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Conflicting Laws Are Criminalising Forest Communities for Exercising Their Rights

BY ARPITHA KODIVERI ON 02/05/2017 • 1 COMMENT

While the Forest Rights Act guarantees rights to forest-dwelling communities, the forest department continues to use two other Acts that criminalise the same activities.

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It was a balmy morning in the forests of Mannekpur as community members gathered to discuss the atrocities they continued to face from the forest department. The governance of Indian forests has been a fairly complicated issue since India was under colonial rule. Human dominion over these forests has shaped their ecosystems just as much as they have influenced human livelihoods. However, the colonial legacy of our forest laws (https://thewire.in/42899/legal-definition-of-forest-in-india/) continues to insist that we treat the complex and dynamic forests of India as a pristine ecosystem that should be free of human habitation.

While the 2006 Forest Rights Act (FRA) did bring respite to native communities and Adivasis by giving them ownership over these lands, several other laws that either contradict the provisions of this Act or directly undercut the rights granted to the forest communities continue to exist. An example of this conflict is present in a recent letter from the National Tiger Conservation Authority dated March 28, 2017, which states that "In the absence of guidelines for notification of Critical Wildlife Habitats, no rights shall be conferred in Critical Tiger Habitats which is duly notified under Section 38 V (4) (i) of the Wildlife (Protection) Act, 1972 under the Act cited under subject". This creates an inviolate zone where the FRA cannot be applied, though statutorily such an exception only exists in critical wildlife habitats.

The forest department continues to use forest and wildlife offences to chastise forest-dwelling communities, whose members are often charged with the unauthorised use of forest resources under the Indian Forest Act of 1927 (IFA) and the Wildlife Protection Act of 1972 (WLPA).

The legal architecture that governs our forests is complex and conflicting. Forest and wildlife offences are legal mechanisms to ensure that the illegal use of forest resources can be deterred by the forest department. However, some of these prohibited activities are now guaranteed as rights under the FRA, but there have been no serious legislative efforts to reconcile these conflicting laws yet. Due to this legal quagmire (https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0ahUKEwi3kM-DsNDTAhWLP48KHUqrAxEQFgg5MAQ&url=https%3A%2F%2Fthewire.in%2F63605%2Fwetlands-conservation-forests-cwra%2F&usg=AFQjCNG69N4qmZps0qIFWUvXiBLBv-bz4Q), forest rights ranging from the right to harvest non-timber forest produce to grazing can continue to be criminalised by the forest department under the IFA and WLPA. Data on environment-related offences (http://ncrb.nic.in/StatPublications/CII/CII2015/FILES/Compendium-15.11.16.pdf) shows that 77% of all such offences are committed under the IFA and 17.4% under the WLPA. This shows that passing the 'landmark' 2006 law has not drastically reduced the charging of offences under these Acts.

An important aspect of forest offence cases is the discretionary power of the forest department that accompanies it. This discretionary power includes the right to arrest without a warrant and seize property including cattle. This discretionary power remains unchecked and has resulted in the violation of rights to due process and human rights of forest dwelling communities.

When the exercise of forest rights constitutes an offence, what is the legal approach to such a conundrum?

Checking the forest department's powers

The IFA gives the forest department immense power to control the use of forest resources and charge people for forest offences. The department's powers include the power to arrest someone without a warrant and the power to seize property that has been illegally acquired from forests.

The forest department has broad discretionary power in determining the nature of forest offences and the evidentiary basis of arrest. This discretionary power is often misused. In Manikpur, communities were charged with illegal extraction of firewood and grazing – which the communities claimed were false. In UP's Ranipur Wildlife Sanctuary, communities claimed that they were falsely charged with wildlife offences, particularly hunting (which is a graver offence) even though they were merely collecting firewood.

There is a need to develop guidelines for the forest department's use of its powers in order to comply with the existing legal standards of evidence, due process and human rights. In another instance, an Adivasi community's members were arrested for fishing in waters that are home to the endangered Mahseer fish – in this case, a bag of fish and a sickle were considered evidence enough to arrest people. Such cases show that the forest department's unchecked discretionary power can violate these communities' right to due process. Weak evidentiary requirements and wide discretionary powers render the forest department a powerful actor in the restriction of communities' forest rights.

This power to charge forest and wildlife offences is part of an ideology of conservation where forest areas are to remain devoid of human interference. In the largely human-dominated forests of India, Adivasi communities that live in them continue to depend on forests for their livelihoods. Such an exclusionary model of conservation can only function by denying these communities their right to their lands and resources.

The FRA aimed to challenge this exclusionary model of conservation by giving forest-dwelling communities the right to manage and conserve their areas. The Act could create an avenue for communities to

determine for themselves the basis on which the management and regulation of resource use should take place. Currently, the forest department produces a working plan for the management of a given forest area, and this acts as the document that guides the department's decisions, along with the state forest manual. Once the community has management powers over a patch of forest land, it can develop a community management plan, based on which forest resource use can be regulated. It is ambiguous how one will read the management plan of the forest department along with the management plan of the community. Will surrendering management powers to the community remove the powers of the forest department? It becomes important to address this pertinent question as the shift in management powers may negate the powers of the forest department to charge community members for forest offences.

The 2015 figures (http://ncrb.nic.in/StatPublications/PSI/Prison2015/Full/PSI-2015-%2018-11-2016.pdf) provided by the National Crime Records Bureau demonstrate that 67.2% of inmates across the country are under trial and are awaiting a verdict. Given the inertia of India's criminal justice system, Adivasi communities, which are seldom able to afford legal counsel, are forced to rely on the state's legal services authorities for legal aid.

These circumstances locate the prospect of being arrested under forest or wildlife offences within the larger questions of access to justice and the lethargic criminal justice system. When communities are charged with forest offences for exercising their legitimate forest rights, there is a need for legal intervention. The FRA was designed to erase forest offences to the extent of legally recognised rights. The existing power of the forest department emerges from the discretionary powers it has been granted in the IFA and WLPA, as well as the ideology that conservation is about the maintenance of inviolate spaces. There is a need to examine these discretionary powers in light of the FRA and limit them so that legitimate holders of rights cannot be charged with forest or wildlife offence cases for activities that involve exercising their rights.

The ideological underpinnings are becoming harder to address as the forest department continues to be hesitant in accommodating notions of community-based conservation, which can be seen in its resistance to implementing the FRA in many parts of the country. Addressing this conflict by doing away with forest offence charges where corresponding forest rights exist may open up avenues for tackling the ideological underpinnings as they would be forced to accommodate community needs as legitimate rights and not dismiss them as offences.

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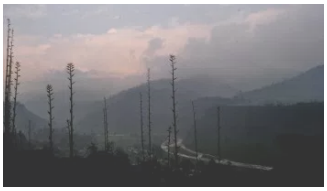

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