

# Colonial Laws – A Great Blow to Indian Indigenous Knowledge Systems

*Mousumi Das*<sup>1</sup>

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## Abstract

This paper focuses on marginalisation of indigenous knowledge due to colonial rule and its impact on Indian economy and society and how even after 75 years of Independence we are still struggling to bring back the indigenous components of knowledge systems back. The paper is a systematic exploratory study of the laws leading to the destruction of rights of the indigenous community over land and forest and how attempts are now being made to revive the same but without a complete break from colonial laws

**Keywords:** Indigenous Knowledge, colonial laws, colonisers

## 1.0 Introduction

Indigenous studies have gained prominence in contemporary academics, practically from 1990s consequent upon the proclamation of the International Year of the World's Indigenous People by the United Nations General Assembly in 1993. It further got momentum with the Declaration of the Rights of Indigenous Peoples in 2007 by the UN. One of the thematic focuses in the engagement of indigenous studies involves critiquing Western Systems of Knowledge vis-a-vis Indigenous Knowledge Systems (IKS) (e.g. *see* Grange 2004), the former being brought in by colonisers.

In this paper an attempt is made to argue that the colonial knowledge enacted in laws marginalised IKS in the corresponding field in India. Laws enacted during colonial period continued in post-colonial period in some areas, and therefore, people friendly laws are gradually being enacted to right the wrong. A passing reference to the people friendly laws is made as a proof that the colonial laws were detrimental to IKS. Similarly, colonial production of knowledge is assumed to guide formulation of its laws, but there is no specific discussion on western system of knowledge, the synonym of colonial ways of knowing, except reference to it while conceptualising IKS. Primarily, the main focus of the study engages in a theoretical understanding of the colonial laws as factors of marginalisation of IKS in the field of forestry and land resources within the framework of colonial motive behind the production of knowledge. The paper draws on secondary sources of data and is a qualitative study based on exploratory approach.

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<sup>1</sup> Assistant Professor in Economics, BJB Autonomous College, Bhubaneswar-751014, **ORCID: 0009-0000-2133-557X** Email: [mailme.mousumidas@gmail.com](mailto:mailme.mousumidas@gmail.com)

The paper is organised into four parts. The first part (1.0) introduces the research problem. The second part (1.1) conceptualises IKS and engages in a theoretical understanding of colonial production of knowledge in the process of colonisation. The third part (1.2) enumerates forest laws and land regulations. The third part (1.3) analyses the data and in the fourth part (1.4) the paper concludes.

The first part defines indigenous knowledge to provide the background of subsequent analysis; second part engages with the theoretical framework of the impact of colonial rule on Indian indigenous knowledge systems; third part lists few forest and land laws during colonial rule, and the fourth part concludes.

## **2.0 Indigenous and Colonial Perspectives of Knowing**

In this part conceptualisation of IKS is attempted and the colonial production of knowledge is theorised in the context.

### ***2.1 Indigenous Knowledge***

A brief review of literature brings out a few core characteristics of IKS relevant to conceptualise the problem articulated in this paper- the colonial rule causing the decline of IKS. This knowledge is conceptualised in contrast to international knowledge system generated in formal way in universities, laboratories, research institutes, and private firms (Dei 2008:7). What is categorised as international knowledge system in fact had its origin in western system of knowledge corresponding to Industrial Revolution and Renaissance<sup>1</sup>. No doubt, earlier literature on indigenous knowledge contrasts it with European i.e., western system of knowledge<sup>2</sup> (Purcell 1998: 258-259). Arguably, IKS refers to the knowledge system of people across the world outside Europe before their contact with the latter through colonisation. In the back drop of this theoretical postulates IKS is contextual, belongs to the people of a locality—small or big— reflects people’s interaction with environment, and is obviously dynamic as local people negotiate their complex relations with nature and culture which place before them ‘ever changing set of conditions and problems’ (Agrawal 1995:5).

IKS is contextual because it is generated in the process of people’s involvement in securing livelihoods through their interaction with immediate environment-social and natural—and implicating local level decision making in the field of agriculture, health, education, resource management, technology innovation and use, and in evolving norms and practices to govern economy, society, body politics, etc. It is a response to the needs of social organisations and environmental challenges. Understandably, IKS points to the knowledge system ‘accumulated by a group of people, not necessarily Indigenous, who by centuries of unbroken residence develop an in depth understanding of their particular place in their particular world’ (Roberts 1998:59). Scholars, therefore, conceptualise it as local people’s knowledge (Warren 1991), people beyond indigenous and non-indigenous dichotomy. This implies that people may not belong to a particular community but form into a local group. In this sense it is ‘communal’ (local community based) in nature (Grey 2014:3230). It is historical in context, need based, and is the product of adaptation strategy of people (*see* Dei 2008). Therefore, Purcell (1998: 260) defines it as ‘a body of historically constituted (emic) knowledge instrumental in adaptation of human groups to biophysical environment’. It follows that the knowledge belongs to the community, and evidently does not have an author as is in western system of knowledge; the production of knowledge being attributed to an individual or institution. Production of knowledge reflects collective nature in case of Indigenous system of knowledge. It can be argued that

indigenous knowledge produces for the mass, but not engages in mass (large scale) production in factory mode as in western system.

In Indigenous knowledge system there is no hierarchy along the line of differences and thus any hegemonic tendency. Needless to say, IKS is not exploitative like the Eurocentric knowledge applied in the colonies; rather it is liberating in the sense of belonging to the community and sustaining community consciousness (*see* Adorno 2002).

## ***2.2 Colonial Production of Knowledge in Colonies***

Before understanding colonial production of knowledge, it is in fairness of things to ask an obvious question: why British colonialism is singled out to study the impact on marginalised status of IKS in India and find the answer to it to justify the study. The question arises because India was invaded by Shaka, Huns, Turks, and Afghans also. No doubt, India had been invaded and conquered by foreigners several times, but British conquest was different. Colonial production of knowledge was Eurocentric and contrasted non-European i.e. indigenous ways of knowing. In this contrast, colonial production of knowledge had hegemonic tendency; it was produced in a different context without the consent or understanding of the needs of the recipients, the colonised people. Hegemonic nature of knowledge leads to 'domination, oppression, and control, which is not in the best interest of the beneficiary society' (Akena 2012:603). Such a hegemonic knowledge system of the invaders and weak knowledge system of recipients in India did not mark the contrast during pre-colonial invasions. Rather, Indian knowledge system was strong but inclusive; therefore, it did not have hegemonic tendency. Production of knowledge was not used as an instrument of domination as was the case during colonial system. Then what was colonial ways of reconstructing or defining non-European systems of knowledge, the Indian system? Who did colonisers situate the latter in their ways of knowing?

Colonialism brought western knowledge to co-exist side by side the indigenous ones. It will not be preposterous to argue that colonialism is the product and producer of the western knowledge system. The knowledge arriving 'with the colonisers and influenced by western ethnocentrism... imposed a monolithic worldview that gave power and control in the hands of Europeans' (Akena 2012:600). Pre-colonial knowledge was branded 'as savage, superstitious, and primitive' (Akena (2012:600) leading to their delegitimisation by colonial ways of knowing. Any action introduced by the colonisers to colonise the people denigrated non-Western ways of knowing in the eyes of the people themselves and served the process of colonisation even after the end of colonial rule. But initially it destroyed the IKS of colonised people. Kincheloe (2011:334-335) rightly remarks in this line of thinking, 'Ridiculed by Europeans as primitive, the indigenous ways of being were often destroyed by the colonial conquerors of not only the military but the political, religious and educational variety as well'. A similar line of argument is put forth by Prucell who maintains that 'as colonialism uprooted Indigenous peoples it also uprooted their knowledge systems'<sup>3</sup> (Purcell 1988:266).

The sense of inferiority imbibed in non-Western mind by the colonisers destroyed the IKS and perpetuated the perspective even after departure of the colonisers. This is evident in the field of education which has 'helped create and maintain the glaring disparities and inequities, structured along lines of ethnicity, culture, language, religion, gender and class' (Dei 2008:11) in post-colonial India. What is crucial to note is the motive behind the knowledge used in the process of colonisation, for the Western

knowledge was used as ‘a tool of domination, oppression, and exploitation due to unequal power relations’ (Akena 2012:616; *also see* Lauer 2007).

### **2.3 Bipan Chandra’s View**

The British came to India as a Company and after 1857 the Government of Britain directly ruled the country. In course of their rule two crucial issues caused decline of indigenous knowledge. The first issue was primacy of economic interest, and the second one was to realise this interest through European knowledge. These two objectives shaped the overall colonial policy which ‘did shatter the economic and political basis of the old society. It dissolved the old pre-capitalist mode of production; but a new capitalist system did not follow; instead a new colonial mode of production came into being’ (Chandra 1980:273). Bipan Chandra (1980) distinguishes how the British tried to realise their twin objectives of economic interest and introduction of European knowledge in three stages. ‘The change from one stage to the other was partially the consequence of the changing patterns of metropolis’ own social, economic, and political development, and of its changing position in the world economy and polity’ (*ibid.*:274).

In the **first stage**, the colonisers traded in Indian products creating a colonial mode of surplus. They practised buyer’s monopoly via purchase of handicrafts, plantation, etc. In the **second stage** the colony was made a subordinate trading partner. From the colony raw materials were exported and manufactures imported. Dominant European economists however argued that theirs was no exploitation in this type of trade practices. They rationalised it in terms of the theory of comparative costs and international division of labour. Under the slogan of development and modernisation, they tried to integrate the colony with the world economy, particularly by securing control to develop plantations, trade, transport and mining in some cases, even agrarian structure was modified to suit their needs and requirements. It was at this stage that western capitalist legal and judicial system was introduced. Formal system of education was introduced which replaced the indigenous system. The motive was not to transform the society and culture but ‘to make the colony reproductive and promote the culture of loyalty among people’ (*ibid.*:277-278). It is important to mention here that the new theories on trade and development based on European knowledge were advanced to justify their activities.

The **third stage** was the result of spread on industrialisation to different countries due to revolution of international transport. Intense struggle to capture new and newer markets and sources of agricultural and mineral raw materials extended exploitation of colonies and semi-colonies, thus resulting in asserting a direct control over the administration of the colonies. However, most of the colonies failed to absorb foreign capital instead were net exporters of capital. In fact, failure to make the colonies productive in the second stage now emerged as the main problem. To intensify surplus expropriation, it became more important to extend administration to every nook and corner of the colony, hence bureaucratic control became even more autocratic. The outcome was the emergence of many stringent laws that affected the control of indigenous community over land, forest, education, and economy (*see* Chnadra 1980:275-280).

What Bipan Chandra argues is that European knowledge which existed and emerged with the transformation of capitalism during colonial period were introduced through different stages of engagement with achieving economic goals. In colonial pursuit of the goal indigenous knowledge was replaced by European knowledge.

### 3.0 Colonial Laws

Laws relating to forests and land have been presented in brief to understand how they led to the decline of corresponding indigenous knowledge

#### 3.1 Colonial Forest Laws

Before the advent of British in India, tribes were intimately integrated with the forests. Tribal production of knowledge with regard to forests was conceptualised in terms of 'giving environment' (Bird-David 1990) despite the fact that they enjoyed the total autonomy in utilizing the forest resources. There was no exploitative relation though tribal survival and life activities were based on the forest (*see* Singh 2017). The British realised the commercial value of forests. Colonial production of knowledge in defining tribe and forest relations was based on tribal alienation through restrictions and other provisions by enacting forest laws (Haeuber 1993, Gupta 2009, and Joshi 1983).

The genre of colonial laws is defined in our context to mean the laws enacted during colonial period and its impact on post-colonial forest laws. In this section path breaking forests laws having impact on indigenous ways of knowing and interacting with forests have been discussed with reference to Nongbri (1999), Joshi (1983), and Haeuber 1993). In 1865 the first Indian Forest Laws was enacted. The Act sought to create forest reservations to meet the long term national and regional resource needs and to regulate the collection of forest produce by forest communities. However, it was silent over the rights of forest users and restrictions over their access to the reserved areas which was criticised at government levels and corrected in 1987.

In 1878 second law was enacted. The act established the state's supremacy over forests and subordinated people's rights and access considering them as mere privileges, not as legal sanctity. It gave the state government indisputable powers to establish, create and demarcate forests for the purpose of railways. It also empowered the forest department of regulate the use of forest and grazing lands, including wastelands; and thereby made people's access to their resource base contingent on the will of the government.

Act 1927 followed the structure and essence of 1878 Act, and just redrafted certain clauses. The 1927 Act was the continuity of efforts by the colonial administration to restrict people's access to Indian forests as they used to do traditionally. The title of the Act, i.e. 'An Act to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce'. The Act is, therefore, critiqued as timber-oriented law having no mention of conservation (Joshi 2013:194).

National Forest Policy, 1952 was the first policy of post-independence India. The influence of British policy was evident in it, for example forests owned by tribals were subject to the same controls as all other forest areas in the line of colonial forest laws. The policy like the colonial counterpart denied tribal statutory rights over forest.

After Independence Forest laws subsequent to 1952 policy, namely The Forest Conservation Act, 1980, National Forest Policy, 1988 and The Forest Rights Act, 2006 have been people friendly.

The 1988 policy recognized partially the rights of tribal communities. The tribal people along with scheduled castes residing nearby were allowed concessions for grazing, collecting firewood, minor forest produce, and timber for their use with restrictions.

The Forest Rights Act, 2006 provides for correcting the ‘historic injustice done to forest-dwelling communities’ such as Scheduled Tribes and Other Traditional Forest Dwellers. It recognised the sufferings undergone by the forest dependent people consequent upon the colonial forest administration and which was ‘unfortunately carried forward into Independent India’ (Bandi 2013:21).

### **3.2 Land laws**

In order to possess land in the country and in different regions during British rule, the colonial government enacted several laws which have been amended over time (Banerjee and Iyer 2005). These include the Land Acquisition Act (LAA) of 1894, which was amended as the Land Acquisition Act of 2007, followed by the Land Acquisition and Rehabilitation and Resettlement Act of 2013. Through LAA the government acquired the right to acquire any type of land primarily for industrialization, mining, railways, and for other public purposes. There are other enactments made for specific land acquisitions, such as the Coal Bearing Areas (Acquisition & Development) Act of 1957 and The Mines and Minerals (Regulation and Development) Act of 1957, among others. In tribe and region contexts, Jhum Land Regulation of 1947<sup>4</sup>, Chotanagpur Tenancy Act (CNT Act) (1908), and Santhal Pargana Tenancy Act (SPT Act) (1949) are important.

The enactment of The Coal Bearing Area Act, (Acquisition & Development) Act, 1957 or CBAA became the most desirous Act which had been introduced in independent India to establish the economic interest of the country through greater public control over the coal mining industries and its development. Through this Act the state had given power to acquire land containing or likely to contain coal deposits for the government coal digging companies on the order of the central government (Lahiri-Dutt et al. 2012).

The Mines and Minerals (Regulation and Development) Act (MMRDA), 1957 and further amended in 1994 and 1999 aims to accelerate the domestic as well as foreign capital flow in mining industries. The regulation and its amendments empowered the state government to grant Permit/Prospecting License/ Mining Lease except 16 areas. The new National Mineral Policy enacted in 2008 through replacing the 1994 policy, empowered the central government and state government to grant exploration license through auction (George 2005 and Sarma 2015).

The Permanent Settlement Act 1993 was not enacted to possess land, but to make an agreement with the prevailing landholding system to fix revenue first in Bengal province and later in other parts of the country (Guha 1996). Indirectly, the land was brought under the control of the Company through zamindari, royotwari and malwari systems (Banerjee 2005; *also see* Banerjee & Iyer 2005). More demand for revenue compelled the farmers to cultivate for market and commercial crops (Shukla 1978). Indigenous knowledge in cultivation and land use became subordinate to the demand created by the colonisers, who were the product of western system of knowledge.

The introduction of laws such as Chotanagpur Tenancy Act (1908), and Santhal Pargana Tenancy A 1876 and subsequently in 1949 are the main tenure reforms during the colonial period (Ashokvardhan 2005). The Chotanagpur Tenancy Act (CNT Act) and the Santhal Pargana Tenancy Act (SPT Act) were meant for protection of the tenants and cultivators belonging to the tribal communities in the area of Chotanagpur plateau. Through these enactments British Government had made several legal provisions to

protect the interest of tribal communities of Jharkhand. The Act also provides a clause of land acquisition for the Public Purpose under section 49 (2A), and the power of acquisition lies with Deputy Commissioner, but what consists in public purpose is a question.

SPT Act provides the power to Headman to settle the Raiyat and also made a provision to acquire common land for certain purpose such as religious purpose, education and charitable purpose with the prior approval of Deputy Commissioner under section 53 of the SPT Act (Prasad 2007). Hence, the overall transfer, lease and acquisition of land are totally restricted in the area which comes under in its jurisdiction. But, contradiction arises when the regulations of Santhal Pargana Industrial Area Development Authority are considered with this act, which claims to provide the land to individual, proprietorship firm, private limited company, etc. (GoJ 2001) for establishing their industrial setup after approval of the state government.

Jhum land Regulation was promulgated in 1947 to protect land rights of tribals of present Arunachal Pradesh. The law recognised the rights of village community if it is a permanent settlement. This law was not necessary as the territory was beyond Innerline and there was no encroachment of non-tribals. No tribesman could sell his land to non-tribe persons. (Elwin 1988:65-66).

#### 4.0 Analysis

At the core of colonial forest policies the knowledge that dictated their formulation was based on economic interest and administrative expediency. The context was different from that of the people in general and tribes in particular who for all purposes were linked with forests. Their knowledge was based on community management by informal norms and conventions of their traditions (Nongbri 1999: 11& 15). The contexts of colonial and people's knowledge were different; and the former was formal, exploitative, and had hidden motive. The governments' overt language of 'conservation need' in the plea of protecting the forests from locals (Joshi 1983:43) by restricting their access in fact served 'the requirements of the state, and rural populations found themselves increasingly excluded from access to these valuable resources' (Haeuber 1993:49). The divergence in the context of knowledge resulted in conflicts (Nongbri 1999: 17-20). The conflicts over forest laws were 'a consequence of "the struggle for existence between the villagers and the Forest Department; the former to live, the latter to show a surplus and what the department looks on as efficient forest management"' (Guha 2001: 227). Arguably, forest laws replaced indigenous knowledge and with 'restrictions placed on access to forests, the sentiments of reverence for the sacred grove, weakened ... in the later years of colonial rule (Gupta 2009: 232). Restriction to the use of forests affected traditional agricultural practices and thus the knowledge system. (ibid.)

Forest laws in India recognise the rights contingent to the state laws. The Act 2006 which recognises the injustice done to the forest people has not made any mention of conservation (Joshi 2013:194). That the law is a contrast like colonial laws to indigenous system is evident from oppositions to its implementation (Joshi 2013).

The Act followed colonial perspectives and thus caused destruction of the foundational position of the forest by turning them into capitalist production of knowledge as Ecological service provider (Savyasaachi 2011). Indigenous knowledge on forest management remained contingent to the production of knowledge by the state, the feature embodied in colonial ways of state administration.

Land-based production of knowledge through generations of land-based practices is the identity marker of indigenous community. Engagement with land is so crucial in their knowledge base that IK is defined ‘as knowledge of practice or “praxis”’ (Grey 2014:3230). Land and forest laws alienated the people from this knowledge base as their relation with land was defined in terms of colonial laws.

In all the land and forest laws the government was empowered to acquire land for ‘public interest’ which included government use for defence, administration, creation of public goods, etc. and for company uses in economic interests. The irony is that the public interest was decided upon by the government in terms of its development and administration expediency. There were some clauses which empower the government, but the government uses the power almost absolutely. Even government enacts subsequent laws that prevail upon the protective laws. In CNT Act, one of the weak points is that *Bhuinhari* tenure was not protected and not considered non-acquirable land held with indigenous peoples. This escaped clause helps to misinterpret the laws and helps the law manipulator to take advantage of the loopholes (Ekka 2011). Similarly, the regulations of Santhal Pargana Industrial Area Development Authority contradicted several provisions of SPT Act and facilitated land possession by individual, proprietorship firm, private limited company and so on (GoJ 2001) for establishment of industries after approval of the state government.

In every law, the clause on public interest gives power to the government to acquire land. But the definition of public purpose is arbitrary and no guidelines are available to regulate it (George 2014). Public interest is, however ‘justified on the ground that the good of the greater number- the community as a whole- is paramount, and that the right of individuals must give away before such a paramount object’ (Setalvad 1971:1).

Jhum regulation Act though seems protective; it served the colonial interest of intervention in village administration. But the attitude of the British government towards jhum cultivation was negative. Jhum was considered to be the cause of destruction of forest resource and low productivity (Singh 2024). The law protected the customary practices of tribespersons living in permanent village, and did not cover the nomadic and semi-nomadic tribes and their rights over land.

Mining activities displaced indigenous people from their habitat. Studies find that the highest forceful displacement was due to mining establishment specially in Jharkhand (then Bihar) (Downing 2002). Land was acquired for mega projects like dams. These mega projects contributed a lot to the large scale forceful dispossession and led to loss of traditional rights cultural loss (Verghese 2006, Rao 2005, and Parasuraman 1996). In new place, the displaced people were alienated from their knowledge system to a greater extent which they had produced in course of their interaction with their old habitat.

The Land Acquisition Act 1894 was based on the concept of *Eminent Domain* i.e., the right of the state to assert its dominion over any portion of the soil of the state on grounds of public exigencies and for public good (Bhattacharyya 2015 and Sampat 2013). European production of knowledge of eminent domain reflected in forest and land laws in post-colonial India in the guise of ‘public interest’.

In people friendly laws enacted after independence like the FRA, 2006, the colonial perspective is prevalent as there is centralised tendency in decentralised



framework. As a result there are conflicts, discrepancy while the act is implemented (Joshi 2013).

European knowledge persists and indigenous knowledge either has disappeared at different contexts or modified to accommodate the change. That is why the laws of independent India have not been able to restore indigenous knowledge because development model, governance, etc. which we have inherited are product of colonial knowledge system.

Indigenous knowledge before the advent of colonisers lost the context as the latter introduced its own context of governance, development, faith and belief which were product of European knowledge system. Native context changed with the introduction of new contexts favouring colonial rule. Change in the context is antithetical to the corresponding knowledge system in original setting. Lugard (1965) describes dual mandate in British tropical Africa because indigenous knowledge was not suitable to those contexts which the British introduced.

## 5.0 Conclusion

Production of knowledge is context – governance, development perspective, technology, values, etc. – specific. The colonial laws were enacted to suit to colonisers context. Arguably, indigenous knowledge, a product of indigenous context did not have relevance in colonial context. But people still take pride in indigenous knowledge and have nurtured their perspective in it and therefore, there are conflicts when state regulations which underlie colonial perspective are implemented. To put it simply, the colonial laws have been responsible for the decline or disappearance of indigenous knowledge as we have studied with reference to selected forest and land laws. Further investigation in all the fields – colonial educational policy, administration, economic regulations, etc. – would substantiate to the inverse relationship between colonial and indigenous knowledge system. The merging syncretic tradition between the two is nothing but the adjustment, and thus decline of indigenous knowledge on the face of the European knowledge which was implanted by colonisers.

## Notes

1. Though the knowledge had its origin in Europe, specialists around the world, specially in countries where Europeans were settlers, practised it and thus it got international character. But it is largely foreign to other non-European cultural traditions (Sillitoe 1998: 226) and unfamiliar till colonisers brought it with them.
2. Exclusive categorisation of IKS and Western Knowledge System is debated (Grange 2004 and Sillitoe 1998:223, fn-2). The reason is being their coexistence, interaction, and borrowings from one another. The crucial point is that before colonisation, the knowledge system of non-European people in different parts of the world was not influenced by Western Knowledge. In this context, IKS and Western System of Knowledge had distinct identity.
3. Grey (2014:3230) finds that gender dimension of western knowledge production along with declining women's status caused due to colonial rule rendered indigenous women's knowledge vulnerable.
4. The Assam Land Revenue Regulation of 1886 also regulated jhum or shifting cultivation practices of indigenous people most of whom are Scheduled Tribes.

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