Contested Spaces, Democratic Rights

People and Forests Today

AJAY DANDEKAR

The Maharashtra government's village forest rules seek to overturn the rights regime established in the letter of the law by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act and the Panchayats (Extension to the Scheduled Areas) Act 1996 in terms of both community rights, as well as the rights over minor forest produce. Moreover, the rules write away the future rights of the community over forests and their management and control over minor forest produce in perpetuity. These are also ultra vires of the rules regime agreed and enacted by an act of Parliament.

Ajay Dandekar (*ajayd16@gmail.com*) is a faculty member at the School of Humanities and Social Sciences, Shiv Nadar University, Greater Noida, Uttar Pradesh.

The Maharashtra government's gazette notification begins ironically enough by citing the Indian Forest Act 1927 and further reaffirms the resolve to "put in place a robust framework for empowerment of village panchayats and gram sabhas as informed participants in the forests and natural resource management; with particular reference to communities and areas not covered under PESA or for communities not eligible for rights under The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act, 2006" (Government of Maharashtra 2014). The notification states the rules that pertain to Indian Forests (Maharashtra) (Regulation of assignment, management and cancellation of village forests) Rules 2014. The particular formulation and the earlier citation of the Indian Forest Act 1927 creates a sense of déjà vu as it brings back an almost 90-year old dormant formulation within the Indian Forest Act 1927 back to life in the most insidious manner. This one act has seminal ramifications across the entire terrain governed by the Panchayat (Extension to the Scheduled Areas) Act (PESA) 1996 and the Forest Rights Act (FRA). The ramifications are not just limited to the state of Maharashtra alone. At the heart of all this is the issue of rights of the communities in the Schedule v regions as well as the rights of the "forest dwellers." What are these rules then and why introduce them now?

In the context of India's past the forests have always loomed large over our imagination. In a case of twisted irony emperor Asoka addressed the forest dwellers stating that even in remorse due to the carnage in the Kalinga war he had the might to decisively deal with them if they did not obey his commands. His statement is quite revealing. It at once establishes the claim of the state over the forest resources and also tacitly recognises the rights of the forest dwellers. It is more of an invitation to a dialogue rather than a call for decimation. It also implied that the emperor did not have decisive control over the forest and its resources. The state in precolonial India refused to claim monopoly rights over forest resources. The precolonial state also recognised the implicit principle of community control over the forests and was willing to negotiate with the forest dwellers, thus recognising the principle of community rights. The precolonial state thus clearly understood its limitation and was willing to work with the communities and did not question the basic foundation of the shared relationship between the forests and the communities.

The colonial state questioned the very basis of the rights regime as nurtured by the communities and accepted by the polities. This it did by declaring in its forest policy that the forests belonged to the state. The colonial imperium by asserting its right over the forests sought to completely alter the fundamental relationship that had governed forests. The forest policy of the raj was an assertion of an imperial ambition that cared only to exploit the forest wealth of the colony to sustain its wealth accumulation process at the cost of the lives of the people and the livelihoods of communities. This history of the exploitation of the forests by the colonial state is too well known to be recounted here.[1] However there is certainly one significant context that needs a recall. After the rebellion in Chhota Nagpur area in the 1830s, the colonial state led by the company declared the region a "Non-regulated Area." Subsequently, the tribal areas were demarcated as "Agency Areas," and still later they devolved into what is now called "Scheduled Areas;" their administration has always been a separate affair. This demarcation partly was put in place to acknowledge the fact that these areas could never be completely

subdued and thus had to be isolated. It is against this background that we need to contextualise the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act 2006 and understand the genesis of the village forest rules that are sought to be now resurrected and the likely impact that such a resurrection may have. In this context it is worth recalling the original forest act here, that is, the 1878 Forest Act, which is in fact the backbone of the Indian Forest Act of 1927. The Indian Forest Act was a culmination of a policy that was initiated in the late 19th century by the predator colonial state. The latter is of course a veritable bible to the governance framework of the forest insofar as the state is concerned.

Asserting the Rights of the State

The Indian Forest Act completely codified the state control over forest. This in itself came at the tail end of what was the final culmination point of the process of asserting the rights of the state on what was a complex arena of space over which there existed community rights regarding the use as well as the control over the forest resources. The history of that process now is well known. Also well known are the struggles before the FRA was finally enacted and the communities were assured of their legitimate exercise of the community rights over the forest produce and control over it as a resource. If one understands this trajectory of praxis and its torturous route then the context of the village forest rules and the gazette notification will be better understood. The gazette notification of the state government thus begins on a right note. It states that,

> these rules shall not be applicable to such forest area covered under, or to communities who have already acquired community forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Act No 2 of 2007) and to any villages in the Scheduled Areas of the State of Maharashtra where the provisions of the Panchayats (Extension to scheduled Areas) Act 1996 (Act no 40 of 1996) apply.

So ostensibly the village forest rules as notified seem to exclude the areas under the PESA and the FRA. However, the next few points in the notification then nullify the issue. The exit clause from the two seminal acts is creatively added using the gram sabha in a twisted irony of the situation. The notification then says, "Provided that, any gram sabha may, sue moto, make a decision, by resolution, to adopt these rules!" The rules regime that is articulated is of course clear and precise and it invokes the colonial act in no uncertain terms where an unequivocal statement is made in the definition itself stating that, "In these rules, unless the context requires otherwise, a Act means the Indian Forest Act 1927 (Act No XVI of 1927), as amended in its application to the State of Maharashtra…".

Let us examine the salient features of these resurrected rules before we turn to their implications and look at the overall context in which they are now being framed. So while rule 1(3) is categorical that the rules shall not be applicable to communities who have already acquired community forest rights under the FRA and also under the PESA in scheduled areas, the next proviso reverses this position and says that gram sabhas suo motu may make a resolution to adopt these rules. This suo motu provision as provided for through rule three introduces a fundamental disconnect between the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Act No 2 of the 2007 Panchayats (Extension to the Scheduled Areas) Act 1996 (Act No 40 of 1996) as it in effect annuls rule 1(3) and entitles the gram sabhas to sign away their own rights. The village forest rules thus seek to overturn the rights regime established in the letter of the law in terms of both the community rights, as well as the rights over minor forest produce. Moreover, the village forest rules also write away the future rights of the community over the forests and its management and its control over the minor forest produce in perpetuity.

As per the FRA the formulation of the rules regime that governs the protection, management, preservation and conservation of the community forest as a resource lies solely with the gram sabha. This was a crucial authority vested with it. The village forest rules however contain a provision that the gram sabha can give away these crucial rights as well as authority to manage and preserve the community forest resource. As an act enacted by the Parliament of the republic the rights recognised under the FRA are sacrosanct and can only be taken away by the Parliament and not by an executive fiat. Thus the act does not provide for a unilateral surrender of rights by the forest dwellers either voluntarily or through the rules regime determined by the executive. The village forest rules however do provide for precisely such eventualities that are specified under certain contexts and conditions. The rules for instance state that rights over bamboo can be suspended and that the areas can be reversed to the forest department for restoration of normalcy that has to be certified by the forest department official as per rule 4(5). This is an obvious violation of both PESA and the FRA as withdrawal of rights is not envisaged in both the legislations. As such the village forest rules on this count alone are ultra vires of the rules regime agreed and enacted by an act of Parliament.

In other words, it completely overturns the hard-won rights of the communities as enshrined in the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Act No 2 of 2007 Panchayats (Extension to the Scheduled Areas) Act 1996 (Act No 40 of 1996) with impunity. For instance, as per the rules the control over minor forest produce, exercise of the community rights over forest and the reversal of the trajectory as envisaged in both the seminal legislation is sought to be done away with. The implications of village forest rules are ominous for all the Schedule v areas as it has the potential to destabilise the rights regime in the Adivasi areas post the FRA.

What then is the overall context of reintroduction of the village forest rules? We need to perhaps go back at least two and a half decades to arrive at a clearer understanding of the context which has led to this situation. As is well known and documented, the oil wars and the investment in the white goods industries led to the post-1991 balance of payment crisis, forcing the Indian economy to open up in a significant manner on adverse terms of relationships without the resultant reciprocity. This, in turn, set two trends in motion. On one hand, a centralising trend in the resource mobilisation was initiated while at the same time in the arena of polity decentralisation was institutionalised through a constitutional amendment. Hence the 73rd and the 74th amendments to the Constitution were passed at the same time when the centralising tendency in the resources mobilisation in the economy was the order of the day. The combined impetus of the contrasting trends has to be contextualised against the looming agrarian crisis that looms over "rural" India. Inscribed in this crisis is the phenomenon of farmers' suicides and large-scale migration of the rural to the urban under the most adverse conditions of subsistence and work as well as an insurgency in the heartland of tribal India.

A rough estimate indicates that more than 55 million tribals were displaced since independence due to the large "developmental projects" by the state. It would appear that land and resource acquisition of individuals and community and the resultant loss of dignity are perhaps at the heart of the growing insurgency in the central Indian tribal heartland areas. In the context of growing militarisation the communities seem to be caught in the vortex of violence and fear and are at a loss to navigate their daily existence. The sidelining of the seminal rights of the people over their resources in the tribal areas has also resulted in the state completely ignoring, at times violating, the very acts it is supposed to respect and abide by. This shifting of a slippery balance of power and the see-saw on display between an insurgent movement and the resultant response from the state has created a volatile situation in the tribal areas.

The latest attempt to subvert the little gain by way of the consent clause in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act makes the intentions of the state clear that insofar as the state represents one spectrum of violence in these areas, it is also emerging as a principal violator of the very laws meant to protect communities. What of the state then? Where does it realistically feature in this developmental conundrum? Let us look at the larger picture as the state visualises it. The watershed moment of 1991 had a momentous impact on the manner in which the state was to engage with the constitutionally mandated welfare positions enjoined on it.

The post-1991 "liberal" economy was supposed to create a level playing field and remove the impediments in order that market forces would bring in greater equilibrium and clarity as well as deliver on growth and development. In effect, however, it resulted in the greater centralisation in the resources mobilisation for the corporates. India after 25 years of the "reform" still largely remains a primary goods exporting country. On top of that we have now invited the global players to set up their manufacturing plants here and take away the profits. This in turn accelerates the exploitation of the mineral wealth, depletes the water resources and creates a class of industrial serfs who would at sub-optimum level work for the good of the market.

All this is of course in the name of a free market framework as well as a liberal economy. Thus we boast of an informal labour sector that constitutes almost 93% of our total labour. In other terms 93% of the total labour would not enjoy the benefit of a steady job, resultant social, educational and health benefits and more importantly would be left to fend for itself. So while these forces of the market were unleashed post 1991 in the sector of the economy, the state at the same time unveiled a political reform process in the mid-1990s. This political reform process was stated in the legislative framework of the 73rd and the 74th amendments to the Constitution and sought to usher in the third tier of the government at the local level with an emphasis on decentralised governance. So when the logic of the economic policy demanded centralisation of the mobilisation of resources, the logic of political reform ushered in, constitutionally, a process of decentralised governance.

Governance and Trust Deficits

Within the context of poverty as well as deprivations, of course, the condition of the "tribals" is worse off. The general trend as is revealed from fieldwork and various reports of the government of India as well as the discussion as per the secondary literature suggests that there exists a governance and trust deficit in large tracts of the Schedule v areas.[2] One of the reasons for the left wing extremism to emerge in these very areas may have been this gap between the ideal and the real. The PESA was enacted after the Bhuria Committee submitted its report in 1996. The chairperson of the committee was categorical in his analysis about the need for PESA. In his letter to the Prime Minister it was stated that

> the most important fact of the proposed law is that it will remove the dissonance between tribal tradition of self-governance and modern formal institutions, which has been at the root of simmering discontent and occasional confrontations. We are confident that this will mark the beginning of a new era in the history of tribal people. After the new institutional frames become operational, the people will be able to perceive the state apparatus as an extension of their own system in the service of the community, that too, in a crucial phase of modernisation firmly rooted in tradition (Bhuria 1995).

The challenge of governance has also been duly recognised by the structure of government at the highest levels. Thus the then Prime Minister conceded as much when he stated that,

> We cannot have equitable growth without guaranteeing the legitimate rights of these marginalised and isolated sections of our society. In a broader sense we need to empower our tribal communities with the means to determine their own destinies, their livelihood, their security and above all their dignity and self-respect as equal citizens of our country, as equal participants in the processes of social and economic development.

In a democracy the rights regimes are supreme, and they are constitutionally mandated. The sovereignty of the people

is enshrined in those rights regimes. The state is a guardian of the regime of rights. This guardianship is bestowed on the state by the people of the republic. At the heart of these rights regime is the inalienable trust between the state and her people forged through the struggle for independence. In the context of the present times it is this trust that has to be reaffirmed in order that the regime of rights of the people reigns and constitutional governance prevails.

NOTES

1 See Guha and Gadgil, *This Fissured Land*, New Delhi: Oxford University Press.

2 See Ajay Dandekar and Chitrangada Choudhury, "PESA, Left-Wing Extremism and Governance: Concerns and Challenges in India's Tribal District," IRMA Report on State of Panchayat Raj 2011; Planning Commission report of the Expert Group on Development Challenges in Extremist Affected Areas 2006. Also see Mani Shankar Aiyar Committee Report on Expert Committee on Leveraging Panchayats for Efficient Delivery of Public Goods and Services. A report submitted to the Parliament 2013.

REFERENCES

Bhuria, Dileep Singh (1995): Quoted in Sharma B D *Whither Tribal Areas: Constitutional Amendments and After*, Sahyog Pustak Kutir, New Delhi, p 8.

Government of Maharashtra (2014): "Gazette Notification on Revenue and Forests," 13 May.