

## Forest Myths, Jungle Laws and Social Justice

*A variety of forest myths and a jungle of forest laws have over the years served to deny social justice to the forest-dwelling tribals. Two commissions, one on tribal matters and the other on forests, are presently reviewing these subjects and this is a golden opportunity for both to meet and resolve all the land issues relating to tribals and forests and the issue of tribal access to their own forest resources which alone can bring peace and prosperity in the tribal areas.*

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### I Forest Myths

#### (1) Forests Increase Rainfall

This is the oldest and longest standing myth about forests. However enough data is not available to support this belief. Rainfall appears to follow a 50 to 60 year global cycle and deforestation locally does not influence the global trends. Forests influence local and regional climates, generally by making them milder. Large-scale denudation does seem to lead to a reduction in the average number of rainy days in a year and an increase in rainfall intensities. There is a perceptible increase in cyclones, cloudbursts, depressions, heavy downpours and floods in the last three decades not only in our country but also around the world. China used to suffer severe floods once in 20 years; but now they occur in nine out of 10 years. Globally the number of people affected by floods has risen from seven million in 1960 to 150 million now. In nature so many forces are acting and interacting with each other that it is difficult to isolate the influence of any one with certainty; all these changes may be due to large-scale deforestation combined with global warming which is also partly a consequence of deforestation. The influence of forests is more below the ground than above it. This may appear paradoxical, but is very true. A healthy forest with a top canopy of trees and an under-story of smaller trees and shrubs and a ground-cover of perennials and annuals and a

thick layer of humus is the best medium for ensuring continuous flow of clean water. Such a forest will act as a giant sponge absorbing rainwater into the humus layer and releasing it drop by drop into the subsoil and ultimately recharging the groundwater reservoirs. Healthy forests are nature's tool to capture rain water. But large sections of the Reserved Forests (RFs) in the country are unable to perform this very important role due to repeated fires, overgrazing and other biotic factors leading to loss of the tree canopy, ground-cover and the crucial humus layer. The State of the Forests report based on satellite imagery released periodically by the ministry of environment and forests gives the status of the top canopy of trees and their density but does not reflect the health of the forests. To reflect this it should also measure the run-off and soil erosion from the forests. Where the forests are deficient in ground-cover and humus and run-off is high, relief can be obtained by protection from fires and grazing and by contour-trenches properly spaced. However they should never be like the elephant-proof trenches of eight to 10 feet depth and equal width dug along the boundary of forest blocks by deploying excavators.

The rainfall data for India taking the average for 10-year periods is as follows:

Time Period in Years	Average Rainfall in mm
1871-1880	976.88
1931-1940	971.47
1951-1960	923.09
1981-1990	988.00

It may be noted that significant deforestation has occurred since 1950s but the

rainfall data as indicated above does not show any correlation with it.

#### (2) 33 Per Cent of Land Area of the Country Should Be under Forests

Tolstoy in a short story stated for all times, that a man needs only six feet by three feet of land. The National Forest Policy of 1952 in a similar manner prescribed as a guideline that India as a whole may aim at 33 per cent of land under forests. The background paper to the National Forest Policy of 1952 while reviewing the area under forests in different countries came to a questionable conclusion that countries with over one-third land area under forests such as US and USSR are prosperous and so our country should aim at the same percentage under forests. As a lofty objective at the dawn of independence, it was laudable, but it became a fixation, with foresters and environmental advocates leading to relentless territorial expansion, causing tribal unrest. This needs to be re-examined. What extent of lands should be under forests in a country with tremendous pressure on land? The concept of Land Capability Classification assigns land to different sustainable uses based on rainfall, soil, degree of slope, etc. As per the Land Capability Classification, land above 65 degrees slope should be kept under permanent vegetation or forests and lands below this gradient can be put under tree crops, annual crops, etc, with soil conservation measures like bench terracing, contour trenches, etc. It is true that going strictly by this rule the existing forest areas may be further fragmented; and there is an extinction threshold for forests as for species; although not arrived at scientifically so far; below a minimum area forests tend to disappear. There is a need for a fresh approach to assessing the land to be kept under forests instead of pursuing the outdated prescription of the 1952 forest policy, repeated in the National Forest Policy of 1988.

#### (3) There Were 40,000 Tigers at the Beginning of 20th Century

While discussing the decline in tiger population it is often asserted that there were 40,000 tigers at the beginning of the century. This is another of the forest myths.

How this figure was arrived at remains a mystery, specially when we are unable to count the tigers with a measure of accuracy even at present Tiger population was at its peak in the beginning of the last century, as in some districts like Visakhapatnam in Andhra Pradesh tigers were carrying off people in broad daylight (District Gazetteer), and Corbett's accounts describe the maneaters in Kumaon hills. Even the tiger census by the tiger-tracer method was not meant to calculate absolute numbers. According to S R Choudary, the author of the method, it only indicates trends in population. Conducting the census year after year at the same time and season with all its drawbacks in tracing the pug-marks, preparing plaster casts from varying soil media, would give broad indications in population trends. The method has been elaborated with use of a fertile imagination to identify individual tigers and arrive at absolute numbers!

#### *(4) 10 Per Cent of the Country's Land Should Be under Protected Areas*

The National Wildlife Action Plan in its objective states that the area under Protected Areas (PA) at present is around 16 million hectares and "we should aim to bring 10 per cent of India's land mass under the PA network"; this again is an arbitrary norm. Earlier it was 10 per cent of forest area and 4 per cent of land mass! If one looks at the evolution of PA concept in our country, their objective was preservation (not conservation) of wildlife and PAs comprised of a core area and a buffer zone, both within the PA; then came the concept of declaring the core as a national park and the buffer as a sanctuary under the Wildlife Act in view of the greater restrictions that can be imposed in a national park and the buffer was shifted to outside the PA boundaries; now the buffer zone is proposed to be declared as the conservation area under the 2003 amendment to the wildlife act; and most likely the area beyond the conservation area, if any is left, will become the buffer zone. Simultaneously the primary objective of the PAs is being considered as biodiversity to meet the dictates of this latest bandwagon. That a global biodiversity study identified 17 centres of plant diversity for prioritisation in our country and to begin with these areas should be attended and that another study has shown that protecting a five-hectare area effectively ensures preservation of 90 per cent of the biodiversity – this vindicates the very old concept of

preservation plots in forestry – do not find a place in the biodiversity prioritisation study of the government. In a country with the greatest pressure on land resources on earth there is utmost need to evolve strategies to attain our objectives with the least demand on land and arbitrary targets such as 10 per cent of land should be brought under PAs which have no sound basis cannot be adopted as part of a national policy.

## **II Jungle Laws**

The prime minister while addressing the National Development Council (NDC) on December 21, 2002 emphasised the need for a review of "a jungle of laws, in particular, municipal, police and forest laws" many of which had not been reformed since many decades. This is particularly the case with Forest Laws.

#### *(1) Forest Act*

Considering that it is largely enforced in tribal and rural areas (except the transport rules) some of the provisions are draconian and drive the villagers into the clutches of the staff at the cutting edge. Section 26 of Indian Forest Act provides penalties for trespass, pasturing cattle, kindling or carrying any fire, or... removing any forest produce, etc. Trespass means no villager can enter the Reserved Forest without permission! He cannot carry a lighted torch even if he is going on a dark night! He cannot collect medicinal herbs for his own needs; these simple acts can land him in jail; tribals and others living inside the forests have to go through the forests or into the forests to collect medicinal plants; it is confirmed by recent market surveys that 90 per cent of medicinal plants used in the pharmaceutical industry, presently come from forests. By the letter of the law the tribal collectors have to take permission though the foresters themselves have little knowledge of the hundreds of herbs being collected. It is quite likely that these provisions have never been invoked and if so they need not be on the statute book. At the time of notification of the area as reserved forests (50 to 100 years back in many cases) several rights and concessions were recognised with regard to grazing, collection of Minor Forest Produce (now termed as Non-Timber Forest Produce) and timber in some instances and also the right to shifting cultivation; these were all recorded in the original settlement papers; in some

states like the old Madras Province they were codified in manuals. However with the passage of time and a general erosion of respect for community rights particularly of the poor since independence most of these came to be ignored by the forest departments. It is essential that these rights are recorded and revived in the interests of forest communities. Similarly the system of supply of domestic needs of firewood and bamboo on seigniorage rates which was in vogue was also abolished. This was a healthy system to meet domestic needs of communities living in and around the forests. Today there is no way for a community living in a forest to meet their bona fide requirement of wood except through the good offices of the forest guard. Water, water everywhere not any drop to drink, sums up the situation.

#### *(2) Forest Conservation Act 1980*

This is a corollary to the '33 per cent under forests' syndrome; since area under legal forests has to be increased to one-third land area of the country any transfer of forest land to non-forestry purpose should be compensated by providing equal area of land outside the forests with funds – as demanded by the forest department – to afforest the area. Once upon a time there lived a king in a palace with most of the outer portions in a dilapidated condition and whenever any person approached him to purchase some of these crumbling portions he would insist that an equal area of dilapidated structure anywhere be given to him with funds to repair it! Government of India under this act is like this king. More than 40 per cent of the Reserve Forest area in the country is in an extreme state of degradation and is in need of funds for reforestation; the funds given for compensatory reforestation should be used to reforest these existing degraded RF areas. Perhaps the government should sell some of the degraded RFs to raise funds for reforestation instead of approaching foreign funding agencies. As in all matters, it is quality that matters and not quantity even in forests. Besides, the isolated bits and pieces of land afforested under this scheme have very little prospect of long-term survival. Further it is impinging on issues of equity and social justice as forest land is generally in demand in progressive districts and land in compensation is given from backward districts, where government departments are involved, and private enterprises purchase the cheapest land from

the poor often depriving them of their only asset. After the government reforests all the degraded areas in the RF it can look for compensatory areas. The mindset of 33 per cent of land should be under forests is to be overcome for an objective understanding.

### (3) *Wildlife (Protection) Act*

Section 18 (1) of the Wildlife Protection Act dealing with the procedure for declaring protected areas exempts areas included from a Reserved Forest from the provisions of sections 19 to 25 dealing with settlement of rights of people, as the section reads: "The state government may, by notification declare its intention to constitute any area *other than area comprised with in any reserve forest...* as a sanctuary" (emphasis added).

This is bad in law as the declaration of a protected area does involve imposing additional restrictions on the local people than was done under the Forest Act, regarding entry into it, grazing, and right to forest produce as per rights and concessions conceded at the time of notification of the forest under the Forest Act. Further the section also prescribes that areas of "adequate ecological, faunal, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment" should be considered for declaration as protected areas. So far over 500 protected areas were declared in the country and more are in the pipeline. It is a moot point as to how many of these fulfil adequately the criteria of ecological and natural significance. The national wildlife action plan recognises 10 biogeographic zones in the country and considering the need for quality than quantity, there is a strong case for a second look at the protected areas and to even denotify some, that do not have natural vegetation nor ecological significance and are similar in biogeographic status.

## III Social Justice

Freedom is incomplete without social justice and this is tragically true of forest-dwelling tribals. If we examine the process of reservation of forests under the forest acts by the British, from the last quarter of the 18th century, large tracts of the hills were still covered with forests in tribal areas – tribal agriculture was largely shifting cultivation, an adaptation to life in hilly areas – and so large areas of forests could

be brought under the regime of Reserve Forests in the tribal belts of the country. As the legislations restricted the freedom of tribals to access the forests and to do shifting cultivation there was resentment among all tribal groups across the country; this was the cause of over hundred tribal rebellions in 125 years of forest administration.

Reservation of forests had the greatest impact on shifting cultivation, which is an integral part of tribal life and culture. Shifting cultivation is an appropriate solution to living in hills. Even forestry is similar in principle, where a block of forest is divided into a number of units (coupes) equal to the number of years required to regenerate the forest and one unit is felled each year. Shifting cultivation works on the same principle. However when large areas previously under shifting cultivation were included in reserved forests the fallow periods under shifting cultivation have drastically shortened.

Forest reservation has been carried on to bring 60 per cent of land under RFs. As stated in the National Forest Policy of 1952, "As an insurance against denudation about 60 per cent of the land in the Himalayas, Deccan and the other mountainous tracts liable to erosion...and in the plains, the proportion to be attained should be placed at 20 per cent...and the country as a whole should aim at maintaining one-third area under forests". In the 50 years since independence around 10 lakh hectares of protected and unclassified forest has been added to reserve forest in AP and most of it in tribal areas. This has severely restricted the availability of land for tribal needs.

Every community has an inherent right to use and exploit the natural resources found around their settlement; this is what the urban citizens do when they start industries, and when rural people use the land for agriculture; most of the resources are under private ownership. All this is denied to the tribal as most of the lands are appropriated by the state and declared Reserved Forests! Under the circumstances prevailing the tribals had no option but to encroach on forest lands. While precise figures of forest areas under occupation by tribals are not available, it is roughly at 1.2 to 1.5 million hectares involving an equal number of families. Orders were issued on May 3, 2002 by the ministry of environment and forests to evict all ineligible (as per the arbitrary norms fixed under conservation act) encroachments by September 30, i.e., in four months. It was reported that some of the states used elephants in some places and guns at other places for

removing the tribals from their lands causing bloodshed and loss of innocent lives. And all this is due to a misreading of the Supreme Court orders in Thirumalpad case where the court had only restrained the state from regularising the encroachments. The responsibility for this heartless deed lies with the government of India. To avoid more bloodshed and to establish peace (so essential for development and prosperity) in tribal belts of the country, there is an urgent need to review the land ownership including that under the biggest landowner – forest departments and concede the just and fair aspirations of our tribal people. The 1.5 million hectares of area under encroachment may appear large but compared to the total area of 68 million hectares under forests in India it constitutes about 2 per cent of the area and disreserving this, spread over thousands of forest blocks will have no adverse influence on the ecology and environment of the country, but a very salutary impact on the peace and prosperity of the tribal belts of the nation.

The total forest area of India at 68 million hectares is no small extent by any standard. It is larger than the combined geographical area of West Bengal, Bihar, Jharkhand, UP, Uttaranchal, Haryana and Punjab! It is in reality an empire ruled by an iron hand of a sultanate at Delhi, with a select group of eco-fundamentalists. This empire is also home to a native population of 70 million tribals whose livelihood is wholly land- and forest-based; over these 50 years their numbers have also increased two to three-fold and in some states their lands have been occupied by powerful plains people on one hand and by the state for RFs and PAs on the other. They are fighting for living space for survival. While discussing the remarkable progress of the Apa Tani and the Naga tribes Christoph von Furer-Haimendorf, well known anthropologist said, "...the cultivable land of the indigenous population was not alienated to newcomers. Hence the economic basis of Naga and Apa Tanis remained unaffected by any outside claim on their landholdings."

Presently two commissions, one on tribal matters, the scheduled areas and scheduled tribes commission set up under Article 339(1) of the Constitution headed by Dilip Singh Bhuria and another on forests headed by Justice B N Kirpal are reviewing their respective portfolios. This is a golden opportunity for both to meet and resolve all the land issues relating to tribals and forests and the issue of tribal access to their own forest resources which alone can bring peace and prosperity over a period of time in these areas. **EPW**