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INDIAN FOREST ACT: INTERPRETATION OF SUBSERVIENT THE FOREST NEEDS ELUCIDATION.

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In the context of law and its legal clarification in any subject, defining it's subdue matter is compulsory. Law is always followed under the decree of its rules, regulations, legislations, and norms of the concerned subject matter.

Law plays it vital role in every essentiality of the Indian territory, without a legal definition, no subject can demand its legal entity and identity. The Indian Bosky is one amongst such, which also needs it legal identification in the eye of law, astonishingly, which is not mentioned in the

framework of The Indian Forest Act.

There are many definitions about the woodlands which covers the entire Copse of the Country. But the prime factor "The Forest" was no where defined in the Indian Forest Act 1865, 1878 & 1927. Neither any policy guidelines, amendments, five year plans mentioned its legal definition in the purview of law. Nor even it mentioned the same in implemented Forest related Act/s post

independence.

The Indian Boscage was ruled by the then Rajas, Zamindars, Talukdars who followed their own created law/s in their individually earmarked territories. The then feudal powers named the woodland areas as per Vedas, Puranas, Arthashastra, where the Bosky were named as Arannya, Atabi, Bon, Jungle etc, and these identifications were continuing since time immemorial having adequate elerifications regarding the subdue metter. In 1760, after taking charge of India the

adequate clarifications regarding the subdue matter. In 1760, after taking charge of India the

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British Government also followed the same rules and regulations till inception of the Indian

Forest Act 1865.

Implementers of the said Act, the then British Government did not mention subservient the

Forest in which the said Act was based upon. It is presumed that either they were in a haste

situation in monopolizing absolute supremacy over the Indian Forest or their trading skill did not

allow them to emphasize on such logical ethics. But the facts necessitated its answer that, why

"The Forest" was not defined in the Indian Forest Act? When the, then British Government

condoned the fact. Is it tenable in the eye of law? How the present Governance overlooked

essentiality of such legal bindings? Why it was/is not incorporated in amendment/s, policy guide

lines, or five years plans? Post Independence when India declared itself as Sovereign Social

Democratic Republic Welfare State, how the Governance slighted such legitimate deed? Is it fair

enough, to stand on the platform of Democracy and accept such a grave lacuna which invites to

challenge the same?

Thereby, it is evident that the Democracy demands a logical licit clarification in the eye of law

which in not mentioned in the captioned subservient "The Forest" in the said Act which needs

elucidation.

Key Words: - Act, Definition, Elucidation, Forest, Law, Legal, Subject, Subservient.

Introduction:-

Legal formation of any subject matter has a compulsory laid down feature. In law every matter

deserves its licit definition, without which it may not come under the parlance of legal

framework. The legal array of the concerned subject is always under the decree of its rules,

regulations, legislations, norms, compulsory for all to abide by the same.

In Indian panorama, the law and its legal approach always play a vital role in case of its

interpretation, where subject matter is of prime importance. In the context of natural

phenomenon of India, interpretation of law is not applicable save an except the Indian Boscage,

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since the other natural phenomenon is not under the purview of legal bindings other than the

prevailing law of the land.

The vast country like India with all kinds of geographical definitions, where woodlands cover a

land area with canopy development which spread on us recognized nature to natural beauty. The

natural phenomenon which always protect life forms. Plant and Animal Kingdom are habituating

in such natural feature, where law of nature play its own role naturally. But, when jurisprudence

of law is the factor, then its legal composition of any subject matter is proviso, necessitate

iterating of its laid down components.

The present investigation on Indian Boscage and its legal entity peers into the concerning subdue

factor, needed delineation of the Indian Boscage rightfully.

The Indian Woodlands:-

The Alpine meadows of Kashmir in the North to the rainy climate of Kerala in South, the dry

thorny weather of Rajasthan and evergreen nature of North East India has developed India's

natural beauty, vegetation and represents wide diversity. Over 40000 Species of Plants are found

in these climatic zones, of which over 10000 are endemic and are not found anywhere else in the

world, it represents about 12 present global plant wealth. The woodland canopy of India are

classified in six major types –

• Tropical Evergreen Rain

Deciduous

Tropical Grasslands

Desert Shrubs

Mountain Vegetation

Mangrove

These divisions may be considered as macro-level and in micro-level. Nature has enriched India

with 22.6% of total land area under actual Copse. The Indian Boscage supply all kinds of human

needs like fuel, fodder, food, ingredients for shelter to tangible benefits or

Contd......2

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environmental benefits for environmental equilibrium. Raw materials started from match sticks, grasses for thatching and tangibles vary from aesthetic enjoyment to protection against soil erosion and regulation of water supply. Nitrogen, Calcium, Potassium, Phosphorous, Magnesium, Organic matter enriched soil erosion which leads to improve physical and chemical condition of the entire woodland areas.

Thus, it is fact that the woodland covers all forms of life sustenance and is a inseparable part of the environment. There are scientists who worked on Indian Boscage and its scientific management. The entire ambit of Bosky in India, right from the country's copse regions, legislation, protection, management, policy, silviculture, wildlife to economics and trade has been encompassed by S.S.Negi's India's Forests, Forestry and Wildlife in the year of 1994 and Forest for Socio- Economic and Rural Development in India, 1996.

The Joint Forest Management and Forest Protection Committee, how it has influenced the program in several Districts of the State West Bengal with the local people, a comprehensive review detailing was delineated by Prabir Guhathakurata and Subimol Roy, in 2000, Joint Forest Management in West Bengal – A Critique.

The research on Indian Forest Act and its impact thereof on the Tribes were not highlighted till 2013, Dr.Suparna Sanyal Mukherjee in her awarded Ph.D Thesis in 2013, and narrated that the Lodha appear to be a bewildered lot. They grew up in and around the forest and continue to have a good deal of dependence, are uncertain of what is on, or what may occur in future. She also pointed out in her published article "Predicaments of Forest Dwelling Tribes by Dint of Indian Forest Act", in Main Stream Weekly, VOL LIII No 25,New Delhi June 13,2015, that the future of the forest dwelling tribes are uncertain because of the impact of the said Act. In another article of her on the topic of "Indian Forest Act and Democracy – Effect On The Tribal Traditional System", Mainstream Weekly, Vol LIV, No 18, New Delhi, April 2016, pp- 17-19, where she categorically mentioned that, if tribal traditional system is ignored for reasons unknown and not taken proper care of, there is immense and every possibility that the tribal traditional system which is unique in its own way, may initially degenerate and eventually obliterate, which is not preached and practiced by Democracy.

Though Vth edition, 1989 of B.R.Beotra, on Law of Forests, explains the Legislative History, National Forest Policy, Objects and Reasons, Scheme of the Act, Scope of the Act, its thirteen chapters and eighty-six sections. Nevertheless, its collision with the copse dwellers especially the Native were not investigated properly not even the subject matter the Indian Boscage was mentioned in the Act as such.

## **Definitions of the Boscage: -**

The Boscage has been defined in various ways – according to Collins Dictionary of Law – "An area of woodland, historically, one owned by the Sovereign and set apart as hunting ground with its own laws and officers."

Segen's Medical Dictionary explains woodland – "A land region with a high concentration of trees, which is divided into an overstory (Canopy or Upper Tree Layer) and an understory of vegetation which is further divided into a shrub layer, herb layer and depending on the ecosystem, also a moss layer".

Farlex Financial Dictionary defined Bosky, "That receives at least 68 inches of rain per year. Where rain is responsible for a large proportion of Earth's Oxygen turnover and home to numerous plant and animal species. Environmental degradation has threatened the future of rain zones of Boscage and various Governments have taken steps to protect them".

#### The Boscage is also defined as –

- A growth of trees and other plants covering a large area.
- A large number of objects bearing a similarity to such a growth, especially a dense collection of tall objects.
- A defined area of land formerly set aside in England as a royal hunting ground.
- A large tract of land covered with trees & underbrush.
- A tract of land generally belonging to the Sovereign & set apart for game.
- A thick cluster of vertical objects.

According to Oxford Dictionary the literary meaning of Boscage is a large area with trees and undergrowth. The trees growing in it. A large number or dense mass of vertical objects. The Latin word "Foris" means "Outside" which may be the derivable factor of claimed "Forest" to

be. Where existents consist of living organisms the plants and the animals are based upon. Whether it is a tree, shrub, herb, moss, lichen, protozoa, amphibian, reptile, bird and mammal, living in a social organization of the woodland, each has a definite role to perform.

# The Indian Boscage & Its Chronology:-

Since the start of human race a million years ago man evolved in the bosky with full of fossilized trunk. Dating back from prehistoric time to the modern era, human being developed a symbiotic relationship with the never ending resource generated by the Treasure Island. Woodlands - covered, sheltered, protected and provided resourceful livelihood sustenance for them.

In different time scale, globally the woodland areas were habitually extorted by the people at large, where Indian Boscage was no exception. The following matter has been narrated chronologically.

# A - Pre British Regime:-

Indian Civilization, especially Indus Valley Humanisation revealed historic counteracts of the Indian Boscage, proper utilization and maintenance of woodlands was an inseparable part of their livelihood sustenance. Civilization started flourishing way back from 2000B.C. The Aryans were basically pastoral people who pursued animal husbandry and agriculture. The Boscage attracted prime importance as Dandakaranya and Nandanvan in the epics Mahabharata and Ramayana respectively.

Alexzander the Great invaded Indian Sub-Continent in 327 B.C, which was the first time, the Western World was allured to the Physiographic and woodlands account in India. The Chandra Gupta Murya came into power in 300 B.C; he recognized the importance of the Indian Boscage and appointed high officials for looking after the same. The entire woodland areas were taken proper care of scientifically, by the management under Emperor Ahoka.

The Muslim invasion led to the uprooting many people from their homes. These people sought refuge in woodlands, they cleared which for settling down, had no special interest in

conservation as such, while the rulers did it for strategic hunting and in the creation, maintenance of gardens, besides planting trees and making highways and canals.

After the fall of Mughal Empire, India was divided into a number of small kingdoms. The rulers of these kingdoms were frequently fighting each other. As a result in many areas the particular population were bound to abandon cultivation, moved to other places, started shifting cultivation, and cleared more woodland areas for sizing their needs.

Aryan & Vedic period, Vishnupuran, Arthashastra to Muryan & Mughal period in every phase of humanisation Indian Boscage was the foundation, where they laid their own pillars of success, which supported them with plentiful natural resources. The woodland dwellers especially the Tribes who were born within and grew in it along with other indigenous people who resided in the thicket areas from time immemorial.

**B - British Regime:-** The British were allured of India since early 18<sup>th</sup> Century. In 1760, after taking charge of India as British India, Lord Dalhausie the then Governor General promulgated for first time in 1855 an outline for Woodland Conservancy for unmitigated India. Issued a memorandum as a charter of Indian Boscage. In 1856, Dr.Brandis was appointed as the Superintendent of Forest in Pegu (Mayanmar). Later he joined in the Indian Government as the first Inspector General of Forests and shaped the destiny of Indian Woodlands. In 1850, The British Association in Edinburgh formed a Committee to peer into of tropical woodland areas in India. Gradually they started exploitation of Indian Boscage and it's never ending natural resources which was the attraction of them initially, the ongoing process made them realize the revenue possibilities hidden every nook and corner of the immense treasure box. They instantly exercised powers for monopolizing the extortion from these Treasured Areas; thereby initiated a rule and later enacted as a legal binding, which conclusively protected them, providing them exclusivity in the field of such extortion, securing them in extraction of forest products of every nature, from its length and breadth.

The first and second World Wars saw severe depletion of India's woodland resources. Vast quantity of timber was removed for ship building, laying railway tracks. 1865 saw the first Indian Forest Act was made by the then British Government. In 1878, it was amended and

formulated legally as a comprehensive Forest Law of India; finally it was amended and enacted in 1927 as XVI of Indian Forest Act.

The Indian Woodlands came across several facts and figures by the then British Government through a chronological approach. Starting from British Regime to the last phase of it, the Indian Boscage faced various pros and cons of legality which was made by the British for their vested trading interests, ultimately pushed the Indian Boscage in a situation of jeopardy.

C- The Post British Regime: - 200 years of British regime kept them busy in organizing themselves from Traders to Rulers. The post colonial period experienced rapid changes of Indian Boscage. It emphasised upon afforestation, scientific management, environmental protection, sustainable development. After attainment of independence in 1947 and declaring itself a Socialist Democratic Republic in 1950, India formed its own laws and legislatures, also continued with many of which, as was laid down by the British. The Indian Forest Act was one such of the many. The Sovereign country continued with the Indian Forest Act 1927 verbatim, which is still in vogue, leading to the fact relating, acceptance and continuance of the British Law over the Forests in India.

#### The Indian Forest Act 1865:-

In the year 1800 the seeds of scientific forestry germinated. The East India Company appointed a Commission to enquire into the availability of teak wood. In 1856, Dr.Brandis, a professionally qualified German Forester, was appointed. In 1864 Anderson was appointed Conservator of Forests, of the Lower Provinces in addition to his duties as the Superintendant of the Botanical Garden in Calcutta (Kolkata at present). In the same year, Dr. Brandis became the first Inspector General of Forests in India. Since in power they made a rule restricting the entry into and exit from the woodland, they even restricted procurement from the copse making them secured for the procurement from the Boscage, for material gains along with earning revenue there from. The empowered, converted the Rule, into an Act in 1865, naming it as the "Indian Forest Act 1865". So the Indian Forest Act came into being completely on commercial grounds, satisfying the needs of the implementers. However, Indian Forest Act 1865 represented the first attempt to enact a comprehensive forest law in India, its main aim was to assert the monopoly of the British

regime over the Indian forest land, and it gave the government undisputable powers to regulate forest and pastures. But, the definition of Forest was not mentioned in the subject matter of the Act, for reasons unexplainable.

## **The Indian Forest Act 1878**

Subsequent to the Act of 1865, two trained German foresters Schlich and Ribbentrop joined the Indian Forest Department in 1867.

It was the beginning of an organized forestry in the Indian Provinces under the British Rule. In 1869, the Forest Department was recognized and the Forest Officers were categorized as Conservators, Deputy Conservators and Assistant Conservators, except in Madras (now Chennai) and Bombay (now Mumbai) Presidency. Though the Indian Forest Act 1865 was the first attempt of a comprehensive forest law in India. In course of time it was felt that the law had many a lacunae, necessitating advent of an amended Act of 1878.

The then Government of India outlined the policy guidelines, shortly before this Act constituted in 1878 superseding the earlier of 1865 thereby providing a legal shape to the Act this remained in force till the advent of the Indian Forest Act 1927, which is in force till date. The salient features of the 1878 Act, that it:

- Was applicable to Reserved Forest, Protected Forest and Village Forest, which were constituted legally for the first time.
- Enabled the Revenue and Forest Department to regulate most forest and grazing land.
- States empowered to effectively regulate Wastes Lands.
- Actions within the forest like, felling of trees, girdling were regulated.
- Prescription of punishment /penalties for Forest Offences was made specific and were spelt out.
- It also provided with certain privileges to the local people i.e. the forest dwellers and those residing in the fringe of the forest.

After a heavily biased implemented Act in 1865, the 1878 Act provided little breathing space, though surprisingly the implementers here also condoned the prime factor the definition of the "Forest" as such in the content.

## The Indian Forest Act, 1927

The Indian Forest Act 1865 was superseded by the Indian Forest Act VII of 1878, which was a much more elaborate piece of legislation. The Indian forest Act XVI of 1927 was intended to consolidate the law and control relating to the forests in India.

The Indian Forest Act of 1927 is the basic forest law of the Country and applicable in all parts of the country.

### **Short Title and the Event**

- 1) The Act may be called the Indian Forest Act, 1927.
- 2) The Indian Forest Act extends to the whole of India except the territories which were comprised in Part B States, before the 1<sup>st</sup> of November, 1956.
- The Act applies to the territories, which before the 1<sup>st</sup> November 1956, were comprised in the states of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal. It may be noted that besides the states previously comprised in the territories of Part B states, the Indian Forest Act does not apply to the states of Andhra Pradesh, Assam and Madras. But the Government of any state may by notification in the official Gazette bring this Act into force, in the whole, or any specified part of that State, to which this Act extends and where it is not in force.

# Scope of the Act.

Forests and Forestry is subject of prime importance to the administration of a Country, to preserve and safeguard the forests generally, in India. The act provides different ways for conservation of forests, in the scheme it provides for a State Government to constitute any forest land or waste land/s which are the property of the Government or over which the Government have proprietary rights, as Reserved Forest, different chapters of the Act deals with different types of forest like – Protected Forest, Village Forest etc. The sais Act contained Thirteen Chapters and Eighty Six Sections, Sub-Sections thereof.

## **Interpretation Clause**

In the Forest Act, unless there is anything repugnant in the subject or context:-

- 1) Cattle, includes elephants, camels, buffaloes, horses, mares, geldings, ponies, fillies, mules, asses, pigs, rams, ewes, sheeps, lamps, goats and kids;
- 2) Forest Officer, means any person whom the State Govt, or any officer empowered by the State Government in this behalf, may appoint to carry out all or any of the purposes of this Act to do anything required by this act or any rule made there under to be done by a Forest officer.
- 3) Forest Offence means an offence punishable under this Act or under any rule made thereof:
- 4) Forest produce, includes –
- a) The following whether found in or brought from a forest or not, that is to say: timber, charcoal, catechu, daoutchouc, wood-oil, resin, natural varnish, bark, lac, malwa flowers, mahua seeds, kuth and myrabolans and
- b) The following when found in or brought from a forest, that is to say:-
- i. Trees and leaves, flowers and fruits and all other parts or produce not hereinbefore mentioned, of tress.
- ii. Plants not being trees, (including grass, creepers, seeds and moss), and all parts and produce of such plants.
- iii. Wild animals and skins, tusks, horns, bones, silk-cocoons, honey and wax and all other parts or produce of animals and
- iv. Peat surface soil, rock and minerals (including lime stone, laterite, mineral oils and all products of mine or quarries). Owner includes a Court of wards in respect of property under the Superintendence or charge of such court.
  - 5) River includes any stream, canal creek or other channels natural or artificial.
  - 6) Timber; includes trees when they have fallen or have been felled and all wood whether cut up or fashioned or hallowed out for any purpose or not and
  - 7) Trees include palms, bamboos, sumps, brushwood and canes.

All the above factors were elaborately defined but for the definition of the principal object were not mentioned.

# Indian Boscage at 21st Century the Recent Era:-

The word 'Forest' shall mean as described in English Dictionaries in recent era which we are continuing with. Though the Hon'ble Supreme Court of India under section 605 passing an

Order dated 12<sup>th</sup> December 1996 opined the meaning of Forest, as "Land/s covered as forest in Government records, irrespective of ownership, are forests", though the apex court's order was straight and rightful still it is a dilemma so far as definition of Forest is concerned.

The Wild Life (Protection) Act, 1972, an Act to provide for the protection of some wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto with a view to ensuring the ecological and environmental security of the country. The Forest Conservation Act 1980 also an Act to provide for the conservation of the forests and for matters connected therewith or ancillary or incidental thereto. All these contributory Act/s were based on the Indian Boscage and its legal formation thereof but nowhere, not in any fashion and manner the definition of "Forest" has been mentioned. Nevertheless, it is a fact that the description of Forest in the implemented Forest Act has not been mentioned in any form or words.

Post Independence the canvas of India totally changed, The Indian Forest Act 1927 is in continuation with its same contents in the present date except for a few amendments. Policy guidelines by implementation of National Forest policy in 1952 & 1988 also 1894 (made by the British) mentioned various developmental factors, conservation, scientific management, agricultural upliftment, canopy development, afforestation but the prime factor "The Forest" remain unexplained.

The Indian Forest Act 1927 being in force till date, the contents of which posed problems in respect of the tribal people and other traditional woodland dwellers, necessitated peering into the matter seriously. The Government of India accepted the fact that, it was a "Historical Injustice" by the part of the governance to the woodland dwelling Scheduled Tribes and Other Traditional Forest Dwellers through Recognition of Forest Rights Act 2006 and Rules 2008. Here again the "Forest" was in no way defined as a subject matter.

**The Facts Necessitated Answer:-** It is fact from the above evidential narrated matter of Indian Boscage where definition of "Forest" is not mentioned anywhere in respect of the concerned Act/s. It may be presumed that, implementers of the Act possibly followed the erstwhile feudal system. Prior to the British regime, woodland was a part of personal property of the then Rajas,

Zamindars, Kings each having individual earmarked territories. Who created their own rules, regulations over it befitting and catering to their own needs, so as per their convenience the treasure box was called as "Arannya", "Bon" "Jungle". If it is counterfeited that the British probably were in a hasty condition to monopolize the situation. Perhaps, took the erstwhile system as granted. The Boscage under independent rulers had different identifications as per the Vedas, Puranas and Upanisad, thereby, it did not require further clarification regarding the subject matter. The changed situation was a consolidated form for the entire country, thereby; the earlier contention could not carry any further. Therefore, the definition of the freshly implemented Act required or called for defining the subject matter elaborately which is missing and not found anywhere.

That the 1865 Act was heavily biased with many lacunae, 1878 though its legality and legal intricacies established the Act in a proper fashion and manner and 1927 Act defined itself chapter wise with sections and sub-sections thereof which is still in vogue, without mentioning any legal definition of the said subject matter "The Forest". Neither any Policy Guidelines nor Amendments, none has mentioned the same even Post Independence.

The Act mentioned of Reserved Forest, Protected Forest, Village Forest and empowerment of the State Government over each individual phenomenon vividly in specified chapters, instead of the said subdue context.

The Act guided legally over the woodlands in entirety, under the norms, Control of Timber and Other Forest Produces in Transit, Collection of Drift and Standard Timber, Penalties and Procedure, Cattle Trespass, and of Forest Officers with many a Subsidiary Rules, Miscellaneous Powers thereof, without conquering the ditto.

The Act comprises in its aim and objectives on part A and part B State of erstwhile entire India's unmitigated dimensions, without pointing out the theme on which such a legal framework is based upon.

However, it is observed that The Indian Forest Act has not provided definition of the "Forest" as the subject matter anywhere, while other Act/s have narrated the definition of the Act's subject about which it is concerned as is mandatory in law.

- Is it tenable that the truth which was not incorporated or condoned by the British Government, should still continue?
- Is it tenable that the truth which was not incorporated or condoned by the British Government should still continue?
- How does the present Governance disregard or overlook the essentiality in respect of a legal binding?
- Why is it not incorporated by implementation of amendment/s? Why did Policy Guidelines, Five Year Plans neglect such a significant ethic?
- Post Independence when India achieved freedom, why our Sovereign Democratic Republic Welfare State slighted the legitimate deed?
- Is it Democracy?
- Is it fair enough to stand on the platform of Democracy and accept such a grave lacuna which invites to challenge the same?

#### Conclusion: -

Traversing through the pre narrated facts and it's in depth trustworthiness leads to such an inference that the implementers of the Indian Forest Act, The British Government nowhere penned the legal definition of the "Forest" in the said Act. Either relying on the erstwhile situation as it prevailed in the regime of individual rulers or in a haste situation of establishing absolute supremacy over the Indian Bosky, they ignored the matter or their trading skill did not allow them mentioning such an important subject matter, befitting Monarchical pattern of rule. But democratic policy guidelines always require the requisite curriculum.

Thereby, in the present context Democracy demands a logical licit clarification of the captioned subservient to confide in the matter. It is essential as per the jurisprudence of law that it be logically clarified making it sustainable in the eye of law.

Nevertheless, our Socialist Democratic Republic, continuing with the Indian Forest Act (1865, 1878 & 1927) condoned the fact as to, what "Forest" is /was meant by the Act since its inception, which could be challenged of its rationality within the framework of the law. If we abide by the statutory norms, that "The Forest" should be defined in the Act by its legality and lawful justness. Thus, in a Sovereign Populous Democratic State the Indian Forest Act is necessitated for its subdued fact on which the Act is based upon, an interpretation of subservient the "Forest" needs elucidation.

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