Chapter 6

Forest Acts, Rules and Practices

The importance of the word 'law' would easily be realized by imagining the state-of-affairs that may arise in a 'lawless society'. When the British put their steps on the Indian subcontinent during the early seventeenth century, the concepts of 'law' or 'rule of law', as the same would be understood in a modern context, were virtually non-existent on this land. The behaviour of the mass was normally self-guided through a prevailing set of ethical notations which was being shaped from time to time at the will of the rulers.

The authority of the rulers as the sovereign was self-proclaimed and the concept of rights of the common man was hardly emanating from any statute. Hence, protection of rights, which is considered the life-fundamentals in the contemporary perspectives were far flung during those historical days. Such a prevailing state of vacuum in the legal space of the continent paved the path for the British to create numerous legislations which they used as instruments of administration over the colony under East India Company (1757-1858) followed by the British *Raj* (1858-1947).

Such a prevailing law-less condition in the subcontinent did not imply to a chaotic or anarchic state of affairs; but meant to be a state where statutory laws were virtually absent. The British enacted numerous statutes, through which they secured for themselves the ultimate sovereign status with defined state's authority to legislate, execute and adjudge through the statutes were bestowed scantly upon the Indians the noble concepts like rights and liberty within the framework of law. The justifiability of the law made by them securing their own sovereign position emanates from the settled principles of common law of England which held that 'the King could do no wrong', which implied that the laws proclaimed by the British Crown, or made under his authority, were unquestionably correct and hence, justified.[1] This law-making process adopted by the British ultimately resulted in culmination of the era of arbitrary will of the Indian rulers to which their masses were so far being subjected to.

Amidst those legislative showers, several provisions were made by the British to proclaim their authority over the untamed forest resources extending over the entire spread of the subcontinent. They were conscious about the revenue as well as the utility potential of the forest resources and immaculately enacted a plethora of statutes which were later on summarily adopted by their Indian counterparts after independence of the country, who

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opted to let those continued for over a period of several decades to follow with little modification and amendments.

During the reign of the East India Company (1757-1858), the administration of the colony was mostly guided by the bureaucratic directives in the form of official orders only. After 1858, the administration was taken up by the British Crown and the source of authority was then substituted with the statutory provisions. Amidst this transaction of authority, the Indian Forest Act, 1865 was enacted and made applicable to the whole of the British ruled territories of India. The said Act was soon substituted with a more elaborate piece of legislation namely Indian Forest Act, 1878. In the year 1882 the Madras Forest Act, 1882 was enacted with special emphasis on the localized administrative needs of south Indian peninsula. The said Madras Forest Act, 1882 was also applicable to the south Odisha forest region, which was ultimately replaced by the Odisha Forest Act, 1972 in the 25th year of independence of India.[2]

6.1 Forest Policies in Madras Province

The evolution of forest policies in Madras was a comprehensive historical framework. In the dominion of the East India Company, forest has been merely perceived as a subject of commercial exploitation which witnessed a paradigm shift under the regime of the British Crown towards the late 18th century when forest was increasingly viewed as an asset of the state with great commercial potential.[3] But establishing control of the state over the forests was not an easy task before the British because there were administrative difficulties in replacing various types of unchartered rights of the communities living in the vicinities of the forest throughout the region, over the forests and the forest produces, which were normally guided by various conventional usages and customs prevalent within the society. The conflicting interest of the tribal communities and the authority of the state to control and conserve the forest resources was most of the times posed as a bone of contention in the path of smooth administration over the subject and caused discontentment among the tribals. The tribals never turned back from their practice of *Poḍu* or shifting cultivation, causing extensive damages to the surrounding vegetations and sometimes, the administration used to bow down before their commitment to such traditional practices. In one occasion, to get rid of the procedural complicacies, the forest department alternatively declared a swiddening area as an un-reserved forest, thus weakening their own authority over the area where the *Doṅgariā* were widely being indulged in shifting cultivation. Similarly, wilful offence of violation of law restricting

encroachment over the forest land, illicit felling and illegal commercial transaction of forest produce was quite common for the tribals.[4]

So, maintaining a balance between the legal rights of the state likely to arise out of the statutes *vis-à-vis* the conventional rights of the communities over the forests have been stated to be a thrust area of the forest policies and legislations of the British. The argument propounded by Ramachandra Guha is a replication of the views presented by Dietrich Brandis, that there was an emphasis over a collaborative relationship between the state and local communities in the forest management.[5]

In early years of their rule, the British tried to indent the timber wealth of the country. The newly established British administration under the Crown was also seemingly little conscious about the need for careful husbanding of forest resources and was under the impression that the forest wealth in India was in-exhaustible. As there was no developed forest organization in Britain, the theories of systematic forestry were new for the British. Their ignorance over the subject was mainly attributable to the fact that, there were no rain forests on their island nation, as such, they never encountered with the problems associated with that subject. Meanwhile, as the supplies of first-class oak timber became short in England due to its widespread exploitation, a huge quantity of teak were being sourced from India for its use in the British Admiralty's fleet-making industry.

Therefore, due to lack of knowledge and experience from the part of the administrators, development of colonial forest policies in India was passing through a bottleneck and took almost a century and half to be framed to its existing form. According to E.P. Stebbings, the slow process was due to the confinement of the scientific knowledge amongst the European officials which was almost entirely limited to the members of the medical profession. According to Ribbentrop the mental bloc amongst the early administrators was responsible for the delay, as "forests were considered as an obstruction to agriculture rather than otherwise, and consequently a bar to the prosperity of the empire."[6]

The course of development of forest policies in India can be divided into three phases viz. the first phase covering from 1796 to 1850, the second phase from 1850 to 1880s and the third phase from 1894 to 1947. B. Ribbentrop gives a detailed account of the development of the forest policies in India.[7]

Table 6.1: *Development of Forest Policies in India During First Colonial Phase (1796-1850)*

Date	Event	Personality/Features
1796	Occupation of Malabar	Teak was still regarded as private Property
1806	First Conservator of Malabar-Travancore	Captain Watson
1820	Plantation against deforestation in Beṅgal	Nathaniel Wallich, Director, Calcutta Botanical Gardens & Member, The Asiatic Society of Beṅgal
1823	Conservatorship in Malabar abolished	Opposition of Teak merchants
1831-47	Steps were initiated for change	Dr. Gibson appointed by Bombay Govt. as Conservator of Forests in 1847
1847-50	Information on effect of trees on climate	Required by the Court of Directors and the Governor-General of India

Source: B. Ribbentrop, *Forestry in British India*, Calcutta,1900, pp. 65-68. as quoted by Arun Bandopadhyay, *The Colonial Legacy of Forest policies in India*, New Delhi, 2009, pp. 4-6.

Table 6.2: *Forest Policies During Second Colonial phase (1850s-1880s)*

Date	Event	Personality/Features
1852	Annexation of Pegu (Burma)	Dr McClelland appointed Superintendent
1855	Memorandum of the GoI on Forest Conservancy	Lord Dalhousie
1856	Superintendent of Forests in Pegu	Dietriech Brandis
1856	Conservator of Forests in Madras	Dr. H. Cleghorn
1864	Inspector-General of Forests in India	Dietriech Brandis
1865	Forest Act VII of 1865	First Forest legislation in India
1878	Forest Act of 1878	Reserved & Protected Forests in all areas except Madras

Source: Arun Bandyopadhyay, "The Colonial Legacy of Forest Policies in India", in: *Social Scientist*, Vol. 38, No1-2, 2010., pp. 4-6.

Table 6.3: *Forest Policies During Third Colonial Phase (1894-1947)*

Date	Event	Personality/Features
1894	Forest Policy of 1894, with a definite for serving the agricultural interests directly	Dr Voelcker
1906	Imperial Forest Research institute, Dehra Dun	Beginning of Forest Working Plan under I.G. of Forests
1909	Royal Commission on decentralization	Beginning of separate Working Plan under a Conservator
1921-22	Forests became a "transferred" subject	Indianization of l. F. S. begins
1935	Forests became entirely the concern of the provinces	IGF was to concern only with general issues of Forestry
1939-47	Wartime and post-war policies	Excessive Felling of Private Forests and their control

Source: Arun Bandyopadhyay, "The Colonial Legacy of Forest Policies in India", in: *Social Scientist*, Vol. 38, No1-2, 2010., pp. 4-6.

6.2 Forests During East India Company's Rule

During the early colonial days, the East India Company's management was broadly indifferent in its policy towards forest conservancy. This trend was somewhat altered in the post 1858's with the commencement of the Crown administration which is otherwise called as the British *raj*. The period of Company rule witnessed a fierce onslaught on India's forests. The settled political condition following the takeover of the command by the British Crown facilitated the environment for extension of cultivation and augmentation of revenue. During the early years of British *raj* as well, in the name of making cultivable lands, there was a policy towards encouragement of the destruction of forests.

For smooth procurement of teak to meet the demands for naval ship-building purpose, the timber syndicate of Malabar was formed under the leadership of Mr. Machonchie which could not function for long. However, during the period, some other agencies had been working for that purpose.[8]

From the above it reveals that ships were being built in England from teak imported from India. The East India Company looked for India as a potential source of their supplies of timber because England's own forests had long been devastated starting from the time of Henry VIII, when he seized Church lands for imperial use. With

vanishing of oak forests in England, the need for a suitable alternative source of timber for the Royal Navy was felt.

The contemporary period was witnessing intense rivalry between the colonial powers and the large dependency of England on its marine strength in the war increased the needs for Indian teak, which was fairly suitable for ship building. This gave the British a competitive edge over France, headed by its formidable ruler Napoleon. It also helped the British for their mission of future maritime expansion.

The military requirements of Indian teak in the late 18th century led to an immediate proclamation to the effect that the royalty right over the teak trees claimed by the former governments in the south was vested with the East India Company. That proclamation prohibited all further unauthorized felling of such trees.[9] Though free access to the forests for the people was not inhibited, a kind of *de facto* ownership of forests and waste lands of the country was by default vested with the state. By 1806, the Company established a timber monopoly to extract teak for the King's navy. With this, indigenous trade came to an end and peasants were denied their rights. [10]

Under further pressure from the Home Government and with regard to future strengthening of the King's navy, it was decided to appoint a special officer in India having knowledge on forest, with an intention for preservation and improvement of production of teak and other timbers suitable for shipbuilding. Thus, Captain Watson of the Police was appointed the first Conservator of Forests in India on the 10th of November 1806. Within a couple of years, he had succeeded in establishing timber monopoly throughout Malabar-Travancore and practically annihilated all private rights on forests assuming those as legally non-existence. The Government had a plentiful and cheap timber supply during his reign. But it resulted a widespread discontent amongst proprietors and traders to such an extent that on the recommendation of the Governor of Madras (Sir Thomas Munro), after due consideration by the Supreme Government, the Conservatorship was abolished in 1823.[11]

Consequent upon the abolition, the landlords re-occupied the forests and they were visited by unrestricted felling. There arose a chaotic situation witnessing indiscriminate felling of teak and other trees by the contractors in exchange of negligible value. This irreparable loss could be ended only after re-establishment of the Conservatorship on recommendation of the Navy Board during the early 1830.[12]

In 1838, the Madras Board of Revenue suggested that the conservation of teak forests should be exercised by the Revenue Officer and not through any independent

authority. This proposal was referred to the Madras Military Board for an opinion. At that time the Court of Directors considered that some teak plantations to a limited extent might be established to safeguard the future and the present supply could best be arranged under the contractors.

Mr. Conolly, the Collector of Malabar did yeoman's service in the interest of forestry. He succeeded in creating a small Local Forest Department and framed some simple local rules. In 1842, in order to provide timber for his district, he laid the foundation of the famous and valuable Nilambur Plantation. In 1847 the Bombay Government appointed Dr. Gibson as Conservator of Forests.

In 1852 the Province of Pegu was annexed. The forests were claimed as royal property of the Alompra dynasty and teak timber had been one of the staple exports from Rangoon for nearly a hundred years. Following that, the forests were also declared as Government property and they appointed Dr. McClelland as the Superintendent. In 1854 Dr. McClelland submitted a report in which he proposed certain curtailments to the exploitation by private parties. This report evoked a memorable reply by the Government of India dated 3rd August 1855 in which Lord Dalhousie laid down the outline of a permanent policy for forest administration.[13] That policy originally named as "Memorandum of the Government of India 1855" has been dubbed by E.P. Stebbing as the Charter of Indian Forestry 1855.

Thus, British colonial intervention was an important watershed in the ecological history of India. The beginning of the establishment of railway network in India was a critical turning point in the history of Indian forestry. The early years of railway expansion extracted an unprecedented assault on the more accessible forests. Large areas of forests were destroyed to meet the requirement for railway sleepers. No supervision was exercised over the felling operations and a large number of trees were felled, whose logs could not be utilized.[14] Before the coalmines of Rāniganj became fully operative, Railway Company's also indulged in widespread use of local timber as fuel for the locomotives.[15]

In Madras Presidency itself, over 250,000 sleepers (35,000 trees) were being required annually from the indigenous sources. To meet the demand, the contractors resorted more and more to over-exploitation of the forests. They utilized more and more unsuitable species and those were more favoured, were destined to be exhausted at a rapid pace. Although, only half a dozen species were considered suitable for use as railway sleepers, more than fifty were hastily tried out. So, the sleepers expected to last for five or

six years, only sustained for a third of that scheduled time. In one consignment, out of 487 sleepers supplied, 458 *i.e.* 92% were found to be unauthorized woods .[16]

Railway expansion continued and the methods by which private enterprise was working in the forests forced the state to step into safeguard their long-term interests. In December 1862, Brandis was placed on special duty with the Government of India to assist in organizing forest administration and for establishment of a department that could ensure the sustained availability of the enormous requirements of different railway companies for sleepers.[17]

Thus, the introduction of colonial forestry was not because of superior knowledge of forestry and management but shaped by the dominant military needs and power as well as for laying the network of railways across the whole spread of the Indian subcontinent. It was in this situation that the Imperial Forest Department was formed in 1864, and on 1st April that of year, a German Forester, Deitrich Brandis, who had profound experience in establishing control over forests through the means of varied legislations, was appointed as the first Inspector General of Forests to the Government of India.

6.3 Statutory Framework of Forest Administration

The concept of administration of state was skilfully developed by the British. The fundamentals of their approach towards the colonial administration have been manifested through the statutes they promulgated for that purpose. Their law-making process was more systematic, and all their official activities were being guided by the laws and the rules they created from time to time. In their statutes they defined the authority of the government and its extent of application, rights and obligations of the people, empowered the officers to execute and enforce the law, made the law binding upon everyone and empowered the courts to adjudicate over the violations of the law and to punish the violators.

Their legislation process may be called as a scientific process to the extent that, in contrast to the self-generated customs and conventions, those statutes were being made through a specific process of law making and expressed as the ultimate will of the sovereign. Once promulgated, such a statute of law would be executed as a tool for administration over the state subjects. From structural anatomy of a statute, it may be found that it bore some common features like:

i. a definite name of the statute called title clause;
ii. the source of its authority from which it emanated;
iii. a statement of the objectives of the statute;

iv. a recital part, defining the context in which there was a requirement for making a new law to cure an evil which had not been addressed in any the then existing law in operation during the time of making the law;
v. nature of the prevailing evils which needed to be cured through a specific law;
vi. definition clauses stating and assigning special meanings to the words used in the statute;
vii. the subject matter and its usages;
viii. obligation of the state and its authority to administer the statute;
ix. persons or office bearers through whom and the manner in which the statute was to be implemented;
x. authorities to make contingent provisions to meet an exceptional situation;
xi. rights and obligations of the people;
xii. penalty for violation of the provisions of the law and its modality of execution either by departmental officers as quasi-judicial authorities or through the common courts of law and ultimately;
xiii. legal remedies that were made available to the people against the indiscriminate state actions.

All the colonial statutes followed the above basic features which were honoured by time and still continue to dominate Indian legal system since its genesis. After seven decades of independence of India the age-old statutes like Indian Penal Code, 1860; Indian Evidence Act, 1872; and Code of Civil Procedure, 1908 are the fundamental laws dominating judicial process of the country. Similarly, the Madras Forest Act, 1882 which was applicable to south Odisha was replaced by Odisha Forest Act, 1972 with a lot of borrowed features from the former.

Prior to institutionalization the forest as a subject of administration by the colonial government, historically, from pre-British era, 'forests' in India were being managed by communities living in and around the forests and by people dependent on it for their sustenance and livelihood. The word 'managed' has been specifically used here, rather loosely to indicate that there was an existing system at its play. It was not a free-for-all, open-access system; social institutions like caste and cultural traditions were regulating the extent and manner of extraction of produce from the forest. Localized cultures with emphasis on the wellbeing of the animal and plant species was somehow followed by all the tribes of primitive origin living in the vicinity of the forests. They were considering the forests, the hills or some species by impersonating them as their gods. The absence of

a defined set of laws on the forests was not an indication towards a law-less chaotic condition in the tribal society. The prevailing state of affairs during the early British period may be well conceived from a contemporary fact that the Hon'ble Supreme Court of India in an order passed in 2013 recognized the hardcore beliefs of the *Doṅgariā* tribe, who worship the Niyamgiri as their Goddess and stopped the progress of bauxite mining from it to protect their religious feelings.[18]

In fact, resources were abundant since the scope of utility of those resources was low, the area was isolated due to lack of communication and the tribals were living an abysmal condition having no expected use of the major and minor forest products except but fuel or as a source of foodstuffs or construction of a dwelling house for themselves and for their animals. Hence, there was no scope for over exploitation and correspondingly there was no need of any effective law to manage the forest. When progress touched the area on the advent of the British, the need of the law was felt.

Secondly, the influence of time over the meaning of the legal statutes is recognizable from the fact that there were established rules in those days for rewarding people on killing dangerous wild animals. The killing of a tiger was being awarded with Rs.20/-, for a cheetah it was Rs. 10/-, for wild dog Rs.10/-, for a bear Rs.02/- and for a hyena it was Rs.2/-. The mutation of the statutory provisions had been stepping at a slower pace with change of time according to conceptualization over the relevant subject and changing of objectives of the governance of the state.

6.4 Building-Up of the Statute

The Indian Forests Act,1865 extended the British Colonial claims over forests in India.[19] This Act was the first attempt of the colonial government under the Crown to replace the provisions laid down under the Memorandum of Government of India, 1855 promulgated by Lord Dalhousie. After the Queen Victoria's proclamation, all the legal statutes were portrayed as beneficial to the Indian subjects which was the fundamental objective statement of the Act of 1865.

6.4.1 The Indian Forest Act, 1865

The attempt of the British Government asserting the state monopoly over forests was manifested through the Indian Forest Act, 1865. This was the first systematic enactment over the subject under the auspices of the Crown that exhibited the characteristic of shifting the ownership of the residual land and forest assets from the private persons to the absolute control of the state. The Act empowered the state to declare

any land covered with trees or brushwood as state owned forest and to make rules regarding the management of the same by notification, provided that such notification should not abridge or affect any existing rights of individuals or communities [20].

The very attempt of the British Government through that Act was to establish state's control over the forests and to extend some minor rights in favour of the individuals or communities who had been conventionally enjoying *de-facto* rights over the forests in the vicinity in which they were dwelling. The government was empowered to prescribe penalties through the provisions of the Act for breach or infringement of the provisions of the law and to inflict upon them either corporal or pecuniary punishments. For the first time, an attempt had been made to regulate the collection of the forest produce by the forest dwellers. Thus, the socially regulated practices of the forest people were restrained and made limited by law. The Act was applicable only to forests under the control of the government and no provisions were made to make it applicable to the private forests. Thus, in the name of 'scientific management, the Act was an attempt to obliterate centuries of customary use of the forests by rural population all over India.' [21]

The Indian Forest Act,1865 provided the legal sanction to the forest administration in various provinces of India and empowered the colonial state to acquire monopolistic control over India.[22] It categorized Indian forest landscape into 'reserved forests' and 'unreserved forests' and urged the provinces to follow it. Most of the provinces accepted the Act but the Madras Government opposed the implementation of the Act 'on the ground that it would negatively affect the communal rights and privileges of the people'.[23]

The Madras Presidency refused to adopt the Act of 1865 *in-toto* on the plea that the rights of the villagers over waste lands and jungles were also to be considered important. As such, the absolute ownership of the state over the forest was somehow impaired. A conference of the forest officers was held in 1874 to address the defects of the Act of 1865. The task before them was to reverse a process which the British had initiated, which was then considered as worthless and unsustainable. In fact, all provisions of the Act of 1865, except that pertaining to arrest, were considered as defective.

The major lacuna in the Act was its provisions that proclaimed the absoluteness of the statutory authority of the state over the forests undermining the people's rights. The Act was "An act to give effect to rules for the management and preservation of government forest". The Government Forest Act (No. VII)1865, legally limited its extent of application to the sovereign authority over the area under absolute control of the state.

So, the Act provided for the protection of forests only after it had selected and declared as Government Forest. However, the rights enjoyed by the people living in the vicinity of forests and those who were dependent mainly on forests for their livelihood was ever been a matter of concern of the administrators and the executives. For effective control, it was agreed that the state should have the power to protect any forest in anticipation of its demarcation and management.

The definition of the connotation 'the forest' as per the Section 2 of the Act of 1865, was described as the 'land covered with trees, brushwood and jungle'. Assignment of such a wider definition was sharply criticized as an over-action from the part of the legislators. It was construed that any land whatsoever would be designated as forest, thereby coming under the provisions of the Act, at the will of the Government. The Act provided a series of prohibitions, but nothing was provisioned about the principles of managing the forest, as there were no provisions associated to fencing and fire protection, etc. which were found therein the statute.

There was also considerable debate within the colonial bureaucracy itself about the 'absolute proprietary right of the state.' In the end it was decided to treat the customary use of the forest by the Indian villagers as based on 'privilege' and not on 'right'. So, there was remote relationship between the stated objectives and the substantiality of the statute which had been recited as "Whereas it is expedient that rules having the force of law should be made from time to time for the better management and preservation of forest wherein rights are vested in Her Majesty for the purposes of the Government of India….".[24]

To formulate a more effective legal mechanism in Madras, in accordance with Government of India's instructions, Brandis prepared a Forest Draft Bill in 1869 and circulated it among the Collectors. Majority of the Collectors opposed the Draft Bill and argued that it would deprive the livelihoods of the people in the forests by restricting the customary access to the resources. The main reason for the revenue official's opposition was that it did not recognize the powers of the Revenue Department in forest management. Commenting on the nature of forest tenure in the Madras Presidency, the Board of Revenue commented in 1871: "Here forests were and always have been common property, no restrictions except that of taxes, like the *Moturphā* and *Pullārì,* was ever imposed on the people prior to creation of the Forest Department and such taxes no more indicate that the forests belong to the state.''[25]

In spite of the rejection of the Forest Act of 1865 and the Draft Bill of 1869, the Government of India continued to pursue upon the forest legislation in the Madras Presidency. Two Forest Conferences were held at Allahabad and Shimla. Baden Powell wrote that in the Allahabad conference, a large proportion of forests were admitted being the absolute property of the state. "The state had not, it is true, exercised that full right; the forest was left open to anyone who chooses to use it, but the right was there." [26]

Under the chairmanship of Deitrich Brandis another forest conference was held at Shimla. In that conference the forest officials held the view that forests were public property and that they should be managed by the state for public welfare. Some argued that the village communities had not the capacity to manage forests in India. Brandis wrote: "if communal forests are created, their administration would have to be in the hands of the forest department, for village communities in India cannot at present be expected to be sufficiently alive to their own interests". [27]

The main theme of the legal debate was on the nature of people's rights on forests. Here Brandis' view was supported to that of Baden Powell's. According to Brandis, the forest rights were inherently limited in nature and could only be exercised as long as the waste lands and forests provided the sources. He pointed out that forest usages in India existed in the form of user rights but not as property rights. He wrote, "villagers who from time immemorial were accustomed to cut and graze in the nearest jungle lands did not acquire a right by prescription- that the state had not exercised its full rights over the forests, which were left open to anyone who choose to use them, but the right of the state was unimpaired and was asserted whenever a native ruler choose to close whole areas of forest to preserve the game, as the *Belās* of Sindh enclosed by the *Amirs.*"[28]

It is important to note that the Governor of the Madras Presidency objected to the bill not on the ground of communal rights but on the issue of private rights as he remarked: "I believe that this Bill, if passed, will in the Presidency, give rise to grave dissatisfaction and will create serious disaffection. I believe that it will do so not because of the native people are averse to the maintenance and protection of forests, but because the basis and principles of the Bill is the ultimate extinction of all private rights over forests or waste lands and their absorption by the Government."[29]

The Government of India was during that time taking strong views against the Madras Government. The Secretary to the Government of India, Revenue and Agriculture was adamant to demarcate the forest lands of Madras as state forests on one hand and

forests 'to be protected and improved by the state and under the control of the state' on the other.

6.4.2 The Cattle-Trespass Act, 1871

This was an Act to consolidate the laws relating to trespass by cattle into the forest land. The British Government after assuming power in India passed an Act relating to trespass by cattle in the year 1857 (Act III of 1857). In the year 1860 it passed an Act to amend the Act III of 1857 which was known as the Cattle Trespass Act, 1860 (Act V of 1860). Again, in the next year i.e. in 1861 an Act was passed to amend the Act III of 1857. Finally, on 13th January 1871 the Cattle Trespass Act,1871 was passed.

Section 1 of the Act was substituted by the Cattle Trespass (amendment) Act, 1891 (1 of 1891). The Act was declared to be in force in Odisha by the Anugul District Regulation, 1894 (1 of 1894). It was also notified under the Scheduled Districts Act, 1874 (14 of 1874) to extend its application to the Scheduled Districts of Gañjām and Vizagpatam.[30]

As per the definitions provided under the said Act, 'cattle' included elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids.[31]

The above definition exhibited the importance of a separate 'definition clause' in the statutes which intended to extend, curtail, include or exclude features to a common word or phrase used in a specific statute. The meaning of a specific word was required to be interpreted in accordance to the expressed or implied meaning so modified by the clause.

The Act provided for establishment of pounds which was under the control of the District Magistrate who had to fix the rates of charges for feeding and watering impounded cattle, which was altered from time to time (under Section 5 of the said Act). The Act also provided for the appointment of a pound-keeper, who was deemed as a public servant within the meaning of the IPC.

Section 7 of the Act provided that every pound-keeper required to keep a register to furnish the returns as the local Government directed from time to time.[32] The pound-keeper was bound to enter the number and description of animals, the day and hour at which they were so brought, the name and residence of the seizer, and if known the name and residence details of the owner.

Persons in charge of public roads, pleasure-grounds, plantations, lower canals, drainage works, embankments and the like, might seize any cattle doing damage or found

thereon, and send them within twenty-four hours to the nearest pound. For every impounded cattle the pound-keeper levied a fine in accordance with the scale prescribed by the local government by notification in the official Gazette.

All fines so levied were sent to the Magistrate of the District through such officer as the local government directed. Chapter IV - section 13 of the Act provided that if the owner of the impounded cattle claimed the cattle, the pound-keeper had to deliver them to him on payment of the appropriate fines as prescribed under the said Act. At Section-14 it was provided that if the cattle were not claimed within seven days, they were to be sold through public auction.

Chapter V of the Act provided for the complaints of illegal seizure or detention of cattle by the owner to the Magistrate of the District.[33]

Chapter VI of the Act provided the quantum of penalties for forcibly opposing the seizure of cattle or rescuing the same. The Act had also provisions for penalty on pound-keeper who failed to perform the duties conferred upon him by this Act, which was a fine not exceeding fifty rupees. The Act is still in force in the whole of Odisha.

6.4.3 The Madras Wild Elephant's Preservation Act, 1873

When it was felt expedient to preserve the elephants from their extinction, the Government enacted a separate legislation namely the Madras Wild Elephant's Preservation Act, 1873 (Madras Act 1 of 1873) with an intend to prevent the indiscriminate destruction of wild elephants within the Presidency of Madras. The Act extended to the territories subject to the approval of the Government of the Presidency of Fort St. George and came into force on the 1st day of October 1873.[34]

The Act prohibited the destruction of wild elephants. It also provided a penalty not exceeding five hundred rupees, and in default of payment, imprisonment for a period not exceeding three months for shooting of elephants upon waste or on a forest land, whether such land was the property of the Government or otherwise.[35]

The said Act was continued to be in operation even after independence of India and in exercise of the powers conferred by Section-8 of the Madras Wild Elephant's Preservation Act, 1873 the Government of Orissa enacted 'The Orissa Elephant's Preservation (Ex-Madras Area) Rules, 1953 which replaced the previous Rules on the subject in force at the areas specified in Schedule Districts i.e. Gañjām, Korāput, Bālligudā and the G. Udayagiri Agency in Boudh, Phulbāni district. These Rules came into force on 14th December 1953.[36] The Act was in force in the regions of south Odisha which were

later transferred from the jurisdiction of Madras Presidency to the newly formed state of Odisha in the year 1936.

6.4.4 The Elephants Preservation Act, 1879 (VI of 1879)

The Elephants Preservation Act, 1879 was passed by the Governor General of India in Council after receiving his assent on 22nd March 1879. The Act extended to the territories administered by the British. It came into force on the 1st day of April 1879. The Act provided that no person shall kill, injure or capture any wild elephant unless (a) in defence of himself or some other person, (b) when such elephant was found injuring houses or cultivation, any main public road, railway or canal; or (c) as permitted by a license granted under this Act (Section 3).

The Collector or Deputy Commissioner of any district, subject to the provisions of this act or the other rules might grant licenses to kill or to capture wild elephants in such districts (Section 5). Section 7 of the Act provided that, any person in contravention of Section-3, killed, injured or captured any wild elephant had to be punished with fine which might extend to five hundred rupees for each elephant concerned. It also provided that any person whoever violated any condition contained in a license granted under this Act was to be punished with imprisonment which might extend to six months. It further provided that when a person holding a license was convicted, the license was to become void. This Act was amended in the year 1883, 1920 and 1930.

6.4.5 The Indian Forest Act, 1878

This Act was more comprehensive in its approach than the earlier one and divided forests into reserved forests, protected and village forests**.** Under the said act, the claimants were now required to notify their claims over the ownership over land and forest in the proposed reserved and protected forests. Certain activities like trespassing and pasturing of cattle in the reserved forests were prohibited. Provisions were made to impose duties on transaction on timber. Provisions were also made for administration and management of private forests. Certain activities were categorized as forest offences, and penal provisions like fines and imprisonment were also prescribed for such offences. Thus, the Act of 1878 provisioned for continuation and extension of the government policy on the state's control over the forests.

The Act further empowered the Government to acquire land over which rights were claimed by persons. The FSO was to record such rights and there were special provisions to ensure that the rights may be preserved. These provisions included setting

out of some other forest tracts to ensure that the right of pasture or the rights on forest produce claimed by the owners over such areas is to be protected. This altered the limit of extent of the proposed forest so as to exclude forest land of sufficient extent in favour of the claimants. It also sought to ensure claimants' right in certain portions of the proposed reserved forest (sec-1-A). The local governments were given the right to notify any forest and empowered to make rules to regulate and prohibit certain activities in the protected forests. It also gave the power to assign to any village community the rights over any land that was constituted as a reserved forest or village forests (Sec-27).

The powers given to the forest officers were the same as that stated in the Act of 1865. The authority to arrest was limited to offences like violating the prohibition or the quarrying of stone or burning of lime or charcoal or removal of any forest produce from any such forest and unauthorized clearing of forest land for purposes like cultivation, construction of building, herding of cattle or for any other purpose within the territory declared as a forest.

Difference between the Forest Act of 1865 and of 1878: The main difference between the Act of 1865 and 1878 was that the Act of 1865 empowered the Government to declare any forest as government property. But the right of the government was subject to the condition that it did not affect the existing rights and privileges enjoyed by the local community in the vicinity or neighbourhood of the forest areas. This resulted in the classification of forest as reserved and protected, and surveys and settlements were initiated in the direction after 1865. The provisions of the legislation later served as a model for other British colonies outside India which was replicated over there.

Several officers within the colonial administration were sharply critical of the new legislation and predicted widespread public discontent on its application. Their objections, however, were swiftly overruled by the Government. The new Act also enabled the sustained working of compact blocks of forests for scientific management by maintaining strict control over forest utilization from the perspective of strategic imperial needs.

Thus, when the colonial state asserted control over the woodlands, which had earlier been in the hands of local communities and assigned those forests for commercial timber production, it was considered as an intervention in the day to day life of the Indian villagers to an unprecedented degree.

Guha argued that the Act of 1865 was enacted to increase control over the forest supply, for the sake of maintaining uninterrupted supply of timbers to the railways, and the environmental issues had been neglected when its provisions were improperly

implemented. While drafting the Forest Act of 1878, a debate on ownership had taken place among the Forest Department officials at the Centre and Madras Presidency level, and the Madras Presidency emerged as the most articulate spokesman for villagers' interests amidst the controversy around the Act of 1878.

The debate over the ownership of forests emerged after the Department of Forests was established. The Madras Presidency believed that it was impossible to distinguish between the rights of the Government and that of the people on the forests falling under the jurisdiction of the Presidency. Gadgil and Guha categorized the whole debate under three distinct positions as stated below:

At the first place, they termed it as annexationist, as its objective was nothing less than achieving the total state control over all forest areas. Secondly, pragmatic, as it was argued in favour of state management of ecologically sensitive and strategically valuable forests; allowing other areas to remain under communal systems of management. Thirdly, as populist, the views which completely rejected state intervention, holding that tribal and peasants should exercise sovereign rights over the woodlands.[37]

6.4.6 The Madras Forest Act, 1882

(For Details see Table No. 13) In the month of October,1881 the Government of India deputed Dietrich Brandis to prepare forest legislation for the Madras Presidency. He personally visited various districts of Madras Presidency and became instrumental in framing the Madras Forest Act, No. V of 1882 which came into effect from the 1st January 1883.[38]

The principal objective of the Madras Forest Act, 1882 was the protection and management of Forests in the Presidency of Madras. It extended to all the territories under the jurisdiction of the Government of Fort St. George, except the Scheduled districts. It also provided that the Governor in Council may, by Notification in the Fort St. George Gazette, exempt any place under the province from operation of the whole or any part of the said Act. The Act extended with the previous sanction of the Governor-General-in-Council to the Pondākhol and the Minnājodi *Muttāhs*.[39] Later, it was made applicable to the Adigudi *Muttāh* in the Scheduled districts of Gañjām known as the Soradā *Malìāh* and Chinnākimidi (Sānakhemundi) *Malìāhs.*[40] Similarly it was extended to other Scheduled districts of Gañjām.[41]

The Madras Forest Act was made applicable to the tracts of Korāput in the year 1891. Rules under the Sections 26, 32, 35 and 55 of Madras Forest Act in this connection

were framed in the year 1900 which were known as Jeypore Forest Rules that underwent many changes in due course of time.[42]

The Madras Forest Act, 1882 was framed on the same general lines as that of the Indian and Burma Acts, but with certain additional features. In this Act, the chapter on the constitution of Reserved Forests was more logically arranged, and the procedural aspects of the law were somewhat simplified. As per the provisions laid down under sec-3 of Chapter-2 of the Act, the Governor-in-Council was empowered to make provisions through notifications published in the Fort St. George Gazette and in the official Gazette of the district reserving any land as a Reserved Forest.

There were also provisions for appointment of the FSO who was to enquire into the relevant matters and determine the rights claimed by any person over the land or the forest products of a notified area. Thereby, the law intended to provide transparency in administration of the subject by removing the scope for future disputes. The arbitrary way of declaring a land as reserved forest was replaced by devising a more scientific methodology for it and the responsibility was entrusted with a localized officer who judiciously handled the subject.

Under section-6 of the said Act it was required that the FSO should publish the intention of the Government to reserve a specified land. It was to be published in the District Gazette and it was also provisioned under the section that the individual owners who had rights over the said lands should be intimated. Even the owners residing beyond the territorial limits of the jurisdictional district were to be intimated by registered post giving at least three months' time for raising any objection against the proposal from the part of the Government. It revealed the principles of natural justice in the legislative procedure. Furthermore, if any order was passed by the FSO, the aggrieved person was provisioned to file an appeal before the District Court.

Some of the discretionary powers were vested with the FSO to reserve some of the rights enjoyed by the owners even after the land was declared as reserved. The circumstances in which the law was made was seemingly followed the fundamentals of modern law-making procedure based on a popular legal maxim "no one may be caused to be alienated from his rights without the authority of duly enacted law and without due procedure of law".

Another contrast which was found in the provisions of the said Act was that the same was not area specific and confined to the notified reserved forests but brought within its ambit some of the subjects which were not within the territorial limits of the reserved

forests. Rules made under the Acts from time to time (under sec-26 of the said Act) imposed restrictions on some of the notified species of plants which were on "Unreserved Land" under the disposal of the government. Trees notified for such restrictions were amongst them the economically valuable plants like Teak, *Sāl*, Sandal, Blackwood, Mango, Jackfruit, etc.

Such provisions with an intention for protection of land at the disposal of government beyond the limits of reserved forests, exhibited an improvement over the provisions of law in existence and in practice before promulgation of the said Act of 1882 with narrower objectives.

But the Act had a major lacuna in so far as, some of its operations were kept beyond the original or appellate jurisdiction of the District Forest Courts restricting a plausible access to the public to the system of redressal of their grievances that might have caused by actions of the state.

A large geographic extent of the country spread over several provinces had already been subject to some sort of reservation under the provisions of Act VII of 1865; and in order not entirely to lose the results of previous work, a provision was entered in the modern enactments by which Government was empowered to declare any such areas as Reserved and Protected forests, under the proviso that any rights of the government or private persons over any land and forest produce in any such forest had been enquired into settled and recorded in a manner which the local Government thought sufficient, or would be thus enquired into, settled, and recorded after the declaration if the former enquires and settlement were considered insufficient.[43]

6.4.7 The Forest Policy Resolution, 1894

Towards the last decade of the nineteenth century, the general concept on state's role was in a course of paradigm shift towards scientific governance. Now feeling the importance of transparency in governance, the British Government published its first policy resolution on forest to manifest its intention to the public as well as to provide a consolidated frame to the law makers and their executives for future governance of forest as a subject of administration. Although a policy statement was not legally implementable as it is but was served as a model and source for subsequent legislations and administration. The policy put a scholarly approach to the whole subject so far as the same was originated basing upon a report of Dr. J.A. Voelcker.[44] The importance of his approach was that he stressed more on agricultural use of the land than its preservation as reserved forests. When the report was submitted to the Government, the then Inspector

General D. Brandis intended to tune it up from administrative and legislative angles keeping in view the states revenue and other interests.

The Government of India brought out a comprehensive forest policy on 19th October 1894, maintaining its policy on the supremacy of the state's interest over that of the people's interest. In chapter VIII of his report on the improvement of Indian Agriculture, Dr. Voelcker recommends the importance of a National Forest Policy which shall serve the agricultural interests more directly. In his Review of Forest Administration for 1892-93 the Inspector General of Forests discusses with details, the principles which should underlie the management of state forests in British India.

The resolution divided the forests into four classes;[45]

1. forests, the preservation of which were essential on climatic or physical grounds;
2. forests which afforded a supply of valuable timbers for commercial purposes,
3. minor forests and
4. Pasture lands.

This classification was applicable only to the forests under the management of the state. According to Elwin,[46] 'the sole objective with which state forests are administered, is for the public benefit. In some cases, the public to be benefited is the whole body of tax payers, in others, the people in general living in the tract within which the forest is installed; but in almost all cases the contribution and preservation of a forest involve, in greater or lesser degree, the regulation of rights and the restriction of privileges of the users in the forest area which may have previously been enjoyed by the inhabitants of its immediate neighbourhood. These regulations and restrictions are justified only when the advantage to be gained by the public is great and the cardinal principle to be observed is that rights and privileges of individuals must be limited, otherwise for their own benefit, only in such degree as is obviously necessary to secure that advantage.'

It is not intended that any attempt should be made to class existing state forests under one or other of these four heads. Some forests may occupy intermediate positions and parts of one and the same forest may fall under different heads. The classification was useful only as offering a basis for the indication of the broad policy which should govern the treatment of each class respectively; and in applying the general policy, the fullest consideration must be given to local circumstances.

The first class of forests were generally situated on hill slopes where the preservation of such vegetation as exists, or the encouragement of further growth, was essential for protection from the devastating action of hill torrents on the cultivated plains

that lie below them. Here the interests to be protected were important beyond all comparison with the interests which it may be necessary to restrict; and so long as there was a reasonable hope of restriction being effectual, the lesser interests must not be allowed to stand by the way.

The second class of state forests included the great tracts from which the supply of more valuable timbers, teak, *Sāl*, deodar and the like is obtained, are for the most parts essentially forest tracts, and encumbered by very limited rights of the user. These forests should be managed on commercial lines on valuable properties and sources of revenue to the state. The needs of the community dwelling on the margins of forest consists mainly on small timber for building, wood for fuel, leaves for fodder, thorns for fencing, grass and grazing for their cattle and edible forest products for their own consumption. It should be distinctly understood that considerations of forest income were to be subordinated to that satisfaction.

The third category of forests included those tracts which produced only the inferior sorts of timber. In some cases, the supply of fuel for manufacturers, railways and like purposes, was of such importance that those forests fell more properly under the second category and mainly managed as commercial undertakings.

The fourth category of forests referred to were pastures and grazing grounds which were for namesake called as forests.

Though the aim of this policy was to manage state forests for public benefit, certain regulations of rights and restriction of privileges for the use of forests by the neighbouring population was provided in this policy. Although the policy was broadly adapted in the next statutory enactment after long 30 years i.e., in the Indian Forest Act, 1927 but during the interim period its spirit was used to be greatly reflected in all official activities, since it provided a clear message on the objectives of the state towards forest as an administrative subject.

6.4.8 The Wild Birds and Animals Protection Act, 1912

The Wild Birds and Animals Protection Act was passed on 18th September 1912 by the Governor-General of India in Council. The Act was passed to make better provision for the protection and preservation of certain wild birds and animals. The Act extended to the whole of British India; it applied to the birds and animals specified in the Schedule, when in their wild state.[47]

The wild birds and animals which included in the Schedule were:

(a) Bustards, ducks, floricans, jungle fowl, partridges, peafowl, pheasants, pigeons, quail, sand-grouse, painted snipe, spur-fowl, woodcock, herons, egrets, rollers, and kingfishers.

(b) Antelopes, asses, bison, buffaloes, deer, gazelles, goats, hares, oxen, rhinoceroses and sheep.

The local government by notification in the local official *Gazette* might apply the provisions of the Act to protect or preserve any kind of wild bird or animal other than those specified in the schedule. The Act provided a penal provision of fine up to fifty rupees or imprisonment which may extend up to one month for its violation. The convicting Magistrate may direct that any bird or animal, in respect of which such offence has been committed, shall be confiscated.

Section (6) of the Act provided that no court inferior to that of a Presidency Magistrate or a Magistrate of the second class should try any offence against this Act. Nothing in this Act shall be deemed to apply to the capture or killing of a wild bird or animal by any person in defence of himself or any other person or in bonafide defence of property. The previous Act i.e. The Wild Birds Protection Act of 1887 was repealed by this Act of 1912.

6.4.9 The Indian Forest Act, 1927

The general law regarding the administration of forests in British India was codified for the first time in 1865 when the Indian Forest Act VII of 1865 was placed in the Statute Book. The Act of 1865 was replaced by the Indian Forest Act VII of 1878 which was a much more elaborate piece of legislation. The Indian Forest Act of 1878 was amended by the Indian Forest (Amendment) Acts of 1890, 1901, 1918 and 1919.

The Indian Forest Act,1927 was intended to consolidate the laws relating to the forests in India. It repealed the then existing enactments on the subject to provide a complete single law in their place.

The IFA, 1927 was in application in the state of Odisha except in the districts of un-divided Korāput, Gañjām and part of Phulbāni (Bālligudā and G. Udaygiri *Tāluks*) where the Madras Forest Act, 1882 was in force. The importance of both the statutes was felt from the facts that those were in operation in their original forms with amendments from time to time up to the year 1972 when both were ultimately repealed by the Orissa Forest Act, 1972. The Act of 1927 was amended by the Indian Forest (Amendment) Act 26 of 1930 and the Indian Forest (Amendment) Act 3 of 1933. The Act was partly repealed by the Repealing and Amending Act 2 of 1948. The Act has also made applicable through

the Adaptation of Laws Orders: 1937, 1948, 1950 and 1956, as a result of constitutional changes brought about in the country. The Indian Forest Act, 1927, was locally amended by the Government of Orissa under the Bìhār and Orissa Acts 25 of 1952, 11 of 1954 and 27 of 1959.[48]

6.5 National Forest Policy

Through the Resolution No. 22-F, dated the 19th October 1894, the Government of India in the Department of Revenue and Agriculture enunciated in broad outlines the general policy to be followed in the management of State Forests in the country. During the interval that had since elapsed, developments of far reaching importance took place in the economic and political fields. The role played by forests in maintaining the physical conditions of the country had since been better understood by that time. The country had passed through the course of two world wars which disclosed unsuspected dependence of defence on forests. The reconstruction schemes, such as river valley projects, development of industries and communications, depended heavily on the produce of forests.[49]

The National Forest Policy of India was formulated on the basis of six paramount needs of the country, namely:

1. The need for evolving a system of balanced and complementary land use, under which each type of land was allotted to that form of use, under which it could produce most and deteriorate least;
2. The need for checking the denudation in mountainous regions, on which depended the perennial water supply of the river system whose basins constituted the fertile core of the country; the erosion progressing space along the treeless banks of the great rivers leading to ravine formation; the invasion of sea-sands on coastal tracts and the shifting of sand-dunes, more particularly in the Rajputana desert;
3. The need for establishing tree lands, wherever possible, for the amelioration of physical and climatic conditions promoting the general well-being of the people;
4. The need for ensuring progressively increasing supplies of grazing, small wood for agricultural implements, and in particular of firewood;
5. The need for sustained supply of timber and other forest produce required for defence, communication and industry;
6. The need for realization of the maximum annual revenue in perpetuity consistent with the fulfilment of the needs enumerated above.[50]

The IFA, 1927 was largely based on previous Indian Forest Acts implemented under the British Government. Both the Acts of 1878 and 1927 sought to reserve the areas having forest cover or having significant wildlife in it. Again, they facilitated the regulation of transit of forest produce and charged duty or taxes leviable on timber and other forest produce. The said acts also defined the procedure to be followed for declaring an area as a Reserved Forest, Protected Forest or as a Village Forest. They defined what actions amounted to a forest offence, what activities were restricted and prohibited within the territory declared as Reserved Forest and the penalties leviable for violation of the provisions laid down under the Act. The important issues dealt within the said Acts were as follows:

6.5.1 Reserved Forest

RF was an area where a sizable patch of forest land was duly notified under the provisions of the Madras Forest Act, 1882 or the IFA, 1927 having full degree of protection. In the RF all activities were prohibited unless it was expressly permitted under the provisions of the Acts. RF was being notified under the applicable provisions of the MFA or IFA, 1927. The manner in which the RF was to be constituted was clearly described in Sec.3 & 4 of the MFA, 1882. It was within the power of a State Government to issue a preliminary notification under Section 4 of the Act declaring such land as a RF. Similar provisions were also there in the IFA,1927 under its corresponding sections as well. Such a notification specified the details of its location, area and boundary description, and about the appointment of an officer of the State Government, normally the Deputy Commissioner of the concerned district as FSO having jurisdiction over such Reserved Forests. The FSO fixed a period not less than three months, to hear the claims and objections of every person or claiming any rights over the land which was to be covered under the notification for reservation. He conducted inquiry into the claims of rights and could reject or accept the claims of the stakeholders. He was empowered even to acquire land over which right was claimed. For rights other than that of right of way, right of pasture, right to forest produce or right to a water course, the FSO might exclude such land in whole or in part or come to an agreement with the owner for surrender of his rights or proceed to acquire such land in the manner prescribed under the Land Acquisition Act 1894 (Act 1 of 1894). Once the FSO settled all the rights either by admitting or rejecting them, in accordance to the provisions prescribed under the Act, and heard the appeals, all rights with the said piece of land (boundaries of which might have been altered or modified during the settlement process) should liable to be vested with the State

Government. Thereafter the state government issued notification under Section 20 of the IFA, 1927 declaring that piece of land as a Reserved Forest.

6.5.2 Protected Forests

Protected Forest was an area or land mass notified under the provisions of the said Acts having limited degree of protection. In Protected Forests, all activities were permitted unless it was expressly prohibited. The government had property rights over the PFs, declared by a state government under the provision of Section 29 of the IFA, 1927. It did not require the long and tedious process of settlement, as in case of a RF. However, if such a declaration infringed upon a person's rights, the government might cause an inquiry into the same; but pending such inquiries, the declaration cannot abridge or affect such rights of persons or communities. Further, in a protected forest, the Government could issue notifications declaring certain trees to be reserved or suspend private rights, if any, for a period not exceeding thirty years, or prohibit quarrying, removal of any forest produces or breaking the land, etc. The IFA was established in 1972 for the protection of all the flora and fauna.

6.5.3 Village Forests

The concept of Village forest was constituted under Section 28 of the IFA, 1927. The government could assign to any village community the rights over a land which might not be a part of a reserved forest for use of the community. Usually, forested community lands were constituted into Village Grazing Reserve (VGR). Parcels of land were so notified and marked on the settlement maps of the villages.

The IFA, 1927 (16 of 1927) had 86 Sections and it was divided into 13 chapters. The Act had a striking feature that was the absence of any definition of forest or forest land. However, the Hon'ble Supreme Court has said that "Forest" shall be understood by its dictionary meaning.[51]

The Preamble to the IFA,1927 (16 of 1927) stated that the Act sought to consolidate the law relating to forests, the transit of forest produces and the duty that could be levied on timber and other forest produce. Similarly, the MFA stated that it was an act to make provisions for protection and management of forests in the Presidency of Madras.

Section 2 (4) of this Act provided definitions for the forest produce. Offences under the IFA, 1927 on account of their peculiarity, differed from those under the IPC, with the sense that as a result of the former, no one was personally aggrieved or affected by the injury inflicted upon the forests, and the vast expanse of it made the detection of

offences difficult. Forest offence had been defined under Section 2 (3) of IFA, 1927 to mean 'an offence punishable under the IFA 1927 or rules made under.' Forest offences had been classified into two broad categories. Firstly, there were trivial offences covered under Section 68, where offences might be disposed by compounding i.e., compromising with money. Secondly, there were offences which did not fall under the above category and they were entitled for higher punishment which included imprisonment, confiscation of private forest produce, tools, vehicle and cattle, etc., and in addition the recovery of an amount equal to the damage done to the forest as compensation in case of offences relating to reserved forest (Section 26). A third category of forest offence related to cattle trespass. Such offences were disposed of under a separate act namely the Cattle Trespass Act, 1871.

After the formation of the state of Odisha on 1st April 1936 there were two Forest Acts in application in the state i.e. The Indian Forest Act, 1927 and The Madras Forest Act, 1882. Except for the undivided districts of Korāput, Gañjām and part of Phulbāni (Bālligudā and G. Udayagiri *Tāluks*) where the Madras Forest Act, 1882 was in force, the rest of the state was covered under the IFA, 1927. The existence of two Acts imposed an extra strain on the government machinery and often created confusion and also caused administrative difficulty. The necessity for a unified Forest Act was felt quite early and in pursuance of that, a Bill was introduced in the State Legislative Assembly in the year 1942. But for unknown reasons that bill was dropped. The necessity of such an Act had been commended by the Forest Enquiry Committee of Orissa in its report in 1959. Further a Sub-committee of the Central Board of Forestry recommended amendment of certain clauses giving the development of forests and the interest of forest production a paramount consideration. The experience of other states in the management of forests in their respective states had been taken into consideration to bring the law up to date. Generally, the sequence followed was of the IFA, 1927, though the Bill was freely drawn from the MFA,1882 for convenience. This Act was called the Orissa Forest Act, 1972 and it extended to the whole of the state of Odisha and it came into force at once. [52]

6.6 Implementation Modalities of the Statutes

The basic characteristics of legislation as a theory was that the substantiality of the wills of the sovereign was first framed in the major legislation namely 'Acts' which followed by a series of minor legislations and set-forth the detailed path and procedure of its implementation. Legislation of substantial laws required intensive efforts and was a time-consuming process. Hence, every bit of procedural aspects may not be incorporated and kept reserved for the minor legislations named as 'Rules' which may easily be

promulgated keeping in view the localized needs. It was easier, during the British regime, to promulgate, alter, revoke or repeal the rules. The rules provided the procedural path of implementation of the law like prescribed fee structures and forms which may be used for this purpose.

The above structure had already been devised during the period and became eternal and time honoured to such an extent that most of the laws made in colonial regime by the British are still in operation in independent India in its original form with a little or no modification.

The Forest Act, 1927 and the Madras Forest Act, 1882 were in operation in the state of Odisha long after the independence of our country in its northern and southern parts respectively till both the acts were merged in the Orissa Forest Act, 1972. Several of minor legislations setting the path of implementation of the Madras Forest Act, 1882 to govern the subject in south Odisha and their basic features are furnished hereunder:

6.6.1 Orissa Forest Contract Rules, 1937

The important Provisions of the Rule are as under:

i. It was applicable to both the Acts in operation in the State of Odisha viz. the Forest Act, 1927 and the Madras Forest Act, 1882.
ii. This rule was applicable to the districts of Odisha falling under the Madras Presidency.
iii. This rule prescribes a procedure for contractors engaged for felling trees and purchase and sale of forest produce.
iv. It prescribed a standardized agreement form, the fee structure, the methods of assignment of the contract and the detailed method of felling of different types of trees and bamboo plants and penalty for violation of the terms of agreement or the legal procedure.

6.6.2 Rules to Regulate the Transit of Timber in Gañjām

The rule was Published vide Order No. 2220-E, dated 08th May 1940.[53] The important Provisions of the Rule are as under:

i. The rule was made under the authority of sec-35, 36 and 64 of the Madras Forest Act, 1882.
ii. The rule governed the transit of timber in Russellkoṇdā, Chatrapur, Bālligudā and Pāralākhemuṇḍi Forest Divisions of Gañjām District.

iii. The rule prohibited the movement of timber within the district and import and export of timber from or to the jurisdictional area of the district.

iv. It provides that the Forest Officer shall notify in the District *Gazette* with the approval of the District Collector the routes through which timbers may be transported.

v. It provided for a specific mark (applicable to the timbers of more than 36 inches in girth and 6 feet in length) named as 'property hammer mark' without which it shall be liable for detention by the authority.

vi. It exempted some of the categories of timbers for minor uses like personal use for the purpose of burning and the wood from private forests which were removed with due permission from the authority designated for the said purpose. It was also not applicable for removals of small quantities of timbers of value not exceeding 50 rupees.

vii. The rule provided for granting of permit by the Forest Officer for transit of timber on a permit book which was to be obtained from the Forest Officer on payment of certain fees.

viii. The timbers on transit were subject to be passed through the check posts where the authenticity of the permit as well as the origin of the timbers was to be verified.

6.6.3 General Rules for Management of Reserved & Unreserved Lands

This Rule was published in the *Fort St. George Gazette* vide Notification No. 74, Dated 21st January 1890 with its important Provisions as under:

i. The objective of the said Rule as stated in its preamble was for regulation of the pasturage and of the natural produce of lands under the disposal of the Government and not included in the reserved forest nor falling within a Municipality.

ii. It was not also applicable to the district of Madras or the scheduled districts.

iii. Under rule-4 of the said rules, many of the plants were classified and declared as reserved trees and restrictions were imposed on felling of such trees.

iv. The category of trees so reserved were: Teak, Sandal, Blackwood, Red sanders, Kino, Myrobolan or Gallnut, Tamarind, *Sāl*, Mango, Jack, Ebony, Satinwood, Ironwood, Soap-nut, Catechu, Wild Nutmeg, Poonspur, Cinnamon and *Nux-Vomica*.

6.7 Rules for Management of the Forests and Waste Lands

The special rules for the estates and the agency areas with some special attributes are as follows:

6.7.1 Chaṅdragiri Agency Situated Below *Ghāts* in the Gañjām District

This Rule was published vide G.O. No. 224, dated 27.01.1909 Notification No.45, of the *Fort St. George Gazette* with its important Provisions as under:

i. This Rule was passed by the Governor-in-Council.
ii. This rule was applicable for the area of Chaṅdragiri Agency Situated below *Ghāts* in the Gañjām District which was not covered under the reserved forests.
iii. As per Rule-1 of this Rule "From and after the date of this notification it shall be unlawful for any person to fell, girdle, mark, lop, tap, uproot, burn, strip off the bark or leaves from, or otherwise damage, any tree growing on the same lands or to remove the timbers from or to collect the natural produce of such trees or lands or to quarry or collect stone, lime, gravel of earth possessing any commercial value upon such lands, unless he is authorized so to do by the Agent to the Governor or by some erosion duly empowered by the Agents to the Governor on that behalf."
iv. The rule provided for preservation of forest as well as the mineral resources on the land.
v. Burning of fire and grazing of cattle was restricted in such areas.
vi. As per the provisions under Rule-4 "Genuine inhabitants of villages in the Agency which are within the said lands and of such villages adjacent thereto as may be notified by the Agent to the Governor in the District *Gazette* shall be permitted to cut and remove free of charge and without license or permit any wood, leaves, fruit or other MFP that they may require for actual home consumption and shall also be permitted to carry on the cultivation known as the *Poḍu* cultivation provided that if the Agent to the Governor so directs, they shall not be permitted to cut or remove any description of tree notified as a reserved tree under the last preceding rule nor they shall be allowed to carry on *Poḍu* cultivation."
vii. The Agent to the Governor may by order in writing notify in the District *Gazette*, select any area within the said lands and may constitute them for fuel or fodder

reserves or grazing grounds, or may direct them to be placed under special fire protection (Rule-2).

viii. Hunting, shooting and fishing within the area was also covered under the rule which required special license from the government.

ix. Any infringement of this rule made it liable for imprisonment up to one month or penalty up to Rs. 200.

The 'Rules for management of the forests and waste lands within the Chaṅdragiri Agency situated below *Ghāts* in the Gañjām District' was made applicable to the Pāralākhemuṇḍi *Malìāhs* and Thumba *Muttāh* Forests in the Gañjām District by the orders of the Governor- in- Council dated 9th February 1909, Notification No. 45 of the *Fort St. George Gazette*.

6.7.2 Pondakhol *Muttāh* in the Gañjām Agency

The Rule was published vide G.O. No. 3073, dated 27.10.1914, Notification No. 623 of the *Fort St. George Gazette*.

The provisions of this rule were almost similar to the rules notified under the G.O. No. 224 dated 27.01.1909 i.e., 'Rules for management of the forests and waste lands within the Chaṅdragiri Agency situated below *Ghāts* in the Gañjām District'.

6.7.3 Chokapada *Muttāh* in the Gañjām Agency

This Rule was published vide G.O. No. 3110, dated 16.10.1909, Notification No. 263, of the *Fort St. George Gazette*.

The provisions of this rule were almost similar to the rules notified under the G.O. No. 224 dated 27.01.1909 i.e., 'Rules for management of the forests and waste lands within the Chaṅdragiri Agency situated below *Ghāts* in the Gañjām District'.

6.7.4 Khallikote and Āthagaḍa Estates in the Gañjām District

This rule was published vide G.O. No. 323, Rev. Spl. dated 24th February 1921; Notification Nos. 41 and 42 of the *Fort St. George Gazette.* The important Provisions of the Rule were as under:

i. When the proprietors of Khallikote and Āthagaḍa Estates applied to the Governor under Sec-32(c) of the Madras Forest Act, 1882 for application of the provisions of Sec- 26 of the said Act, the Governor-in-Council notified the instant Rules.

ii. This rule was applicable to the 'Reserved' and the 'Un-reserved' lands as shall be notified by the District Collector.
iii. A Forest Officer was to be appointed who shall issue lease for the reserved land for cultivation or for any other purpose.
iv. In the areas which shall be notified by the District *Gazette*, cut, saw, convert or remove of trees or timber and collection and removal of natural produce without due authorization from the government was made unlawful. However, it was defined that the forest produce shall not include limestone, laterite, gravel, stone earth or other minerals.
v. On un-reserved land of any village felling of tree or grazing, collection of dry wood, etc. was permitted for agriculture or domestic purposes. But the heads of the villages were made responsible to see that such privileges shall not be abused.
vi. An exhaustive list comprising of 49 numbers of trees was declared as reserved trees under Rule-VII of this Rule which were restricted for felling in the applicable area.
vii. The rate of fee was to be notified from time to time for operation of the permits issued under the rules.
viii. This rule empowered the District Collector to appoint any officer to issue permits for use of the forests and forest produces falling under the area and prescribed *Thānās* and other places where the timber or other produce may be brought for examination and recover.
ix. For infringement of the provisions of the rules a penalty up to Rs. 200 or imprisonment up to one month was prescribed under rule-XI of the said Rules.

6.7.5 Dharākote Estate, the Gañjām District

This rule was published vide G.O. Mis. No. 1972, dated 30th October 1924; Notification Nos. 316, 317 and 318 of *Fort St. George Gazette* with its important Provisions as under:

i. When the *Rājā* of Dharākote applied to the Governor under Sec-32(c) of the Madras Forest Act, 1882 for application of the provisions of Sec- 26 of the said Acts, the Governor-in-Council notified the instant Rules.
ii. This rule was applicable to the 'Reserved' and the 'Un-reserved' lands as to be declared by the District Collector.

iii. An Estate Forest Officer was to be appointed who shall issue lease for the reserved land for cultivation or for any other purpose.

iv. In the areas which shall be notified by the District *Gazette*, cut, saw, convert or remove of trees or timber and collection and removal of natural produce without due authorization from the Government was made unlawful. However, it was defined that the forest produce shall not include limestone, laterite, gravel, stone earth or other minerals.

v. On un-reserved land of any village felling of tree or grazing, collection of dry wood, etc. was permitted for agriculture or domestic purposes. But the heads of the villages were made responsible to see that such privileges shall not be abused.

vi. A similar list of trees (comprising of 21 trees) as prescribed in the General Rules for Management of Reserved and Unreserved Lands (under section 26 of the Madras Forest Act,1882) was also made applicable to this area (Rule-7) which were restricted for felling in the applicable area.

vii. These rules empowered the District Collector to appoint any officer to issue permits for use of the forests and forest produces falling under the area and prescribed *Thānās* and other places where the timber or other produce may be brought for examination and recover.

viii. For infringement of the provisions of the rules a penalty up to Rs. 200 or imprisonment up to one month was prescribed under rule-11 of the said Rules.

6.7.6 Korāput District

This rule was published vide Notification No. 397 & 398, dated 4th November 1919, of *Fort St. George Gazette.* The rule was applicable to Korāput, Bissamcuttak Estate under the *Mahārājā* of Jeypore. The administration of forests in Korāput, Bissamcuttak Estate falling under Pārvatipuram Division of the Vizagapatam District was under the *Mahārājā* of Jeypore. The rules which were known as Jeypore Forest Rules and the seigniorage rates applicable for the forests of those areas were as notified by the District administration and Agency Commissioner of Vizagapatam District.

6.8 Orissa Government Reserved Forest Shooting Rules, 1938

This rule was published vide Notification No. 3641, dated 2nd July 1938, by the Government of Orissa, Local Self-Government Department.[54]

This Rule was applicable to the areas falling under Madras Presidency i.e., the undivided Gañjām and Korāput districts, Bālligudā and G. Udaygiri *Tāluk* of Phulbāni District. Important Provisions of the Rule were:

i. The Rule was made by the Governor to regulate hunting, shooting and fishing by poisoning of water and the setting of traps or snares in such forests and the killing and catching of elephants in such areas where the Elephant Preservation Act, 1879 and the Madras Wild Elephants' Preservation act, 1873 were not in force.
ii. The Conservator of Forest was empowered under this Act to order for closing of forests for shooting and hunting.
iii. No person other than permit-holders could shoot, hunt or fish, poison or dynamite the rivers and other waters, spear or run deer with dog, erect dams or fix snares or kill wild elephant and to do the other activities as restricted under rule-4 and 5 of the said rules in Government Reserved forests.
iv. The Divisional Forest Officer, subject to the control of the Conservator of Forest under Rule-6 was empowered to grant a general permit to hunt, shoot or fish or a special permit to fish, shoot ground and for winged game or shoot a carnivore or bear only. He was also empowered to grant special free permit for destruction of any animal declared by the district or sub-divisional officer to be especially dangerous.
v. For getting a general permit for hunting, a fee structure was prescribed as follows:

Table 6.4: *General Permit Fee Structure for Hunting and Fishing*

(Fig. in Rs.)

Period	By residents of the district in which the forest was situated	By residents of the other districts of the Province	By persons residing outside the Province
1	**2**	**3**	**4**
General Hunting Permit Fee Structure			
10 Days	10	15	20
1 Month	20	30	40
Fee Structure for Special Orders to Fish, Shoot Ground and for Winged Game			
10 Days	2	3	5
1 Month	4	6	10
Fee Structure for Special Orders to shoot carnivorous or bear only			
10 Days	5	7	10
1 Month	10	15	25

Source: Government of Orissa, Local Self-Government Department Notification No. 3641, dated 2nd July 1938.

But there was no fee chargeable for destruction of wild dogs or any animal declared by the district or sub-divisional officer to be especially dangerous.

A duly enacted piece of statute in the form of an Act or a Rule is a great source of historical information. It explicitly provides a lot of authentic information on its contemporary social, political, economic and administrative environment. It also provides information about the level of knowledge and understanding of the rulers and their mindset towards the ruled.

In spite of a lot of criticism and allegations of ruthless administration by the British; from a plain reading of the Madras Forest Act,1885 it may be realised that, in addition to their inalienable pecuniary objectives and expectations from the colony they were highly concerned about conservation of the natural resources and were not apathetic towards the interests and rights of their colonial subjects as it has ever been portrayed. Definitely, it might have an intelligent decision from the part of the Indian law makers to let the Madras Forest Act,1882 outlive its creators for several decades after India's independence, which otherwise exhibits the inherent legislative strength in that Act.

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