

Environmental Laws and the Mountain Regions

The Constitutional arrangement for control of resources prescribes a federal economy in which the States have power over land and water resources. Forests, which were originally enrolled in the State List are now at the disposal of both the States and the Central Governments. The change was brought about by a constitutional amendment to the Concurrent List. The distribution of power in the Indian Constitution is described in three Schedules: The Union List, the Concurrent List, and the State List. In terms of territory and ownership rights, the land, water and forest resources belong to the States but in actual operational terms, however, the use of the mandate is a far more complex matter than mere ownership rights may suggest. This is because the States are dependant upon Central decisions, in some major ways, for financial resources and allocations in accordance with the Centre-State revenue arrangements in the Constitution. This federal arrangement necessitates separate land, water, and forest laws in each State. With respect to forests, however, the Indian Forest Act 1927, with minor amendments, has served as a model which most States have adopted for their individual purposes. So far the power available in the Concurrent List has been used by the Centre only to enact the Forest Conservation Act, 1980, which limits the State's power to use forest land for non-forestry purposes without the Centre's permission. Since 1980, the Act has been used stringently by the Centre to stop the conversion of forest land into agricultural, industrial, or homestead lands in the States. This policy, however, is in conflict with some of the objectives of social forestry, especially where lands have to be allotted to forest cooperatives, non-government organisations, landless farmers, or tribals.

The Himalayan Region is spread throughout twelve States, and covers a total land area of 61.5 million hectares. This total land mass is, hence, regulated by twelve different kinds of land, water, and forest laws, besides the Central Acts such as the Forest Conservation Act and the Land Acquisition Act which apply to all States. Since large parts of most States are in the plains, the laws do not make a distinction between the plains and the mountains and they are applied uniformly. The geographical and socioeconomic conditions of the mountains are, however, distinctly different from those of the plains. Of the 61.5 million hectares of mountain land, 17.8 million is covered by dense forest and another 1.7 million hectares by alpine pastures; over two-thirds of which are in the State of Himachal Pradesh alone. Not all grazing lands, however, are natural. Only those above 2,500 to 3,000 metres, where trees do not grow, qualify as alpine pastures, the rest, by and large, are the results of large-scale deforestation. The land and forest laws in the mountain regions do not, in general, make special provisions for grazing land. However, grazing in the Himalayas is intense. It is one of the major causes of denudation. The region supports 20 million cattle according to the statistics of the Ministry of Agriculture. Besides the cattle, there are 10 million buffalo, 3 million sheep, and 6 million goats. The Western Himalayas alone (consisting of Jammu and Kashmir, Himachal Pradesh, and eight hill districts of U.P.) possess about 50 per cent of the cattle, 40 per cent of the buffalo, 90 per cent of the sheep, and over 50 per cent of the goats. The treeless sub-alpine and alpine pastures are extensively grazed by these animals in the summer⁹.

⁹ A critical analysis of the grazing land situation is available in: *The State of India's Environment* (1984-85). Centre for Science and Environment. New Delhi. pp. 3-18.

Besides the lack of legal control over grazing there are various other legal issues of significance in the Himalayan context which relate to the management and use of resources. The first and foremost is the fact that, unlike in the plains, land settlement and legal classification of land have not been completed in large parts of the hills as yet. The land records, therefore, are grossly incomplete and inaccurate. In Himachal Pradesh, for example, the same area of land is classified as revenue land in the Revenue Department's records and as forest land in the Forest Department's records. This is because the appropriate transfer of land from the Revenue Department to the Forest Department has not taken place. The Forest Departments also have not completed settlement of rights in many areas, hence the classification of land as reserved forest or protected forest is incomplete. There are two main factors behind this, first, the remoteness and inaccessibility of the region as compared to the plains and, second, a comparatively greater availability of the forest resources in areas that do not invite the State's legal intervention. Because of the abundance of resources, people had free access to them. As noted earlier, legal intervention becomes necessary only when the resources begin to become scarce. The massive exploitation of resources in the hills, by legal and illegal means, has now generated the need to take the legal framework more seriously. In the meantime, the indefiniteness of land demarcation and the settlement of rights make any project planning and management extremely difficult, especially those in the context of afforestation and agriculture.

The next major aspect of environmental legislations in the mountains is the fact that the laws, by and large, have been enacted purely out of considerations of exploitation of the resources for the benefit of the people living in the plains. This becomes more evident if we look at the law pertaining to water resources. Most of them are aimed at the management of energy or irrigation potentials for the plains. Concerns about the availability of water in the rural or urban mountain areas find little or no consideration in these laws. As a consequence, most of the hill stations, from Shimla to Darjeeling, and even Ooty in the Nilgiris in the South, now face a major water crisis.

Laws concerning tourism and local level organisations, such as *panchayats* and municipalities, make evident the fact that no integrated view has been taken of the mountain ecology in enacting legislation. Laws concerning tourism have connected themselves mainly with the generation of revenue for the States, with little concern for saving the resources that attract the tourist. The *panchayat* and municipal laws are not related to ecological development. These organisations are financially impoverished, and because of this the mandate and obligations given to them for the protection or maintenance of the environment, under the *panchayat* and municipal laws, cannot be fulfilled. Instead of economically empowering these statutory bodies the Government, through the Ministry of Welfare, has set up *ad hoc* ground level agencies such as the Village Development Committees, *Mahila Samities*, *Yuvak Mandals*, etc. Besides having no legal power to bargain with the Government in terms of management, such agencies are often in conflict with statutory bodies¹⁰. In Uttar Pradesh, for example, the *panchayats* have filed numerous petitions in the local courts against the *Yuvak Mandals* for use of *panchayat* lands. Such conflicts are going to retard the environmental regeneration programmes. Careful consideration needs to be given to the ground level organisational set-up, if efficacious management of projects and programmes is to be planned. The organisational matters in the hills are a little more complex because the legal intervention there, through the forest and *panchayat* acts, has taken a different route and this is due mainly to the struggle put up by the local people against the exploitation of resources. The struggles in the Kumaon and Gharwal hills, for example, forced the British to compromise on the Forest Act and allow for Forest *Panchayats* which had a greater access to and power over the forest produce. These Forest *Panchayats* were given statutory recognition in 1950 through the U.P. Forest *Panchayat* Rules, 1950, which apply to the hill areas only. The demarcation of forests is also somewhat different in the U.P. hills than in the plains. The law there has a provision for 'civil forests' over which the local people have greater control and access. In Himachal, before the formation of the State, Forest Societies, which come under the

¹⁰ For details see, Chhatrapati Singh's: 6 Volume Reports on *Forestry and the Law in India*, submitted to the Ministry of Environment and Forests, Government of India, in 1986, especially, Vol. IV: *Panchayats, Forestry and the Laws*, which is relevant to the discussion here.

Cooperative Act, were the main local level organisations involved in forestry apart from the Forest Department. These societies still exist legally but are now operationally defunct.¹¹

In the mountain regions, it is also important to take note of the traditional community management systems with regard to the local level organisations. Such organisations are governed by customary laws which define not only the beneficiaries and the administration but also the criteria for accountability and responsibility. The *Rakhas* in Himachal Pradesh are one such traditional system for community management of village forests.

There are other special needs of the mountains which are not covered by the land laws. The most significant amongst them are issues concerning landslides and seismicity. Since the Himalayas are a comparatively young mountain range, change in landmass formation and contour are ubiquitous. Hundreds of lives and property worth crores of rupees are lost every year because of landslides. No special legal provisions for compensation or rehabilitation exist. The land laws do not even take into consideration these special problems in the mountains. Compensation and rehabilitation is an *ad hoc* arrangement left to the wishes of the Government. There are no zoning laws which can guide the administration to execute town or rural planning in a manner that will take the problems of landslides and seismicity into account.

Another major reason for landslides in the mountains is extensive mining. Most mines are in the forest areas. Hence, they attract the provisions of the Forest Act. This act, however, makes arrangements only for the delegation of power so far as mining is concerned; it does not provide for ecological considerations in mining operations. Road building activities also contribute in a major way to landslides. Once again the forest laws, in the event of roads passing through forest lands, limit themselves to matters of giving permission. Such legal provisions do not bind the Department of Public Works to ecological considerations.

The above account outlines some of the major legal concerns with respect to mountain regions. The account is comprehensive but not exhaustive. An exhaustive account must specify in details laws, rules, ordinances, court judgements, and customary laws relating to each of the problematic issues, namely, land settlement, land classification or demarcation, delegation of powers among departments, afforestation, landslides, grazing, livestock, water use, water rights, powers and duties of *panchayats* and municipalities, the legal status of the *ad hoc* local organisations, and community resource management systems. The detailed account must do so for each of the 12 Himalayan States. Having done so, it must go on to specify the work programme or research agenda necessary for dealing with each issue as well as the action programmes for the respective governments or local agencies for undertaking follow-up work. Such an attempt has been made here, in an illustrative way, for one State, namely Himachal Pradesh.