Burmese word, but it is believed that the system is much older, having originated in China. It was introduced in Indian by Brandis in 1856. The first *taungya* plantations were raised in 1863 in North Bengal, in 1886 in Sylhet¹².

The 'taungya' system may be classified into three following categories:

- a) Departmental Taungya: In this arrangement, agricultural crops and tree plantations are raised by the forest department. By employing daily wage labours the main aim of raising agriculture crops along with the plantation is to keep along with the land free of unwanted vegetation.
- b) Leased Taungya: The forest land is given on lease to the person who offers the highest money for raising the crop for a specialized number of years and ensure care of tree plantation.

c) Village Taungya: This is the most successful of all the three Taungya systems. Under this the people who have settled down in a village inside the forest for this purpose raise crops. Normally a family is allotted a small piece of land where they plant trees and cultivate crops for three to five years¹³.

In the post colonial context, the forest department continues to be a powerful landlord. Supply of easy labour resource to the forest department leads to the initiation of 'taungya plantation system'. Villagers who worked for the forest department would get land and bullocks for doing agriculture and in exchange would offer their labour services for free to the department¹⁴.

IV. HISTORY OF FOREST MANAGEMENT: GONDA DISTRICT

The history of forest management in Gonda Forest Division may be derived from the following four forest units:

1. Tikri Reserved Forest
2. Balrampur (Kuwana) Vested Forest



Page: 53

3. Utraulla Vested Forest
4. Other Vested Forests of the district

A. History of Tikri forest range

The present study is based on Tikri forest range. The history of the forest and forest management of the area dates back to 1856. The history of the forest of this area before 1856 is not available in the records of forest department. In the year 1856, the British Government has taken control of the forest area of the district. Initially these forests were managed under the '*Banjar bhoomi*' system. In the year, 1861 these forests were incorporated as 'state forest'. In the year 1865 these forests were managed under the '*Awadh forest rules (Awadh van niyam)*'. During this period uncontrolled grazing by herds of animals led to some problems to forest management and preservation¹⁵.

The natives of the south-east part of Gonda district were given land as a grant in the year 1865, in order to facilitate agriculture along with forest protection and management. Some of the grantees who could not continue with agriculture in the area; their land was confiscated and reacquired by the government and these forests are in the form of 'Tikri reserve forest' in district Gonda.

The irregular felling of the trees in the forests resulted in the shortage of wood. As a result of this the government reacquired the forest and converted them into reserved forest. The management of these forests has been assigned to department of forest.

The management of these forests properly started after 1887. The scheme of from 1887 to 1958 is as follows¹⁶:

- K.N. Mukerjee: 1887-88 to 1906-07
 - Gulab Rai: 1907-08 to 1916-17
 - Marriot: 1917-18 to 1932-33
 - Dramond: 1933-34 to 1947-48
 - Khalil: 1948-49 to 1957-58
 - Mehndi Hasan: 1913-14 to 1915-16
-

In all the forest management plan only during Marriot (1917-18 to 1932-33) that for the first time 'taungya' method was adopted. Not only 'taungya' method was used for the first time, it led to the regeneration of 'saal' and this regeneration of 'saal' was very encouraging.

During Dramond plan (1933-34 to 1947-48), the 'taungya' method was not encouraged. It was considered that the 'barwara' (criminal tribe) caste group who worked as 'taungya' planters, take no interest in the work and they are not serious about the responsibilities. As a result the 'taungya' planters were marginalized during this time-period. Khalil's plan continued from 1948-49 to 1951-59 and during this period, the vested forest due to the implementation of 'zamindari abolition act' came under the forest department. Thereafter the management plans of Rajjada, Nath, Sinha and Joshi, planned and managed the forest with a very marginal role of the 'taungya' workers¹⁷.

Though the 'taungya' workers were marginalized and the work has been done by department, the significance of the 'taungya' workers is still maintained as they remained there in the forest and the catchment areas and provided a support to the department in protection of forest from outsiders. Not only this, since they have planted a substantial portion of Tikri forest range, they have some emotional attachment to the area also, as a result of this affiliation they remained in the confinement of the forest. No doubt, they were illegal occupants of the area, they did not disturb the forest rather they were helpful in protecting and preserving the forest. The role of these 'taungya' settlements was also recognized by the forest officials who were working in the field. The 'taungya' residents are well aware of the geographical location of the forests and they reside in the forest, they are well aware of each and every encroachment and illegal felling in the forest. They act as informers to the forest department regarding illegal poaching and felling of the trees.

V. PATTERN OF LAND RELATIONSHIP AND CLASS FORMATION

In order to understand the relationship between classes, one needs to define the class and agree on the nature of classes. In the present context the classes may be observed with reference to their relationship with the forest. This symbiotic, some times protective and exploitative relationship with forest gives a very distinct character to the class formation. The striking feature of this class configuration is the dependency of one class over another class and this feature creates a social structure which is unique in itself.

The following pattern of land relationship and class formation that one can observe and deduce with reference to the relationship between forest and the different stakeholders:

First, the class formation where forest department as the owner of the land creates the first class and the communities residing in the forest who are dependent on forest for their partial and total livelihood creates the second class. This class and relationship is exploitative in the sense that the forest officials act as the owner and the members of the communities residing in the forest and catchment areas as

dependants on forest resource. This dependency of the communities on forest is dictated by the officials of forest department. The inhabitants have some land at their disposal and they work on this land for agriculture purposes but this is not sufficient enough to sustain them as a result of this they are partially dependent on the forest and forest produce. The class formations emerging out of this dependency of villagers on forest creates village community and forest department as two important classes in the social-economic setup of the forest area. These two classes, no doubt have their own interests but the symbiotic relationship to a certain extent compels them both to manage and preserve the forests.

Second, the inhabitants were granted some ownership rights, where they were allotted some lands in the forest by the department of forest under the compulsion of the Forest Rights Act, 2006. This development is particularly important with reference to 'taungya' workers who were working in the area since a very long period of time. Before this, the class formation in the form of 'taungya' workers and the forest department, the relationship was dictated by the forest department and the 'taungya' workers were working for the forest department for managing, planting and protecting the forests. But their rights were not defined and they have to work on the mercy of the forest officials and most of the time the unwritten contract in which they were involved was exploitative as they were totally dependent on the forests and forest officials for their livelihood. The conferring of ownership rights over the land leads to change in this class formation, the classes are the same but the nature of relationship has changed to certain extent. The total dependency of the members of the village on forest and forest officials has changed and now the villagers are to a certain extent independent and autonomous in their own domain where at least the absolute dependency has converted to relative dependency with an independent identity, as earlier they were identified with the forest and their status and identity was defined and derived meaning through forest and forest officials only.

Third, the inhabitants were involved in the different activities of forest as 'taungya' workers, but after discontinuity of the system they resided in the forest land. Since their relationship with the forest and forest department was symbiotic in the sense that they helped in protection and care of forest



and act as informers to the department, forest department informally recognized their presence in the forest and did not disturb their inhabitations. Though agriculture was not allowed, but cattle economy sustained these residents of the forest. The class formation that one can deduce indicates toward a vulnerable class which is totally dependent on forest and forest officials for its livelihood and identity at one pole and forest department at another pole.

These class structures changed after the enactment of forest rights Act, 2006, which conferred some land ownership rights to a partial section of the residents of the village. These changes can be visualized with reference to formation of groups which differs in action and intention. The one group, which was denied the ownership rights, took recourse to violence, felled the trees and cleaned the land and started agriculture on the forest land, the forest department protested and the case is pending in court. Another group, which could not muster the courage to take on the forest department and due to some emotional attachment to forests, still expects that forest department will grant some land to them. Due to constraints of law and other modalities the forest department could not provide the land titles to this group but department did not evict them and are still settled on the forest land. The changes in the class formation

where forest department was the usual owner and other classes were deriving the rights and livelihood from them changed after the conferment of land rights to some of inhabitants. Now the classes are not only defined with reference to department of forest but also with reference to those who are the owners and those who do not have any land ownership rights.

The class formation visible in the form of forest department and the forest dwellers who were residing in the forest has taken a change and new class formation may be understood with reference to content and discontent of the people residing in the forest. This discontent, dissatisfaction and hostility may be categorized in the following categories.:

Inter group discontent: The satisfaction on the part of those who received land titles in the village Maheshpur and those who due to some reasons could not get the land titles are deprived. The law has done good to one group but it deprives a section of the same community. At the same time law works as an institution of welfare and an instrument of coercion. This also creates another class formation which were non-existent in the form of owners and non-owners of the land. Earlier whatever discontent and dissatisfaction was there it was with reference to department of forest, now the fissure in the community is visible and the hostility that was towards forest department has diffused towards community's own class contradictions. In the village Maheshpur, 33 families were granted land titles whereas a number of petitions were turned down. The discontent is visible



on the part of those who were denied the land rights and other members of the community with whom they were residing for a very long period of time were given the same rights. This discontent has created a fissure in the community consolidation and class formation in the form of owners and non-owners of the land has emerged. Though at present it does not seem hostile but in a time to come they may take recourse to hostility also. The claimants who were denied the rights were of the opinion that their petitions were not taken seriously and they want one more hearing in their case¹⁸.

Inter group discontent (relationship to outside village): The inhabitants of other village, who were also involved as 'taungya' workers, were denied the land titles and land rights. This resulted in two types of class formations with different intent and actions towards forest.

- a. Those who have taken recourse to violence and initiated the felling of trees, preparing the ground for agriculture resulted in protest from the forest department. This converted into violence and the matter was reported to police and the case is still pending in the court. But 'taungya' workers resisted the attempt of the forest department towards encroachment on the forest land and they are still practicing agriculture on the forest land. This violence has created an opportunity of generating income for them.
- b. Those who could not gather the courage to protest and resist could not get any concession from the forest department except that their habitations were not disturbed. Without any agricultural land, they are dependent on the mercy of the forest department. This suggests that not taking recourse to violence and favouring the department did not bring any concessions to this particular group.

Intra-group discontent/dissatisfaction: The frame of discontent is also there within those who were given land titles. The main reason of dissatisfaction is the

location of land allotted to inhabitants. Those who are allotted land adjacent to forest complains that the animals from the forest particularly the monkeys destroy their agriculture crop. The dissatisfaction on their part is relative, relative in the sense of location of agriculture land with respect to forest area.

VI. CONCLUSION

The emergence of anti colonial and independent nation states after colonialism is frequently accompanied by a desire to forget the colonial past. This will to forget takes a number of historical forms and is impelled by a variety of cultural and political motivations. The process of returning to the



Page: 58

colonial scene discloses a relationship of reciprocal antagonism and desire between coloniser and colonised¹⁹. This is very true with reference to the history of forest in colonial and post colonial India. Forest degradation was not due to abuse by the poor but to state ownership, under British colonial exploitation for short term gain. There has been a confrontation between two positions. On one side the colonial state and its republican successor, and on the other side tribal and peasant communities, with their own rule governing access to and use of the forest²⁰. The Forest Rights Act (2006) tries to balance the two stakeholders, state and forest dwellers (mainly tribal).

The main issue that emerges out of this study is the satisfaction of one section (who received the land rights) and the deprivation of another section of society residing in the forest and forest catchment area. They were denied the land rights as they were unable to fulfill a condition required to prove their habitation in the area for three generations. The Act defines: "other traditional forest dwellers means any member or community who has for three generation prior to the 13th day of December, 2005 primarily resided in and who depend on the forest and forests land for bona fide livelihood needs. For the purposes of this clause, generation means a period comprising of twenty-five years". This clause has created a structural strain in the social structure of the society and this strain resulted in a different form of class formation, where the classes sometimes satisfied but sometimes very hostile to the forest and the law.

Another very important significance of the law is the gender frame where the Act says: 'A right conferred shall be heritable but not alienable or transferable and shall be registered jointly in the name of both the spouses in case of married persons'. This is very important development as during the field work, the women were more vocal in the village where the land titles were given and they were aware of the villagers who were given these titles. Women's command over property is the single most important factor in women's economic empowerment²¹.

Policy formulations and implementation involve several government departments and ministries along with a set of complex web of laws. Some times these laws promote but some times they are in conflict to one another, this is very true with reference to Forest Rights Act (2006). Both the Ministry of Tribal Affairs and the ministry of Environment and



Page: 59

Forest (MoEF) played key role in the making of Forest Rights Act (2006), the intent and action of both the ministries should be in consonance to one another. The praxis of

the present law that is Forest Rights Act (2006) is affected by the dynamics of other laws such as Wildlife Protection Act, 1972 and Forest Conservation Act, 1980.

The law aims at inclusionary frame in its intention and spirit but the results from the field suggest that this inclusionary intent of law excludes the marginalized groups of the society by creating different class formations. Earlier the marginalized group was united against the forest department for their rights. This law changes the nature and number of class formation. The new class formation that emerged due to the distribution of land titles to some of villagers led to fission in the community solidarity. The new class formations led to the more exclusion in the community and the intent of the present law that aimed at inclusion and social justice seems to be partially fulfilled.

It is important to decentralize the institutions of forest governance with more participation of local stakeholders in the decision making process. A shift from state controlled and managed forest to community controlled and managed forest is required²². The present law intends to give more powers to gram sabha and gram panchayat in community forest management process. This practice of decentralization and involvement of people continued for a long period of time in forest management in India under 'taungya' system. The other laws enacted in the colonial and post colonial time period relating to forest; made the tribal and other forest-dependent communities encroachers on their own lands. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is an important step to undo the injustice done to the scheduled tribes and other traditional forest dwellers.

— — —
* Associate Professor (Sociology), Department of Sociology, Social Science & Social Work, Dr. Shakuntala Misra National Rehabilitation University, Lucknow, Email: shailjadsmru@gmail.com.

¹ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The Gazette of India, Part II-Section —I. New Delhi, Tuesday, January 2, 2007.

² *Ibid.*

³ Kronman, Anthony T.(2008) in Mathieu Deflem (ed.) *Sociology of Law: Visions of a Scholarly Tradition*. Cambridge University Press, Cambridge.p: 5.

⁴ Guha, Ramchandra (1994) *Colonialism and Conflict in the Himalayan Forest*, in *Social Ecology* (ed.), Oxford University Press, New Delhi.p:283.

⁵ *Ibid.* p:284.

⁶ Defem, Mathieu (2008), *Sociology of Law: Visions of a Scholarly Tradition*, Cambridge University Press, Cmbridge. P: 28.

⁷ *Ibid.*

⁸ Sinha, V.K (2009), *Work Plan (2009-10 to 2018-19)*, Gonda Forest Division, Department of Forest, Government of Uttar Pradesh.

⁹ *Ibid.*

¹⁰ Banerjee Sujoy (2003), *Illicit Felling in the Gonda Forest Division of Uttar Pradesh, India - A Case study*. paper submitted to the XII World Forestry Conference, Quebec City, Canada <http://www.fao.org/docrep/ARTICLE/WFC/XII/0222-B1.HTM>. (Accessed on October 12, 2016).

¹¹ Oliver Springate-Baginski and Piers Blaikie (2007), *Forest, People and Power: The Political Ecology of Reform in South Asia*. Earthscan, London, pp: 103-4111.

¹² Tejwani, K.G. (2002), *Agro Forestry in India*, Concept Publishing Company, New Delhi.

¹³ <http://www.agriinfo.in/?page=topic&superid=2&topid=1687> (accessed on 16-02-16).

¹⁴ Chatterjee, Piya (2001), *A Time for Tea Women: Labour and Post Colonial Politics of an Indian Plantation*. Duke University Press. (Note-8, Pages 375-77).

¹⁵ Sinha, V.K. (2009), *Work Plan (2009-10 to 2018-19)*, Gonda Forest Division, Department of Forest, Government of Uttar Pradesh.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Dainik Aaj (Gonda edition: Hindi news paper dated: 14-05-2011).

¹⁹ Gandhi, Leela (1998), *Post Colonial Theory: A Critical Introduction*, Oxford University Press, New Delhi.

²⁰ Guha, Ramchandra & Juan Martinez-Alier (2000), *Varieties of Environmentalism: Essays North and South*. Oxford University Press, New Delhi, p: 74.

²¹ Agarwal, Bina (2011) *Women and Green Governance: The Political Economy of Women's Presence Within and Beyond Community Forestry*. Oxford University Press, New Delhi, p:422.

²² *Ibid*, p:91.

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.