



THE LEGAL AND ADMINISTRATIVE CHALLENGES OF FOREST GOVERNANCE IN NORTH EAST INDIA

Dr. Moatoshi Ao

Assistant Professor, Faculty of Law, University of Delhi

ABSTRACT

The North Eastern (NE) region of India that contributes one-fourth of the total forest cover and more than fifty percent of the flowering plants of the country has been witnessing a gradual decline in forest cover since 2011. The Constitution of India has accorded special constitutional status to all the NE states. The management of forest thus is with the local customary authorities. The state owns only a marginal area of forestland and the rest are either private or community owned. The state therefore has no direct control over the forestland. The local customary authorities have been tirelessly engaged in the conservation of forests; however, there has been gradual decline in forest cover. The paper therefore examines into the constitutional provisions and other statutory enactments for governance and administration of forest and its resources. The paper also examines the judicial intervention and its limitations in protection and conservation of forests in the region. The paper further investigates into the local customary authorities and its role in conservation of forests as against the statutory authorities. The paper concludes with some suggestions to maintain equilibrium between the forest ecology and the wants of the population.

INTRODUCTION

The North Eastern (NE) region of India comprises of eight states, Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura. The total area of the region is about 262,179 Sq. Km. The region is vital not only for it has international frontier, but the biological diversity is an indispensable asset to the nation. The NE region is blessed with rich floral and faunal biodiversity. About 7,500 species of flowering plants are found in the region which amounts to about fifty percent of the total flowering plants in the country.¹ The region's endemic floral species accounts for one-third of the nation's floral species.² In the NE region about 700 varieties of orchids, 64 varieties of citrus, 58 varieties of bamboos, 28 varieties of conifers, 700 varieties of ferns 500 varieties of mosses, and 728 varieties of lichen species has been identified so far.³ About 3,624 species of insects, 236 fishes, 50 molluscs, 137 reptiles, 64 amphibians, 160 mammalian species, and 541 birds have been identified so far.⁴ Out of the six largest cats found in India, four of them are found in the State of

Arunachal Pradesh, namely, *Panthera tigris* (Tiger), *Uncia uncia* (Snow Leopard), *Neofelis nebulosa* (Clouded Leopard) and *Panthera pardus* (Leopard).⁵ The NE region accounts for about one-fourth of the nation's forest cover and thus it holds a significant position in environmental and forest resources of the country. However, after 2011 as shown in Table No.1 there has been gradual decline in the forest cover. The reason for this decline is population growth and unemployment. The majority of the population are tribals and closely connected with nature. Since time immemorial they have been dependant on forest for their every day needs. In the recent days with the decline in forest cover, the region has been facing environmental challenges. In the year 1991 the total forest cover was 1,68,810 sq. km. However, despite some increase of forest cover in some states during the period from 1991 to 2018, there is a decline of about 3,245 Sq. Km from the year 2011 to 2018. This decline is alarming for the reason that there has been significant increase of about 29,403 Sq. Km. from the year 1987 to 1991. Thus, a comparison of these two periods i.e., 1991 - 2018 and 1987 - 1991 calls for urgent study of the environmental governance and the legal challenges in the NE region of the country and the measures to be taken to mitigate the environmental degradation.

¹ Sudipto Chatterjee *et al.* (2006), "Background Paper No. 13, Biodiversity Significance of North East India," WWF-India, June 2006, p. 26.

² Ibid.

³ Ibid.

⁴ Ibid at 27.

⁵ Ibid.



Table No. 1

State	Total Geographical Area (sq. km)	Total Forest Area (1987) (sq. km)	Total Forest Area (1991) (sq. km)	Total Forest Area (2001) (sq. km)	Total Forest Area (2011) (sq. km)	Total Forest Area (2015) (sq. km)	Total Forest Area (2018) (sq. km)
Arunachal Pradesh	83743	51540	68757	68045	67353	67248	66,687
Assam	78438	30708	24751	27714	27692	27623	28,326
Manipur	22327	15155	17685	16929	17280	16994	16,846
Meghalaya	22429	8514	15875	15584	17321	17217	17,118
Mizoram	21081	15935	18853	17494	19240	18784	18,005
Nagaland	16579	8625	14321	13354	13464	12966	12,486
Sikkim	7096	2650	3033	3193	3357	3357	3,342
Tripura	10486	6280	5535	7065	8073	7811	7,725
Grand Total	2,62,179	1,39,407	1,68,810	1,69,378	1,73,780	1,72,000	1,70,535

Source: The data in this table are taken from the State of Forest Report, 1987, 1991 and the India State of Forest Report, 2001, 2011, 2015 and 2019 published by the Forest Survey of India, Ministry of Environment, Forest & Climate Change, Govt. of India.

ENVIRONMENTAL DEGRADATION

With the growth of developmental and infrastructural activities, the causes for deterioration of environment in the NE region have multiplied in the recent period. Thus, deforestation, coal mining, paper industries, cement industries, crude oil exploration, fertilizer industries, shifting cultivation and automobile exhaust emission are some major causes of environmental degradation of the region. The rainfall pattern has changed resulting in drying up of mountain springs which ultimately affect every water source of the region. About 200 mountain springs were reported dried up in Arunachal Pradesh during 2018.⁶ Similar situation are in other states. The drying of mountain springs is due to decline in the intensity of winter rainfall which is an effect of climate change. The deforestation and Jhum cultivation (shifting cultivation) is one major reason that causes drying up of the mountain spring in which the whole population of the hilly states of the region is dependant. Thus, the states of Nagaland, Mizoram, Meghalaya, Arunachal Pradesh, Sikkim and parts of Manipur and Tripura whose rural population are dependent on springs have been facing acute problems in access to drinking water and for other uses.

The coal mining is another serious environmental problem of the region. Such mining is

done without any legally approved environmental protection measures. The ecology around the mining areas are completely deteriorated that no sign of any live is found in the forest and the rivers around the area. The cutting of the forest for Jhum and burning of the field for cultivation has not only dried up the springs but has caused landslides and air pollution. The crude oil exploration and extraction in the states of Assam, Tripura and Nagaland has rendered the area around unfit for any use. The lack of waste treatment plants for industries and its direct discharge of effluents into the rivers has made the water unfit for human and agricultural use, particularly in the state of Assam. Similarly, the lack of treatment plant for domestic waste and the direct disposal into the streams is another cause of water pollution and shortage of drinking water of the region. The underground water is also depleting rapidly owing to the unregulated digging of wells in both the valleys and the hills. Another urgent environmental challenge of the region is the air pollution. Even though there are hardly any industries that could pollute air like other parts of the country, the vehicular pollution and burning of forest for agricultural purpose (especially Jhum cultivation) and other forms of shifting cultivation are major causes of air pollution in the region. Although, there are no data available, of how much pollution are caused by these two factors, but it is clearly evident to anyone who has visited the region. The dumping of used vehicles to this region is rampant. These vehicles are brought from the metro cities of the country into the region at a cheap rate luring the naïve minded tribal people at the cost of ecology. Generally, the tribals buy such used vehicles for the love of driving and owning a car. The knowledge of environmental harm caused by the use of old and out-

⁶ Akshit Sangomla (2021), "Climate crisis in North East India: What is behind water scarcity in the region," DownToEarth, Sept. 2021, available at: <https://www.downtoearth.org.in/news/climate-change/climate-crisis-in-north-east-india-what-is-behind-water-scarcity-in-the-region-78910>



dated cars is alien to the people. Besides, there is no strict control of pollution from vehicles by the state authorities or public awareness of such pollution. Thus, the culmination of this pollution is due to the liberal attitude of the state in not regulating the import of old out-dated used vehicles and the absence of strict implementation of pollution from vehicles (PUC certificates).

THE ASSAM FOREST REGULATION, 1891 AND THE STATE'S JHUM CULTIVATION LAWS

Section 10 of the Assam Forest Regulation, 1891 permits Jhum cultivation and the only exception to this provision is that the state government may make and order permitting or prohibiting the practice. A reading of the provision understands that this exception is directory in nature. Clause (4) of Section 10 of the Regulation even though provides that the practice of Jhum cultivation is not a right but subject to control, restriction and abolition by the state government, none of the state governments has abolished the practice. In fact after the independence and the subsequent attainment of statehood of the erstwhile districts of Assam, all the states of the region have enacted statutory legislations on Jhum cultivation and other forms of shifting cultivation. However, the legislation is enacted not on the basis of conserving the environment or maintaining ecological balance. As for instance, Section 3 of the Nagaland Jhumland Act, 1970 provides Jhum cultivation as a customary right if the village or the community has enjoyed the right of cultivation for not less than 30 years according to the local custom. The rest of the provision of the Act only provides the jurisdiction and powers of the customary authorities and bodies under the supervision the Deputy Commissioner on the use, transfer, rights, claims, etc. on Jhum cultivation and other forest produce. Similarly, in the state of Mizoram, neither under the erstwhile Lushai Hills District (Jhumming) Regulation 1954⁷ nor under the Mizoram (Land Revenue) Act, 2013 any provision to mitigate environmental degradation by Jhum cultivation could be found. In the state of Arunachal Pradesh, under the Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulation, 1947 a similar provision like the Nagaland can be found providing customary right of cultivation to village or the community that has enjoyed the right of cultivation for not less than 5 years according to the local custom.⁸

The respective state laws and enactments on Jhum cultivation have all evolved from the said

Assam Forest Regulation, 1891. Thus, it being the parent legislation, in case of judicial interpretation, the object and statesman of this colonial legislation is crucial. However, its object was not on environmental protection but levy of duty on forest produce and timber.⁹ Thus, the colonial enactment of Assam Forest Regulation, 1891 could be of no assistance in mitigating environmental degradation by Jhum cultivation. Even though after the Indian Independence, the respective states had amended the said Regulations and enactments, however, until today it has failed to insert clauses on environmental protection and conservation except the provisions relating to protected and reserved forests.¹⁰ These provisions may to some extent conserve ecology. However, for acquiring land by the government, adequate compensation is required to be paid to the land owner. Therefore, in backward states where the government is in deficit, heavy compensation is impossible and any steps by the government leads to lengthy litigation for compensation issues. Thus, the state legislatures have still not evaluated on the effects of Jhum cultivation on environment and therefore the legal mitigation remains unanswered. However, having studied the effects of Jhum cultivation on ecology and the absence of law to mitigate the problem emanated by such practice, the people of the region have been surviving on this system of cultivation since time immemorial. Other forms of cultivation practiced in the plains region of the country is not possible owing to the geographical location of the region. Thus, Jhum cultivation remains the most practicable form of agriculture and it is the major means of sustenance of the people. Hence, one finds in a conflicting situation to decide whether to choose protection and conservation of environment or livelihood of the tribal population. In such a situation, going adversarial would cause untold difficulties and irreparable losses to the rural tribal people and thus harmonization by governmental policies would be the only solution to maintain a just human environment.

⁹ See the Statesman and Object of the Assam Forest Regulation, 1891 (Regulation 7 of 1891).

¹⁰ Section 11 of the Nagaland Jhumland Act, 1970 provides power to the Government to acquire land on payment of compensation to declare any part of jhumland as protected forest for preservation of water supply or erosion of land occurs due to excessive cutting of trees from the jhumland. Section 12 of the Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulation, 1947 lays down a similar provision for the state of Arunachal Pradesh to declare any jhumland as protected forest by the Conservator of forest where preservation of water supply is required or to prevent erosion due to excessive cutting of trees in jhumland.

⁷ Repealed by virtue of Section 131 of the The Mizoram (Land Revenue) Act, 2013.

⁸ Section 4 of the Balipara/Tirap/Sadiya Frontier Tract Jhum Land Regulation, 1947.



THE SIXTH SCHEDULE AND OTHER SPECIAL PROVISION OF THE CONSTITUTION OF INDIA

Under Paragraph 3 of the Sixth Schedule to the Constitution of India, the power to make laws on management of forest (except reserved forest), use of water course for agricultural irrigation, regulation on the practice of Jhum cultivation, allotment, occupation of land for agriculture, towns, grazing, etc. has been given to the District Councils and Regional Councils.¹¹ The District Councils and Regional Councils have also been given the power to assess and collect land revenue and levy taxes on professions, trades, animals, entry of goods, etc.¹² Further, Paragraph 9 of the Sixth Schedule to the Constitution of India provides for the sharing of royalties between the State Government and the District and Regional Councils. Thus, unlike other parts of the country where the state government manages the forest, in the NE region the administration and management of forest is entrusted to the District and Regional Councils by the Constitution. The framers of the Constitution of India recognized the unique customs and usages of the NE region and have therefore provided autonomy in the management of internal affairs of the region in accordance to their respective age old customs and traditions.

Post the attainment of statehood of all the North Eastern States, special Constitutional status were accorded to the states. The state of Nagaland has special status under Article 371A and by virtue of which no Act of the Parliament shall be applicable unless the Legislative Assembly of Nagaland by a resolution so decides in respect of religious or social practices, Naga customary law and procedure, administration of civil and criminal justice, ownership and transfer of land and its resources. Similarly, Article 371G gives special status to the people of Mizoram by excluding the Acts of the Parliament in religious or social practices, administration of civil and criminal justice, customary law and procedure, ownership and transfer of land, unless the Legislative Assembly by a resolution so decides. Article 371H provides special responsibility to the Governor in the state of Arunachal Pradesh in maintenance of law and order.

¹¹ Paragraph 3 of the Sixth Schedule to the Constitution of India also provides the power of making laws to the District Councils and Regional Councils in other matters like establishment of village and town committees, appointment and succession of Chiefs and Headman of the village, property inheritance, marriage and divorce, social customs, etc.

¹² Paragraph 8 of the Sixth Schedule to the Constitution of India.

In the state of Manipur, the President of India has special powers for the constitution of a Committee of the Legislative Assembly of the state consisting of members of the Assembly elected from the Hill areas of the state for the administration of the Hill areas of the state.¹³ A similar committee consisting of members of the state legislative assembly elected from the tribal areas of Assam is provided in Article 371B of the Constitution. Article 371F provides special provisions with regard to the state of Sikkim for protection of the rights and interests of the people of Sikkim. Thus, the Constitution of India has provided special and extensive powers to the local customary authorities and bodies for the internal administration and management of their land and resources according to the customs and practices without rigid interference from the complex and technical laws of the country.

THE JUDICIAL INTERVENTION

Notwithstanding the Constitutional autonomy, a perusal of Table No. 1 indicates a gradual decline in forest cover of about 3,245 Sq. Km from the year 2011 to 2018. It can be observed from the table that there was a significant increase of forest cover from 1987 to 2011. However, post 2011 the rate of decline is exceedingly high in seven years (2011-2018) as compared to the previous decades i.e. 1987 to 2011. This raises a question on the forest governance of the region. A reason for the increase in forest cover during 1987 to 2011 was the effective implementation of Hon'ble Supreme Court direction in *T.N. Godavarman Thirumulkpad v. Union of India*¹⁴ in which the apex court directed that "there shall be a complete ban on the movement of cut trees and timber from any of the seven North-Eastern States to any other State of the country either by rail, road or water-ways."¹⁵ The Hon'ble Court also directed the Indian Railways and the State Governments to take all measures necessary to ensure strict compliance of the direction set out in the judgement. The court however, laid an exception in cases of private forest that "the ban will also not affect felling in any private plantation comprising of trees planted in any area which is not a forest."¹⁶

The Hon'ble Supreme Court ordering a complete ban on the cutting of trees and saw mills, veneer mills and ply-wood mills in the states of Assam and Arunachal Pradesh for the preservation of ever-green forests directed the State Governments of Arunachal Pradesh and Assam in the following words:

¹³ Article 371C of the Constitution of India.

¹⁴ MANU/SC/0278/1997.

¹⁵ Ibid at paragraph 5.I.4.

¹⁶ Ibid.



“..... in the tropical wet ever-green forests of Tirap and Changlang in the State of Arunachal Pradesh, there would be a complete ban on felling of any kind of trees therein because of their particular significance to maintain ecological balance needed to preserve bio-diversity. All saw mills, veneer mills and ply-wood mills in Tirap and Changlang in Arunachal Pradesh and within a distance of 100 kms, from its border, in Assam, should also be closed immediately.”¹⁷

Besides the effective implementation of the direction of the Supreme Court, the *social forestry scheme* of the state governments by providing free tree saplings with minimum monetary benefits to the framers for re-cultivation in the forest they have cleared for Jhum and other forms of shifting cultivation has led to significant increase in forest cover. The advantage of such scheme is that the forest is not cut for decades once the trees are planted (i.e., until the trees are large enough for timber). However, this initiative of the government continued only for a couple of decade (1991-2011). Thus, the cycle of Jhum cultivation continues every few years instead of decades, which has contributed to the gradual decline of forest cover in the region from the year 2011 onwards.

EXCEPTIONS TO JUDICIAL INTERVENTION

The Hon'ble Supreme Court in *T.N. Godavarman case* banned only the cutting of trees and movement of timber from the NE states to any other state of the country either by rail, road or water-ways. The Hon'ble Court however, did not the banned felling or cutting of trees in any private plantation comprising of trees planted in any area which is not a forest. In the NE region only a marginal area of forest is owned by the State. The rest of the forestlands are either community or private owned. Thus, the exception set out in the judgement appears to be the reason for the decline in forest cover from 2011 onwards. Also the discontinuance of *social forestry scheme* owing to financial factor of the government is another reason. The NE regions are backward areas with high unemployment and the forest resources are the only source of sustenance and income for the people. The restriction of the commercial use of forest resources therefore have drastically affected on the livelihood of the people. This has caused illegal exploitation and utilization of the forest resources by the local population. Thus, in such a region, a sudden ban on commercial use of forest resources without providing governmental social incentive schemes or other alternative arrangements have lead to frustration of

the orders of Court and thereby we see a gradual decline in the forest cover.

THE CUSTOMARY AUTHORITIES IN ADMINISTRATION OF FOREST GOVERNANCE

The customary authorities in the NE region are regarded next to the state. Being a close knitted society that has lived throughout the ages under customary administration; the people are more attached to their traditional system. Thus, the customary authorities and bodies hold a prime authority in the administration of the region. The customary authorities at the local level may therefore play a strong role in maintaining equilibrium between the ecology and the human needs. This necessity was realised and the local customary authorities has been actively engaged in conservation of forest diversity. For an instance, in the state of Nagaland, the village is the centre of all social and political activities and thus the village council regulates the cultivation, fishing, hunting, etc. The state forest officials have no jurisdiction in these community and private land and hence they can only regulate the movement and transport of forest resources at a check post in the border of the district or the state. Thus, it is only the Village Council, who checks on the activities carried out in the forest within their jurisdiction. The Village Council in ever village in the state had banned fishing and hunting during breeding seasons and allowing it only for a couple of months i.e. December and January. Similarly, in other states of the region the Village Councils and the area councils has imposed restriction on the use of forest resources. The local customary authorities had declared certain area within their jurisdiction a reserved forests and anyone felling trees or hunting even during permissible period is heavily penalized and made to recover the same. However, such initiatives are carried out without any governmental assistance and thus effective and rigid application of penal customary laws against influential and powerful persons remains a challenge for the local customary authorities. The customary authorities like the Village Council occupy a crucial position in the administration of justice and forest governance in the NE region, however to effectively implement the customary protection of forest and its resources, there is urgent requirement financial assistance and stronger powers being delegated to the village customary authorities.

CONCLUSION AND SUGGESTIONS

Looking at the alarming climate change and pollution, the very existence of the planet is threatened due to human made environmental destruction activities. Thus, conservation of forest is prime importance to save the planet and give inter-

¹⁷ Ibid at paragraph 5.I.2.



generational equity to the future citizens. In a backward region like the NR region, any positive initiative of the government as well as customary authorities in conservation of forest and its resources would not succeed unless poverty and unemployment is addressed. Thus, equilibrium is required to be achieved by formulating incentive-based schemes and programmes to substitute their sustenance and earnings without supplanting the right of equity and survival of the people of the region. The rigid application of domestic and international environmental laws in the NE region would lead to frustration of the law as the region's necessity is distinct from other states of the country. Hence, the legislature as well as the judiciary has to be sensitive in finalising any enactment or orders. Programme and training on environmental conservation and awareness to the local population would help a long way in protection of forest. The customary authorities at the local level in addition to trainings and awareness programme should be trained in management of administrative complexities to harmoniously and effectively resolve any administrative exigencies in administration of forest. Introducing Environmental subject in schools and colleges would help mitigate this challenge and maintain a desired equilibrium, which would contribute to the ecological diversity of the country. Finally, a legislative and policy reconsideration of the existing system empowering the local customary authorities with financial and statutory authoritative powers would mitigate the loss of forest and environmental degradation of the region.