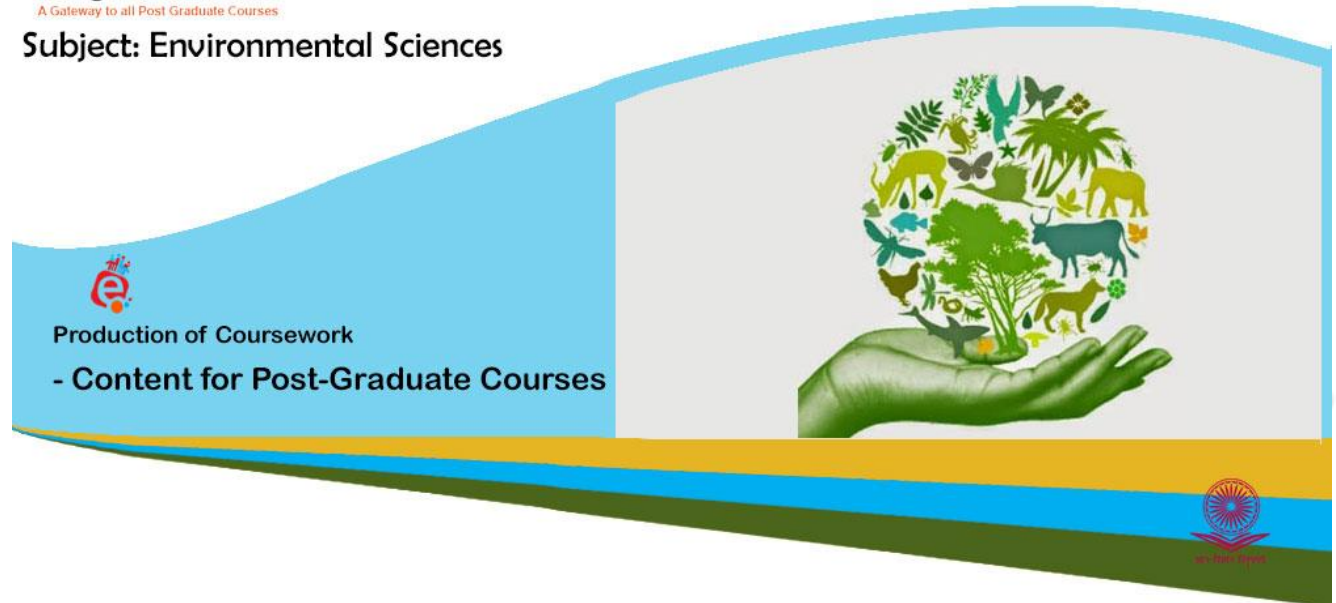


Subject: Environmental Sciences



Paper No: 13 **Environmental Law and Policies**

Module: 03 Indian Forest Act, 1927



### Development Team

Principal Investigator & Co- Principal Investigator	Prof. R.K. Kohli Prof. V.K. Garg & Prof. Ashok Dhawan Central University of Punjab, Bathinda
Paper Coordinator	Dr. P.S. Jaswal, Rajiv Gandhi National University of Law, Punjab
Content Writer	Dr. Shilpa Jain Rajiv Gandhi National University of Law, Punjab
Content Reviewer	Dr. P.S. Jaswal, Rajiv Gandhi National University of Law, Punjab
Anchor Institute	 Central University of Punjab

## Description of Module

<b>Subject Name</b>	<b>Environmental Sciences</b>
<b>Paper Name</b>	Environmental Law and Policies
<b>Module Name/Title</b>	<b>Indian Forest Act, 1927</b>
<b>Module Id</b>	EVS/ELP-XIII/03
<b>Pre-requisites</b>	Understanding of the term forest and its inclusions
<b>Objectives</b>	To understand and analyze the various provisions of the Indian Forest Act , 1927
<b>Keywords</b>	Indian Forest, Forest policy, Forest Officer



A Gateway to All Post Graduate Courses

## Indian Forest Act, 1927

### LEARNING OUTCOME:

- In depth understanding of The Indian Forest Act, 1927
- Understanding of the Post-Colonial Forest Policies
- Understanding the Role of Judiciary in Forest Reforms
- Critical analysis of the Act and need for reformations.

### Introduction

The relationship between man and environment has varied from time to time. Man's ambition for limitless enjoyment and comfort has led him towards the exploitation of nature's wealth so indiscriminately and so brazenly as to abate nature's capacity for self-stabilization. Man's insatiable appetite for resources and his desires to vanquish nature has put him in collision course with the environment. The escalating demand for his explosive technological society imposes excessive strain on the state of equilibrium with the environment. Therefore, where environment degradation poses one of the biggest problem, environment protection policy has gained immense significance.

The preservation of ecology and environment has been prevalent in India since ancient times. The phases of environment protection has dated from the time of Vedas, Upanishads, Puranas and other scriptures of Hindu religion, to Emperor Ashoka and Mughals. However, it was only during the reign of Britishers that several laws were enacted as a strong step towards the conservation of ecological system of India.

However be it, these legislations served only as a veil to conceal the imperialist policies under which the Britishers exploited the natural resources of its colonies, specifically the forest areas to draw timber for shipbuilding, iron-smelting and farming. In India, this process greatly intensified in the early years of the building of the railways network after about 1853. Various belts, for instance, the sub-Himalayan forests of Garhwal and Kumaon, were declared as 'Protected' forests under the proprietorship of the British government.

British interests in forest resources of India were dictated by imperialism. The imperial needs led to establishment of pervasive control of the colonialists over Indian forests. The ambition eclipsed, firstly, the well-established traditional systems of conservation and sustainable use, and secondly, the critical ecological and social role that forests played. The Protected Forests under British power was a means to expand state power and exploit Indian colony.

Forest conservators were appointed in several provinces and Forest Department was established. In 1865, Forest Act was passed which was later revised in 1878. This legislation covered most of the Indian territories, and expanded the powers of the British government by providing for 'Reserved' forest. The forest administration was empowered by the legislation to impose huge penalties on transgressors.

On 19<sup>th</sup> October 1884, the British Government declared its first Forest Policy by a resolution, stating three prime objectives:

1. Promoting the general well-being of the people in the country;
2. Preserving climatic and physical condition in the country; and
3. Fulfilling the need of the people

This policy classified the forests into four categories:

1. Forests, the preservation of which was essential for climatic and physical grounds;

2. Forests which offered a supply a valuable timber for commercial purposes;
3. Minor forest which produced only the inferior sort of timber; and
4. Pastures, which were forest only in name.

In 1927, the Indian Forest Act was passed to implement this policy of 1884. This Act was very comprehensive in nature and replaced the Forest Act of 1878.

### **The Indian Forest Act, 1927: An Analysis**

#### **Object and Scope of the Act**

The object of the Indian forest Act [hereinafter referred to as '**the Act**'] was to consolidate and re-shape the law relating to forests in India. This was the first step towards codification of the various practices and activities of the forest officials. The Act further aimed towards regulating the rights of various groups of people over forest lands and the resources. Different classifications of forests were made and the scope of the provisions was elaborated to extend control of State over forests and resources. Unlike the 1878 Act, this Act did not refer to the community's right over the forest and people were expected to put in their claims over forest lands. Further, the act tried to govern the transit of forest produce and duties to be levied on forest products. Thus, the Act depicted the revenue yielding aspects of forests, in the mind of colonial rulers.

#### **Salient features of the Act**

- The Act contains 86 sections and deals in four categories of forest which includes (i) Reserve Forest (ii) Village Forest (iii) Protected Forest (iv) Non-government Forest.
- Regulatory measures were introduced to prohibit/control quarrying of stones, burning of lime or charcoal, the collection of any manufacturing process, or removal of any forest produce in any such forest and the breaking up or clearing for cultivation, for building and for herding cattle.

- Inspectors were conferred with the power to arrest without warrant in cases of disobeying or violation of the provisions of this Act.
- Unlike the 1878 Act, the 1927 Act did not refer to rights of various communities over forests, rather the communities/individuals were expected to claim their right over the particular forest land before the Forest Settlement Officer. The officer may conduct appropriate enquiry against such claim.
- Special provisions have been included to control the shifting cultivation. The practice of shifting cultivation is subject to satisfaction of the Forest Settlement Officer who upon recording the claims, informed the State Government regarding the permissibility of the same.

Further, Section 10 of the Act specifically mentions that the practice of shifting cultivation was in all cases deemed to be a privilege subject to control, restriction and abolition by the State Government.

### **Reserved Forest (Chapter II)**

The Act under Section 3 empowers the State Government to constitute/declare any forest land or wasteland as reserved forest by issuing notification in this regard. Once a forest is declared as a reserved forest, the state government has the proprietary right over that area and all individual or community rights on that area, which existed before such notification, shall be extinguished. In order to declare any area as reserved forest the State Government is bound to follow the following process:

- (a) State government shall issue a notification which shall declare the intention of government to constitute an area as reserved forest, specifying the limits of that area and appoint the Forest Settlement Officer (FSO) to redress to the queries of various persons.
- (b) FSO is obliged to inquire into the claims made by the individuals and if any claim exist in the government record, then such claims must be settled (Section 6 & 7).
- (c) The State Government shall specify the limits of the forest which is to be reserved in accordance with the boundary-marks erected or otherwise. Once a notification is published in the Official Gazette, the same is declared to be reserved from a date fixed by a notification in the Official Gazette, after satisfying all the conditions mentioned in Section 20.



In the case of *Ratan Singh v. State of UP*, 1980 (6) ALR 228, the Hon'ble Court held that the State government could issue notification under Section 4 only about the land described in Section 3. If the land described in the notification is not mentioned under Section 3, then no such power can be exercised by the State government on such land.

### **Village Forest**

State Government establishes Village Forests by assigning rights to a village community over any land constituting a reserved forest. The State Government may make rules for regulating the management of village forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest. All the provisions of this Act relating to reserved forests shall, so far as they are not inconsistent with the rules so made apply to village-forests (Section 28).

### **Protected Forest**

The State Government is empowered to declare any forest-land or waste-land which is not included in a reserved forest but over which the Government has proprietary rights or has right over any part of forest produce, as protected forest. However, the government must survey about the rights and claims of private individuals in the forest area which is under consideration and only after the settlement of such claims an area can be declared as protected forest.

### **Non-government Forest (Chapter V)**

The Forest Act intended to be a piece of legislation not only in respect of government forest but also in respect of forests and land not belonging to government as held in the case of *Kashi Prasad Sahu v. State of Orissa*, AIR 1963 Ori 24.

The Act authorizes the State Government, by notification, to regulate or prohibit breaking up or clearing of land for cultivation, pasturing of cattle and firing or clearing of the vegetation in any forest or waste land in order to achieve the following purpose:

1. for protection against storms, winds, rolling stones, floods and avalanches;
2. for the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines, and torrents, or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
3. for the maintenance of a water-supply in springs, rivers and tanks;
4. for the protection of roads, bridges, railways and other lines of communication;
5. for the preservation of the public health

However before issuing such notification, the state government is bound to issue show cause notice to the owner of the forest or waste land asking him why such notice not be issued and to make his objections (Section 35).

### **Control over timber and duty on transit**

The Act under Section 39 authorizes the Central Government to levy a duty on all timber or other forest produce which is produced in the territorial jurisdiction of this act and in respect of which the Government has any right or which is brought from any place outside. The Government shall by notification specify the manner, place and rate of such duty.

Further, the Act empowers the state government to control all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water and makes rules and regulations in that regard (Section 41).

These rules may prescribe the routes for import, export or movement of forest produce, prohibit movement without pass issued by the specified authority, stoppage and examination of goods, establishment and regulations of depots, Regulate the use of property marks for timber and the



registration of such marks, removal of obstructions from channels or banks of river used for transit and for other purposes specified under section 41(2) of the Act.

Section 42 of the Act empowers the State Government to make rules prescribing penalties for the contravention thereof. Such penalty may include imprisonment for a term extending to six months, or fine which may extend to five hundred rupees or both.

In the case of *T.V. Balakrishnan v. State of Tamil Nadu*, 1994 (2) SCALE 661, Supreme Court held that Timber Transit Rules are regulatory in nature and not prohibitive. Hence it does not violate freedom given under Article 19 (1) (g) nor Articles 301 and 304 of the Constitution of India. Thus, power to grant or refuse permit does not violate right to freedom of movement.

#### **Powers of Forest Officer**

- Any Forest-officer or Police-officer without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards (Section 64).
- Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of Section 64, may release such person on his executing a bond to appear (Section 65).
- Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.
- Power to confiscate all timber or forest-produce or other equipment in respect of which a forest-offence has been committed.

**POST-COLONIAL FOREST POLICIES :** Salient features of important Forest Policies are discussed in brief as follows.

### ***Forest Policy, 1952***

The Forest Policy of 1952 withdrew the concessions of release of forest land for cultivation. Moreover, the policy decided that there should be village forests, to cater to the needs of the villagers, as against the provisions under Forest Policy Resolution (1894) which allowed them only into outlying areas of reserved forests. The Policy further applied certain checks and controls on private land. Along with this, fee was imposed on grazing. This Policy laid six paramount needs of the country which included, among others, a system of balanced and complementary land use, to check denudation in mountain regions, need for establishing tree lands and sustained supply of timber and other forest produced.

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

The Forest (Conservation) Act of 1980 was enacted to curb and control deforestation. The legislation thus enshrined various provisions which are applicable to all forests notwithstanding the classification. The power of State Government related to use of forest land and preservation of forest resources, has also been restricted by the Act. Section 2 provides that the State Government shall not make amendments except with the prior approval of the Central Government. The Act further directs cessation of all such non-forest activities within any forest which are ongoing without prior approval of the Central Government.

Furthermore, an advisory committee shall be constituted under the Act to advise the Government with regard to the grant of approved by the Central Government (Section 2) or any other matter connected with conservation of forests which may be referred to it by the Central Government (Section 3).

### ***Forest (Conservation) Act, as amended in 1988***

The Forest Conservation Act was amended in 1988 to strengthen the legislative framework required for conservation of forests and its resources. The amended Act provides that the aim of the Act is to ensure environmental stability and maintenance of ecological balance. Thus, derivation of any economic benefit from the environment is ancillary in nature. The Act advocates Joint Forest Management by giving usufruct rights for protection of forests.

Contravention of the provisions of the Act is punishable by imprisonment which may extend to a period of 15 days as per Section 3A. The Act also enshrines offences by the authorities and Government departments (Section 3B).

### ***Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006***

This Act under Section 4 has recognized the failure of earlier forest policies in recognizing the rights of forest dwellers, due to which discrimination has been meted out against them. Thus, the legislation endeavors to reverse the historical injustice done to the forest dwellers and tribal people. It was for the first time that through this Act the rights of the forest dwelling people got recognized in the Indian forest policy formation. Traditionally the forest dwellers held only the right to collect and use the forest produce. However, the Act of 2006 now recognizes the rights of Scheduled Tribes and Forest Dwellers including right to forest land in terms of living, holding, occupying the forest land under (Section 3).

Along with various rights, the Act also provides for certain duties of the forest dwellers to protect the wildlife and diversity of the forests and to promote sustainability in the ecological areas. Furthermore, Section 6 of the Act empowers the Gram Sabha for deciding upon the community rights and that of the individuals in the areas that has been marked as forest areas.

Hence, with the inclusion of forest communities in forest conservation policy, there is a radical shift in the governance and management of the forests.

### ***Forest Rights Act, Amendment Rules, 2012***

To ensure that the intended benefits of this welfare legislation flow to the eligible forest dwellers and to strengthen Forest Rights Act, the Ministry has notified the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Amendment Rules, 2012 on 6.9.2012.

The quorum of the Gram Sabha shall be reduced from 2/3 to 1/2 of the members to ensure that at least fifty percent of the claimants are there. The resolution to pass any claims shall be held in the presence of these claimants so there was a majority present between those voting for these rights. Rejection or modifications are to be communicated to the claimants and reasonable time shall be given to the claimant in case he decides to file a petition against the decision. Further, a procedure shall be laid down for identification of the village forests and similar laws shall be made for bringing them in to the main stream. The Scheduled Tribes in the Forest Rights Committee shall be represented by 2/3 rather than 1/3 as was earlier represented.

Furthermore, there shall be modification of the transit permits when there is transportation of the minor forest produce. Such modifications shall be done only by Committee constituted by Gram Sabha or a person authorized by the Gram Sabha. The royalties and other MFP related revenue shall be collected by these committees. The idea behind this is to recognize the rights of the forest dwellers and ensure sustainable development through localization of the laws. The rights of forest dwellers shall be recognized by all the villages

### **ROLE OF JUDICIARY**

This 1927 Act has faced serious scrutiny by various judicial forums in the country. The Supreme Court and High Courts have made a serious effort to eliminate arbitrary powers from this Act in order to remove the colonial touch, which existed in the Act at the time of its enactment, and to secure the rights of various stakeholders in the contemporary democratic era.

### **Mehta Brothers v. State of Himachal Pradesh, 1980 Cri LJ 289**

It was contented that no appeal under Section 59 can be made by the person who was not the party before the Magistrate court. The Hon'ble Court while rejecting this argument observed that the principle of natural justice requires that a person cannot be adversely affected without affording him a reasonable opportunity to substantiate his cause. Under Section 59 no bar has been created that no person would be entitled to prefer an appeal who has not extended his claim before a Magistrate. The phrase "any person claiming to be interested in the property seized" is wide enough to include even a person who was not a party before the trial Court. Further it was held that under Section 55 of the Indian Forest Act the phrase "shall be liable for confiscation" does not mean that the property stands automatically confiscated. On the contrary, it is presupposed that an opportunity is to be given to the person affected before the property is actually ordered to be confiscated.

### **Constitutional Validity of Section 52 of the Act**

In the case of *Kailash Chand v. State of MP*, AIR 1995 MP 1, it was contented that Section 52 of Act encroaches upon the power of Magistrate under Sections 451 and 457 of CrPC by giving such parallel powers to Forest Officer. The Forest Act is certainly a special law within the meaning of Sec 5 of CrPC. Wherein the officer has power to initiate confiscation proceeding then it must follow that he has incidental and ancillary power of passing an order of temporary custody or possession of property. However, where no confiscation proceeding is initiated, the Magistrate himself can exercise the power vested in him under CrPC. Thus, the power of Magistrate to pass order regarding temporary custody or disposal of property is taken away in case where confiscation proceeding is initiated, followed by intimation. The ban on jurisdiction is partial and not absolute as highlighted in case of *D.Shantalakshmi v. State of Tamil Nadu*, AIR 1983 Mad 232. Merely because other forum is manned judicially by an executive officer, instead of judicial officer, it cannot be said that it results in violation of Article 14 of the Constitution. This was stated in the case of *Ashoka Marketing Ltd. and Anr. v. Punjab National Bank And Ors.*, 1990 SCR (3) 649. Therefore, Sec 52 of the Act does not violate Article 14, 19(1) (g) or 21 of the Constitution by empowering forest officer to confiscate. Further, The



Magistrate has no power to release the vehicle, when confiscation proceedings initiated under Section 52 of the Act or any State Act.

### **Forest conservation and preservation**

The Hon'ble Apex Court has taken a firm view in disallowing non-forest activities and leasing the forest for this purpose. The court in the case of *Dhirendra Agrawal v. State of Bihar*, AIR 1993 Pat 109, considered the renewal of stone crushing lease without prior permission of the Central Government as a serious act of negligence and breach of duty. Also, the use of forest land for non-forest purpose was clearly denied by the court in the case of *State of Bihar v. Banshi Ram Modi*, AIR 1985 SC 814. Similarly, permissions for tourism in the forest have been denied by the court in the case of *Union of India v Kamath Holiday resorts Pvt. Ltd.* AIR 1996 SC 1040. The court has also criticized the idea of excavations of iron ore in forest in the case of *B V Joshi v State of Andhra Pradesh* AIR 1989 AP 122.

In the landmark judgment of *T.N. Godavarman Thirumulpad v. Union of India*, (2011) 14 SCC 387, the Supreme Court has touched wide range of issues related to forest conservation through the different orders. Through this case, the court has addressed the issues like defining the term forest and implementation of Forest Conservation Act, 1980, Constitution of High Power Committee to oversee implementation of Court's orders in Northern Eastern States, encroachment of forest land, constitution of Arunachal Pradesh Forest Protection Authority, Formation of State and central level Authorities under the Environment (Protection) Act, constitution of Central Empowered Committee, Forest Advisory Committee, the issues related to regulation of non-forest use of forest land and protection of wild life and sanctuaries and national parks throughout the country.

Further, the Court issued sweeping directives to enforce the Forest Conservation Act, 1980 and it was categorically stated that the provisions of the Act must apply to all the forests irrespective of the ownership or classification thereof.



## CRITICAL ANALYSIS AND NEED FOR REFORMATION

As elucidated earlier, the British Government was the first one to formulate stringent policies regarding Forest resources. However, the analysis of the Forest Act of 1927 entails significant concerns. The legislation has been drafted and enacted by the Colonial Government with imperialistic ambition and is in force even today. Therefore, the issues that arise from the evaluation require immediate attention.

Provisions for declaring forests as reserved by extinguishing the rights of the local people, were contained in the Forest Act of 1865 and modified and re-enacted in 1878 and then in 1927. It was clear that, commercial interests were the primary consideration in declaring forests reserved in colonial era. Thus, the law which caters to voracious tendencies of the British has been continued by the Government. Modern legislations, such as Indian Wildlife (Protection) Act, 1972, Forest (Conservation) Act, 1980, Forest Rights Act, 2006 etc. have been enacted to ensure that forest policies cater to the need of contemporaneity. However, the Act of 1927, instead of serving as a catalyst, obstructs the attempt of newer legislations.

Moreover, the Courts of law have failed to interpret the language of the provisions within the legislation in a manner that makes it adaptable to the law in post-colonial period. They have resorted to various provisions under Indian Constitution and the international treaties to which India is a party. One reason behind it could be the limited scope of interpretation that the provisions have provided. The language of the Act has become quite obsolete and that the language is not wide enough to incorporate the newer approaches to environment conservation and forest management. The classification of forests into reserved, protected and village forests according to their use and the rights that the people have over them have existed since the time the law as drafted. As discussed earlier, the concept of such classification has raised questions for the needs and aspects of environment conservation and protection have changed. For example, the concept of village forests provides for public participation. How be it, joint forest management which involves sustainable utilization of

forest resources is not included in the scope of the 1927 Act. This has been provided by the Forest (Conservation) Act, as amended in 1988.

Thus, it is essential to consider that due to existence of contradictions and overlapping of the related forest legislations, the Act of 1927 is rendered ineffective. The need of the hour is to examine whether these legislations are required to be integrated in one statute. There is certainly a need for reformulation of the Forest Act, 1927 which should primarily aim at removal of imperialistic tendencies from the law. In order to ensure that the legislation serves as a catalyst in forest management and protection, integrated approach should be followed which would lead to formulation of a comprehensive statute, encompassing all the provisions related to the subject matter and thus, eliminating the scope of overlapping or obstruction. This shall further the purpose of the legislations, that is, protection of forests and protection of the rights of the forest dwellers leading to sustainable development.

