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Delegated Legislation in Indian Forest Act, 1927

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ABSTRACT

'When more Powers vest in the hands of the authority, the real purpose of the law is neglected'. The ultimate solution to this is delegation of power to different classes/ ranks of people in accordance with the statutes. Delegation of powers allow the authority to focus on other important matters and implementation of law is done in a better manner when powers are Delegated. This research Paper expresses the intention of one such live example of delegated legislation w.r.t. Indian Forest Act, 1927. The power/Authority which trickles down to various levels has certain advantages as well as Lacunae's and this paper tries to bring forth those gaps. This research paper also lightly touches upon the newly tabled bill amendment bill of 2019. Analysis has been done using relevant case laws and live examples ending with suggestions.

Keywords: Indian Forest Act, Delegated Legislation, Power of Authorities.

I. INTRODUCTION

The relationship between mankind and nature has varied from changing situations and needs. Man's ever-changing wants and greediness towards fulfilling those wants has led to the exploitation of nature in the most brazen way. Due to this, there have been constant collisions between the environment and human beings, the effects of which are being seen today. There is an increasing demand for the country to be tech-Savy and thereby putting a strain on the environment and disarming the equilibrium of the state. To bring environmental degradation under control, environmental policy is of immense relief.

Many legislations were passed by the Britishers to conceal their activities of exploiting nature by cutting down timber, farming cash crops, smelting the iron etc. for their own benefit and business. The process of protecting the forests in India gained momentum when the activity of railways started in 1853. Various areas of the forest in the Himalayan region were declared as protected areas under those legislations under the guardianship of the British Government.

Forest Conservators were Appointed In several provinces and the department of forest was established. The revised forest act was passed in 1878. Most of the Indian Territories were

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covered under act and the powers of British Government were expanded as they could further delegate those powers to the forest administrative authorities to impose penalties for trespassers in the forest reserved zones.

The British Government at that time declared a Forest Protection policy which covered forests into Four areas:

1. The preservation on climatic grounds.
2. Preserving forests for Timber and commercial purposes.
3. Minor forests protection
4. Pastures preservation

To implement these policies the Indian Forest Act of 1927 has been enacted which is more comprehensive in nature.

II. CONFERENCE OF POWERS

The legislative body in India is now more concerned with making policy decisions as they can't devote their time in making minutely detailed laws for that they have started delegating their ancillary decision-making powers to the executive authorities. They further carry out that power by making rules, issuing notifications, circulars, etc. Which are in line with the purpose of the legislature. This delegation of powers can be further done by the executive authorities to other bodies if the parent act/enabling statute permits to do. This method is called Sub-delegation. Subdelegation can happen up to as many levels and powers as may have been permitted by the legislation. But if the decision or power exceeds that, then such a declaration of rules or notifications will be ultra vires to the parent act and therefore void in nature. In Indian Forest Act, 1927 there has been delegation happening to various levels and the authority has been conferred to the following authorities;

- Section 1(3)² which is the short title to the act clearly states that the statute confers powers upon the state governments to bring the Indian Forest Act, 1927 into effect from any date by giving notification in the official gazette and the said notified act can be brought into force anyone or whole part of the state as well. All this is left up to the discretion of the State Government. The form of permissible delegation allowed under this act is **Commencement**

² Indian Forest Act, 1927 Section 1(3) It applies to the territories which, immediately before the 1st November, 1956, were comprised in the States of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal; but the Government of any State may by notification in Official Gazette bring this Act into force in the whole or any specified part of that State which this Act extends and where it is not in force.

powers being given to the executive authority.

- Section 41A also grants power to the central government to make rules if required for the transit of any forest produce or timber in and out of the territories in or outside India I.e., importing, exporting, or any custom barriers. This power has been conferred to both the central and the state governments, but the scope of state government has been kept wider in nature. “If the rules are made by the state government regarding this import/ export they will be subject to rules made by the central government in this regard³”.

- Section 4⁴ of the Act states that the state government has the power to appoint a forest officer to control the forest areas which are reserved by the state government. This form of delegation is known as supplying details. His powers and rights regarding making decisions have been mentioned in Section 8⁵ and Section 9⁶ respectively.

These are the authorities to whom the power can be delegated under this act.

III. POWERS OF THE STATE, DELEGATED LEGISLATION IN ACTION

(A) Reserved Forests

There are various types of forests which have been notified by this act. But Section 3 of the act gives powers to State government to declare any forest or wasteland as reserve forest area. The declaration should be made by mode of publication and notification. Once that is done the state “Government will have all the ownership rights over that reserved forest area and will also have community rights⁷”. This shall have no retrospective effects I.e., the individuals or any community having rights in that forest area after being notified by state government as reserved will be extinguished. To bring any area under the reserved forest category the following procedure must be followed;

1. The state government to declare the forests reserves they have to give an official notification stating the consensus of the government in demarcating the boundaries of the area as a reserved forest.
2. The forest Settlement officer (FSO) will be appointed to keep a check on the

3 Indian Forest Act, 1927 Section 41A **Powers of Central Government as to movements of timber across customs frontiers.**

4 Indian Forest Act, Section 4 (c) appointing an officer (hereinafter called “the Forest Settlement-officer”) to inquire..

5 Indian Forest Act, 1927 Section 8

6 Indian Forest Act, 1927 Section 9

7 Indian Forest Act, 1927 Section 3 The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided. ⁷

Indian Forest Act, 1927 Section 6&7 ⁸ Indian Forest Act, 1927 Section 20.

claims of the people living in that area and address the grievances and queries. This power is conferred upon by the state government.

3. The FSO on receiving any queries have to address them and settle the claims of the individuals if any and registered in the Government record⁷.

4. “After all the conditions have been fulfilled by the FSO, the state government can notify the forest areas by drawing boundaries or erecting something on it⁸”. They have too first published such notification in the official gazette and the forest will be considered a reserved from the date which has been mentioned in the notification published.

In case of *Ratan Singh v. state of UP*, it was held “State government could issue notification under Section 4(Notification of reservation of forests) only about the land described in Section 3(Powers of state to reserve forest). If the land described in the notification is not mentioned under Section 3, then no such power can be exercised by the State government on such land⁸”.

A live example of the above provisions and the power of states w.r.t declaring a forest as Reserved is as follows. “⁹The tussle between Aarey colony being a forest or not is at a stage where the Maharashtra Government has declared and issued a final notification which states that 800 acres of land” will be declared as reserved forest area under section 3 and 4 of the Indian Forest acts, 1927 an official notification was also published in the gazette regarding the same. As the Notifications says, a Forest settlement officer has been appointed “he area to be excluded from the forest will be ascertained after seeking suggestions and objections from citizens. Since the issue of notification, suggestions and objections are expected to be submitted within three months¹¹”. An appeal can be made against the FSO to the Mumbai suburban district Collector. After all such formalities have been fulfilled a final notification under section 20 of the act will be published and from the date mentioned in the notification the reserved forest area will come under the state's forest ministry's jurisdiction.

- **Village Forests**

Chapter III section 28 of the Act defines village forests. “There is a discretion of the state government to assign any forest area to the village government¹⁰”. Only those forests over which the government has any rights and which have been declared as reserved forests can be declared as village forests. The state government has been bestowed with the power to make

⁸ *Ratan Singh v. State of UP*, 1980 (6) ALR 228.

⁹ <http://www.indiaenvironmentportal.org.in/files/file/Aarey-Judgment-Vanashakthi-Plea-Bombay-HC.pdf>.

¹⁰ Indian Forest Act, 1927 Section 28.

rules regarding managing the village forests.” The Maharashtra State Government, in order to regulate the management of the village forests, came up with Village Forests Rules 2014¹¹”. This is a clear example of delegated legislation.

Kumbhiwagoli is such a village forest declared by the government belonging to Korku tribals in the Melghat region in Maharashtra. The tribal people wanted to conserve and develop forests in this region and the government granted them one under the Maharashtra Village Rules, 2014 which derives its powers from the Indian Forest Act, of 1927. “This provision enacted in 1997 was a step to involve village communities in forest management¹²”.

- **Protected Forests**

The State Government has the right to declare the forest a protected forest which has been declared as reserved forest under the Indian Forest Act, 1927. The government has proprietary rights over the produce in the forest under the declared area of village forests. Thus, the government must survey the claims which must be taken from private individuals, and after that claim must be settled only then the region will be declared as protected forests.

“With the addition of the state’s 50th wildlife sanctuary and 10 new conservation reserves (CR), Maharashtra has expanded its protected area network from 62 to 73 zones with over 10,000 sq km of the state now secured¹⁵”. This is done in consonance with Indian Forest Act and Indian Wildlife Act.

- **Non-Governmental Forests**

Kashi Prasad Sahu v. the State of Orissa held that “The Forest Act intended to be a piece of legislation not only in respect of government forest but also in respect of forests and land not belonging to government¹³”. The State Government can make rules and publish them and notify and notify them which relates to clearing of the forest areas for cultivation, pasturing, the following purpose can be achieved by the state government;

- a) Protecting the forests against natural calamities.
- b) For protection of land and soil against erosion and landslides.
- c) For maintain the water supply in the internal forest areas.
- d) For protecting the roads, railways tracks, bridges.
- e) For preserving public health, the forests can be cleared out.

¹¹ <http://www.indiaenvironmentportal.org.in/content/389909/maharashtra-village-forest-rules-2014/>.

¹² <https://indianexpress.com/article/india/india-news-india/a-village-that-wanted-a-forest-and-got-one/>.

¹³ Kashi Prasad Sahu v. State of Orissa, AIR 1963 Ori 24.

“However, before issuing such notification, the state government is bound to issue show-cause notice to the owner of the forest or wasteland asking him why such notice not be issued and to make his objections¹⁴”.

IV. CONTROL OVER THE TRANSIT AND TIMBER PRODUCE

Section 39 of the act states that the central government may make rules for the transit of timber or any other forest produce which is grown in the territorial jurisdiction to which the act extends its boundaries to. “The Central Government is also authorized to levy duty/Modify the laws made by the state government if they related to import/export on all the timber produce¹⁵”. This can be done only over that place in which the government has proprietary rights and when the produce is coming from outside to the land where the government has rights.

The Act also authorizes the state government to make rules w.r.t. floating timbers, as well as forest, produce I.e., transit of timbers via water bodies and thereby controlling the transit in the rivers and its banks and also on land. The state government may prescribe all those activities which are prescribed in section 41 of the Act. “Those activities include authorization of pass for transiting the timber or forest produce, examining the timber in transit, stoppage or confiscation of the produce, leaving of fees, prescribing routes for transit or for import and export¹⁶”. If any transit relates to customs and export or import the act even authorizes the Central government to make rules regarding such transit.

Section 42 of the act quotes penalties for contravening section 41 of the act. The section also gives powers to the police officers and to forest officers to examine and confiscate any produce in transit if they find that any rule is not followed, thereby prescribing punishment's will be another form of Delegated Legislation. “Any damage or loss of timber if happens at the hands of the officers will not be held liable for the same unless caused fraudulently¹⁷”.

In Maharashtra, the transit of forest produce is governed by the Maharashtra Forest Rules, 2014. “According to which a pass is required in transiting the timber and if any prior permission is taken from the forest officer to whom the discretionary powers have been vested by state¹⁸”, then pass won't be required. This is all notified in their regular notifications. What goods are to be included and excluded under the Maha Forest Rules is a form of DL which is inclusion and exclusion powers.

¹⁴ Indian Forest Act, 1927 section 35.

¹⁵ Indian Forest Act, 1927 Section 39.

¹⁶ Indian Forest Act, 1927 Section 41.

¹⁷ Indian Forest Act, 1927 Section 43.

¹⁸ http://117.239.200.163/mahaforest/internal.php?lang_eng_mar=Eng&id=41.

V. POWERS OF THE FOREST OFFICERS

TABLE NO:- 1 Powers of the Officers and its Delegation

SR NO.	SECTION	POWERS	SUB-DELEGATED BY
1.	S.72	Enter into Any land and survei and demarcate boundaries	State Government
2.	S.72	Powers of civil Court to attend witnesses and to ask for production of evidence and documents	State Government
3.	S.72	Search Warrant under crpc	State Government
4.	S. 72	Can Hold inquiry	State Government
5.	S. 68	Compound offences with fees not exceeding Rupees 50.	State Government by notification.
6.	S. 52	To seize the forest, produce if the officer believes that offence has been committed	State Government
7.	S. 64	To arrest a person and thus having the powers to do so with or without orders from magistrate	State Government
8.	S. 75	Not to act as an agent for trade of the produce unless specified by the government in writing	State Government

VI. JUDICIAL OUTLOOK

“The Supreme Court and High Courts have made a serious effort to eliminate arbitrary powers from this Act in order to remove the colonial touch, which existed in the Act at the time of its enactment, and to secure the rights of various stakeholders in the contemporary democratic era¹⁹”.

1. Kailash Chand V. State of M.P²⁰ : - Section 52 of the act which confers power upon the forest officers to confiscate the produce in relation to the offence. The powers are akin to the magistrate given in the crpc. The forest officer has the power to pass an ancillary order to seize the produce for temporary custody of the goods. Thus, here the power of magistrate has been taken away and given to the officer only after initiation and intimation is made.

2. UOI V. Abdul Jalil and ors: - The respondents were convicted of a crime under the IFA, 1927. It was contended that the reserves in which the offences were committed were not reserved forest areas under the Act. They alleged that the tripura act section 5 marked the boundaries after a notification and publication in the gazette. “The appellant urged that the Tripura Act was replaced by the Indian Forest Act by reason of legislative provisions upon the merger of the native State of Tripura with the Dominion of India, and that the notifications under the Tripura Act which were continued in force by these same provisions rendered these reserves "Reserved forests" under the Indian Forest Act²¹”. It was held even though although all conditions have been fulfilled under IFA, 1927 the offence was not committed under the IFA so as any notification was not issued by the Tripura government as it being an offense. So that was considered only as a protected forest and not reserved one.

VII. CONCLUSION AND WAY FORWARD

The Indian Forest Act 1927 addresses the lacunae's which were present in the previous legislation related to the forest in the British Colonial Era. Howmuchevever , the act has been successful in describing and categorizing forests and their extensive usage but it has failed to recognize the concentration of arbitrary powers in the hands of the government who is the sole decision-making authority. The central idea for legislating this act was different as in theory more powers were left to the discretion of the forest officers, but how much of it is followed on paper is always a question as there were several reports which stated that the forest uses in transit were detained illegally for collecting more and more revenue and the orders used to

¹⁹ Indian Forest Act, 1927, Environmental Law and Policies, <https://www.shivajicollege.ac.in/sPanel/uploads/econtent/d3841d32ee08f0c0fff1777e55efb648.pdf>.

²⁰ Kailash Chand v. State of MP, AIR 1995 MP.

²¹ Union Of India vs Abdul Jalil And Ors on 5 May, 1964, 1965 AIR 147.

directly from the government, thereby making the forest officers only rubber stamps. Also, the act does not contain any provisions regarding the flora and fauna which are present in the forests recognized by the state.

Even though the act aims at conserving the forest and protecting its forest produce duties, the main objective of the act is still not met which is protecting the forest from exploitation. The essence of it was lost when the forests, even the village forests were regained control by the government depriving the community of their forest rights so that more and more revenue can be generated from the produce. Eventually the act couldn't protect the regulation of forest lands earlier from the hands of people itself and now at the hands of the Government.

The Forest Act requires amends in matters where the focus should be shifted towards conservation and enrichment of sustainable use of forest resources to safeguard ecological stability. This is proposed in the amendment bill of 2019 which is tabled to bring changes to the existing act. As forest dwellers, being the rightful inhabitants of the forest lands, deserve to get all their rights fulfilled by the government exploiting their lands for their own benefit.

VIII. REFERENCES**BARE ACTS AND LAW REFERENCES**

1. CPC
2. Crpc
3. Indian Forest Act, 1927
4. Maharashtra Forest Rules 2014
5. SSC Online

CASE LAWS

1. Kailash Chand v. State of MP, AIR 1995 MP.
2. Kashi Prasad Sahu v. State of Orissa, AIR 1963 Ori 24.
3. Ratan Singh v. State of UP, 1980 (6) ALR 228.
4. Union Of India vs Abdul Jalil And Ors on 5 May, 1964, 1965 AIR 147.

OFFICIAL WEBSITES

- 1 http://117.239.200.163/mahaforest/internal.php?lang_eng_mar=Eng&id=41.
- 2 <http://www.indiaenvironmentportal.org.in/content/389909/maharashtra-village-forest><http://www.indiaenvironmentportal.org.in/content/389909/maharashtra-village-forest-rules-2014/rules-2014/>.
- 3 <http://www.indiaenvironmentportal.org.in/files/file/Aarey-Judgment-Vanashakthi-Plea><http://www.indiaenvironmentportal.org.in/files/file/Aarey-Judgment-Vanashakthi-Plea-Bombay-HC.pdf>
- 4 <https://indianexpress.com/article/india/india-news-india/a-village-that-wanted-a-forest><https://indianexpress.com/article/india/india-news-india/a-village-that-wanted-a-forest-and-got-one/and-got-one/>.
- 5 <https://www.freepressjournal.in/mumbai/maharashtra-government-issues-notification><https://www.freepressjournal.in/mumbai/maharashtra-government-issues-notification-declaring-aarey-land-as-reserved-forest>.
6. <https://www.hindustantimes.com/environment/maharashtra-expands-protected-wildlife>
7. <https://www.hindustantimes.com/environment/maharashtra-expands-protected-wildlife-area-beyond-10000-sq-km/story-ho3Vv6pvGFABFBbRdNIYxI.html>

beyond-10000-sq-km/story-ho3Vv6pvGFABFBbRdNIYxI.html.

8. Indian Forest Act, 1927, Environmental Law and Policies, <https://www.shivajicollege.ac.in/sPanel/uploads/econtent/d3841d32ee08f0c0fff1777e55e>
