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BEGINNING OF FOREST LEGISLATION IN WEST BENGAL

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[Author's Note: This article is excerpted from a yet to be published paper titled "A History of Forest Laws in West Bengal" which deals with the evolution of forest laws and rules in West Bengal.]

Introduction

In 1862, Dr. Dietrich Brandis, while on his way from Burma (Now Myanmar) to Calcutta to take up the post of the Inspector General of Forests in India, inspected some of the forests of Bengal and submitted his proposals to the Government of India for conserving these forests. As a sequel, in January 1863, the Government of India requested the Government of Bengal to give its attention to the conservation of forests under its jurisdiction, and to "favour us with its views as to the best course to be adopted in placing this branch of the administration on a more efficient footing" (Stebbing, 1921). Conservancy of forests was inaugurated in Bengal on 3rd August 1864, when Dr. Thomas Anderson was appointed as the first Conservator of Forests (C.F.) of Bengal. Much water has flown down the Ganga since then. The Forest Organisation, which earlier extended to the present Bangladesh, Orissa, Bihar, Jharkhand, Uttar Pradesh (Gorakhpur only), Assam and parts of some other north-eastern States, is now confined to West Bengal. But it can now boast of tremendous increase in terms of activities, man-power, finances, technical inputs, etc. The policies and the priorities of the Forest Department have also undergone a sea change in order to keep pace with the changing social, political, economic and demographic scenario of the country. Obviously, all these changes have had their

toll on the laws, rules and regulations governing the management of forests in the State. This paper seeks to trace the evolution of forest laws and rules (excluding wildlife laws which have been discussed in a separate paper) in West Bengal since the inception of the State Forest Department.

Beginning of forest legislation

The founder fathers of forestry in India realised right from the beginning that forests needed a special law for better protection and management. The despatch dated 1st November 1862 from the Governor-General in Council to the Secretary of State on the subject of forests stated that: "— but the facilities for the destruction of forest are so great, the difficulty of reproducing it so insurmountable, and the general tendency in this country to accept as truth the fallacy that the clearance of forest is of itself necessarily an improvement so common, that it will be important to record forest boundaries, and to set forest land apart in a very strict and formal manner, and it seems even possible that the object might be best attained by an Act of the legislature. But the exact way of doing this must be a matter for further consideration" (Stebbing, 1921). Probably the law-makers also took inspiration from the prevalent forest laws in Europe, such as the French Forest Code of 1827, the Austrian Law (Forstgesetz) of 1852 and the Bavarian Law of 1852. Be as it may, the first forest law titled 'The Government Forests Act, 1865' (GFA, 1865)

came into force on 1st May 1865 in many parts of the British India including Bengal.

Government Forests Act, 1865 (Act VII of 1865)

Section 1 of the GFA, 1865 defined Government Forests as "such land covered with trees, brushwood or jungle, as shall be declared in accordance with the second Section of this Act to be subject to its provisions". Section 2 of the Act stipulated that the Local Governments may, by Gazette notification, bring under the provisions of this Act, any land covered with trees, brushwood or jungle, provided that such notification should not abridge or affect any existing rights of individuals or communities. Sections 3 and 4 of the Act authorised the Local Governments to frame rules, subject to confirmation by the Governor-General in Council, for preservation of either all or some specified trees, shrubs and plants, within Government Forests by prohibiting felling and lopping thereof; by prohibiting the kindling of fires and the grazing of cattle within such forests; etc. The rules could also be framed for regulating the use of streams and canals for the transport of timber; for safe custody of timber from Government Forests by laying down the procedure for harvesting and disposal of such produce; and for regulating the duties of the Government Officers charged with the management and conservancy of Government Forests. Sections 7 and 8 empowered any police officer or 'person employed as an officer of Government to prevent infringement of the rules made in pursuance of this Act' to arrest any person infringing any of such rules, and seize any implements, timber or forest produce involved in such infringement. Section 13 provided that all fines and penalties under

the rules would be enforced by a Magistrate in the manner prescribed by the Code of Criminal Procedure. Section 14 of the Act empowered the Local Government to remit the penalty or discharge the offender within three months after final judgement. Section 17 of the Act stipulated that no charge of an offence under the Act would be instituted except within three months after the commission of such offence.

The first reservations were notified in the official Gazette on 13th July 1865 according to the new Act in the forest areas of the present Darjeeling Division as well as the Sal forests of the Terai districts reserved from sale under the Waste Land Rules (Ray, 1964). A code of rules for the better management and control of the forests of British Sikkim (i.e. Darjeeling), under the GFA, 1865, received the confirmation of the Government of India on 5th September 1866 (Stebbing, 1923). Rules for the management of the forests in the Doon were sanctioned by the Government of India through a notification dated 16th February 1871. These rules recognised two distinct classes of forests, viz. Open and Reserved Forest. All forest reservations in Bengal, or North Bengal to be precise, till 1877-78 proceeded on the basis of the GFA, 1865 and the rules made thereunder (Ray, 1964).

A Critique of the GFA, 1865

Applications of the GFA, 1865 did not prove to be satisfactory. In the first place, it professed to deal only with the Government Forests. But the definition of the Government Forests given in the Act was a great source of confusion. Baden Powell (1882) called this definition 'imperfect and unsatisfactory'. He remarked that: "Indeed, it (the definition) is mischievous: since if a forest is land covered with trees, etc., and

declared under the Act, it would follow that a tract of land not so covered, even if it were declared, would not be legally a forest, or subject to the law. It may happen that land perfectly bare, or covered only with grass, is taken up for a large plantation which can only be gradually completed; nevertheless, it would be important to have the whole area under forest law from the beginning." The Act also failed to provide a satisfactory procedure for reservation of forests and settlement of rights thereon. In their letter dated 24th September, 1868 to the Government of Bengal, the Government of India observed: "Act VII of 1865, under which any forest rules would have to be sanctioned at present, contains no provisions concerning the regulation of forest rights, but only stipulates that the notification defining Government forests shall not abridge or affect any existing rights of individuals or communities. No rules, therefore, can be framed under this Act to facilitate the regulation of forest rights" (Stebbing, 1923). The Act even failed to define the term 'Forest Officer'. The GFA, 1865 lasted only for 13 years and was superseded by a new Act titled 'The Indian Forest Act, 1878' (IFA, 1878).

Indian Forest Act, 1878 (Act VII of 1878)

The IFA, 1878 came into force on 8th March 1878 in many parts of the British India including the Lower Provinces (as the Bengal and Assam were referred to at that time). This Act provided for the constitution of 'Reserved Forest' (R.F.) [Chapter II] and 'Protected Forest' (P.F.) [Chapter IV] and laid down the procedure for this purpose. It also made provisions for the constitution of Village Forests (Chapter III) and management of forests and lands which, though 'do not belong to the Government, yet need protection' [Chapter VI]. It

empowered the Local Government to make rules for imposing duty on timber (Chapter VII); regulating transit of timber and other forest produce (Chapter VIII); and collection of drift and other stranded timber (Chapter IX). The Act identified the activities in the R.Fs (Section 25) and the P.Fs (Section 32) which could be regarded as offences and laid down the procedure for trial of offences and imposition of penalties (Chapter X). The Act made the provisions of the Cattle Trespass Act, 1871 applicable to the R.Fs and the P.Fs, but laid down a different scale for levying fines for the impounded cattle (Chapter XI). The Act defined the term 'Forest Officer' (Section 2), empowered the Local Government to invest the 'Forest Officer' with certain powers (Section 71), recognised Forest Officers as 'public servant' (Section 72), and barred them from trading in timber or other forest-produce (Section 74). The Act also made provisions for involving the beneficiaries from a R.F. or a P.F. in preventing fires and offences in such forest (Section 78). It also provided for a procedure for recovering the money due to the Government on account of revenue from the forest-produce (Sections 81 and 82) [Anon., 1878].

The IFA, 1878 was amended by the Forest Act, 1890 (Act V of 1890), the Amendment Act, 1891 (Act XII of 1891), the Indian Forest (Amendment) Act, 1901 (Act V of 1901), the Indian Forest (Amendment) Act, 1911 (Act XV of 1911), the Repealing and Amending Act, 1914 (Act X of 1914), the Indian Forest (Amendment) Act, 1918 (Act I of 1918) and the Devolution Act, 1920 (Act 28 of 1920).

After the promulgation of the IFA, 1878, fresh notifications were issued notifying all the reserved forests under the new Act (Ray, 1964).

IFA, 1878 Experience in Bengal

It is interesting to note the experience of the old forest officers of Bengal as regards the application of the IFA, 1878. In the Annual Report for 1892-93, the C.F. noted that: "There is no Forest Ranger in Bengal on a higher salary than Rs. 80 per month whereas the Section 67 of the IFA, 1878 allows no officer of less rank than a Ranger on a salary of Rs. 100 to compound offences." A serious offence of counterfeiting a Government hammer and using it in a windfall (i.e., cyclone damaged) coupe of Sundri (*Heritiera fomes*) in the Sunderbans* was detected in 1910-11 but no action could be taken against the culprits (Annual Report, 1911-12). The Divisional Forest Officers (D.F.Os) frequently complained that the penalty imposed by the Courts on the offenders was too meagre. In Chittagong Division†, there was no case of imprisonment in 1912-13, only 3 cases of imprisonment in 1913-14, only 6 cases of imprisonment in 1914-15, and only two persons were given imprisonment in 1915-16: one for 1 day and another for 3 days (Annual Report, 1915-16). It was reported that in many cases offenders preferred to go to Court instead of paying compensation (Annual Report, 1915-16). Mr. Homfray, D.F.O. Chittagong Division, was quoted in the Annual Report for 1916-17 as saying that: "The writer is certain that the number of offences would be reduced very considerably if the Courts gave sentences of imprisonment without the option of a fine.... That poverty is not the reason for the increase of crime is proved by the readiness with which offenders pay up fines inflicted by the Courts. Cases of offenders going to prison through inability to pay fines are unknown." Mr. Homfray also complained about the management of khasmahal forests in Chittagong "where officers neither select, nor mark the sold

trees----- consequently, there is always a large quantity of unmarked timber lying about the district." He suggested that: "....if it is held that khasmahal officials have no time to mark trees and timber from their forest, the only alternative seems to be for the Forest Department to take over the management of them" (Annual Report, 1915-16). However, the experiment of authorising khasmahal officers to issue passes for forest produce led to friction and was abandoned (Annual Report, 1918-19).

Revision of the IFA, 1878

The IFA, 1878, which had succeeded the GFA, 1865 and which had provided a model for corresponding Forest Acts of a number of the Commonwealth countries, was revised in 1927 as the Indian Forest Act, 1927 (IFA, 1927). The following objects and reasons for the new Act were given while introducing the Bill in the legislature: "The IFA, 1878 and its various amendments have been brought under one enactment; language of the Act has been improved taking advantage of the General Clauses Act, 1897; ambiguous language of the second Para of Section 2 of the IFA, 1878 has been altered in Sub-section (2) of Section 42 so as to bring it in conformity with what appears to have been the original intention of the law; and Assam has been omitted from the extent clause in view of the Regulation VII of 1891" (Bagga, 1989).

What is the present fate of the IFA, 1878 and its various amendments? It may be mentioned that Section 86 and the Schedule of the original IFA, 1927 provided for repeal of the IFA, 1878 and its various amendments (Anon., 1927). Surprisingly, the IFA, 1927 did not provide for any saving clause to protect the legal status of the R.Fs and the P.Fs notified under the IFA, 1878, thus creating a paradoxical situation.

* Now situated between West Bengal and Bangladesh.
† Now in Bangladesh.

However, Section 86 and the Schedule were repealed by the Repealing and Amending Act, 1947 (Act II of 1948) (Anon., 1979). This, in effect, means that the IFA, 1878 along with its amendments and various rules and orders issued thereunder has come back into force!

Indian Forest Act, 1927 (Act XVI of 1927)

The IFA, 1927 came into force on 21st September 1927. The changes in the 1927 Act were small and consisted mainly in redrafting the IFA, 1878 and its amendments. The small changes included, in Section 30(b) permission to close portions of P.Fs and suspend rights therein for a maximum period of thirty years as compared with the twenty years fixed in the IFA, 1878. In Section 79, the duties of the public to prevent and extinguish forest fires and help the forest or police officers in preventing forest offences were clarified and made somewhat extensive (Champion & Osmonston, 1962).

Amendments in the IFA, 1927

1. The Central Amendments

The IFA, 1927 has been adapted by the Adaptation of Laws Orders in 1937, 1948, 1950 and 1956 with a view to bring it in conformity with the constitutional changes. The Act was amended by the Indian Forest (Amendment) Act, 1930 (Act XXVI of 1930) when 'Kuth' (*Saussaria lappa*) was included in the definition of Forest Produce. The Act was next amended by the Indian Forest (Amendment) Act, 1933 (Act 3 of 1933) when the term 'Owner' was defined. Section 86 and the Schedule of the Act were repealed by the Repealing and Amending Act, 1947 (Act II of 1948) (Anon., 1979).

2. The West Bengal Amendments

The Government of West Bengal has amended the IFA, 1927 four times:

- 1) Sections 35, 36, 37 and 38 (i.e., whole of Chapter V dealing with control over forests and lands not being the property of Government) of the IFA, 1927 have been repealed in their application in West Bengal as per Section 63 of the West Bengal Private Forests Act, 1948 (Act XIV of 1948).
- 2) The Indian Forest (West Bengal Amendment) Act, 1975 (Act XIV of 1975) came into force on 6th May 1975. It amended Section 68 (power to compound offences) of the IFA, 1927 and, inter alia, enhanced the limit of amount of compensation to be realised from the accused to Rs. 1150. The same amendment also increased the scale of fine for cattle-trespass as prescribed in Section 71.
- 3) The Indian Forest (West Bengal Amendment) Act, 1981 (Act XXXIX of 1981), became effective on 15th December 1981. It amended Section 2 of the IFA, 1927 by including Sal (*Shorea robusta*) seeds, Sal leaves, Kend (*Diospyros melanoxylon*) leaves, and wild animals with their parts and products in the definition of Forest Produce and by defining the term 'wild animal'. This amendment also inserted Chapter VIII A and Section 51A to the IFA, 1927 thus empowering the State Government to make rules for regulating manufacture and preparation of articles based on forest produce.
- 4) The Indian Forest (West Bengal Amendment) Act, 1988 (Act XXII of 1988), which came in to force on 3rd February 1989, made sweeping changes in the IFA, 1927. It amended Sections 26, 33, 41, 42, 51, 51A, 52, 53, 54, 55, 56, 58, 63, 68 and 74, and inserted new Sections viz., 52A, 59A,

59B, 59C, 59D, 59E, 59F, 59G, 65A, 66A and 84A. In essence, this amendment increased the penalty for various forest offences; empowered the forest officers to vacate encroachments from R.Fs and P.Fs; provided the forest officers with semi-judicial powers to seize and confiscate vehicles and implements used in forest offences; and made abatement of forest offences a punishable offence.

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