

NATIONAL PRIORITY PROJECTS AND THE ISSUES OF FOREST ENCROACHMENT

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ABSTRACT

Forests are one of the major land-use systems in Nepal, covering 45.31% of the total land of the country as per the Economic Survey, 2080/81. Forest heritage is amongst the forms of natural heritage. Forests of Nepal as well as biodiversity are requisite to both the livelihoods as well as for the environmental conservation. Nepal has an ecologically diverse landscape providing home to many species of flora and fauna. But forest encroachment has been turned out to be one of the major challenges in the protection and conservation of the forest, environment and the biodiversity. In addition, the major focus of the government on conducting the projects of national priority have in one way or the other caused the higher uses of the forest area. Therefore, this paper attempts to provide an overview of the forest encroachment in context of Nepal along with the causes specifically addressing to that of infrastructural development issues. Moreover, the paper tries to examine the varied impacts of forest encroachment in Nepal posed by the national pride projects.

Keywords: *Environment Impact Assessment (EIA), Initial Environment Examination (IEE), Forest Encroachment, sustainable, national priority projects, national pride, indigenous, biodiversity, environment, ecosystem*

Introduction

Forest Encroachment

Forests play an important role in the livelihood of an immense number of people in both developed and developing countries. Forests are related to not only the ecological concerns but also to the socio-economic aspects of the people. Forests are related to the culture, civilization and other aspects of the people's well-being.

Nepal's forests occupy roughly 5.96 million hectares of landmass, with the forests of Terai serving as a source of revenue through timber exports to India (World Wildlife Fund, WWF). After the continuous efforts of the local, provincial and federal governments, the total land coverage area of Nepal by the forest areas have reached to 44.75% (National Forest Policy, 2018). As per the recent Economic Survey of 2080/81, the forest areas of Nepal covers 6,166,766 hectares and the shrub and grassland areas cover 535,179 hectares of total land making it 45.31% of the total land area of Nepal covered by the forest area (Economic Survey, 2023/24).

Forests are globally important in regulating climate and locally important in sustaining communities and supporting biodiversity. But with unsustainable logging, and agriculture and bio fuel producers competing for land, forests, and the people who depend on them, are under increasing pressure (National Conservation Strategy Implementation Program, 1991).

Despite Nepal having around 45.31% of its land covered by forests, sustaining this status is difficult in order to preserve connection for the flow of ecosystem services and the distribution of species. Amongst various problems with respect to forest and its conservation, encroachment is one of the very serious issues associated with forest conservation of all the times.

Encroachment is a term used to describe the advancement of structures, roads, railroads, improved paths, utilities, and other development, into natural areas including floodplains, river corridors, wetlands, lakes and ponds, and the buffers around these areas (Encroachment, 2020). In other words, encroachment is the illegal conversion of forest land into the agricultural land or settlements by migrants, landless people or political groups (Bhusal and Adhikari, 2024). Forest encroachment is an illegal expansion of the cultivable land and the settlements within the jurisdiction of forest areas. Forest encroachment is the term used to describe the unauthorized occupation and use of forest land for a variety of uses, including agriculture, the construction of infrastructure, and human habitation.

Nepal boasts an ecologically diverse landscape that is home to a wide range of flora and fauna. However, forest encroachment has emerged as a significant challenge to the protection and conservation of forests, the environment, and biodiversity. Additionally, the government's emphasis on implementing nationally important projects has, in various ways, led to increased use of forested areas. This paper aims to provide an overview of forest encroachment in Nepal, focusing specifically on the issues related to infrastructural development. Furthermore, it examines the diverse impacts of forest encroachment resulting from these national pride projects.

Methods and Procedure

The paper is constructed on the qualitative research design comprising of descriptive, analytical approach. The research comes under descriptive research design as it deals with the concept of forest encroachment, causes of such encroachment, and situations of national pride projects and its relation to the issues of forest encroachment. On the other hand, this research is based on analytical research approach pertaining to the critical study of existing legal provisions and various precedents established by the Supreme Court of Nepal

regarding forest conservation in Nepal along with the quandary relation between national pride projects and exigent issues relating to forest encroachment.

The paper is completed using primary data collected from the Constitution of Nepal and National legislations such as; statutes, regulations, policies, strategies, standards and procedure etc. The secondary sources such as reports, newspapers, government websites, books, journal, etc. have been referred.

The first part of the paper deals with the concept of forest encroachment. The second part of the paper reflects the causes of forest encroachment and shall inquire the national and international legal frameworks relating to the forest conservation. The third half of the paper addresses the issues of land encroachment, national pride projects, along with various precedents established on aspect of these. Furthermore, this chapter also discusses on the exigent issues of National Pride Projects on varied areas of socio-cultural and environmental episteme. The concluding part of the paper endeavors a short conclusion of the study.

Results

Causes of Forest Encroachment

Forest conflicts between the state and communities, and also at the local level, is widespread in Nepal (Shrestha and Conway, 1996). Most of these disputes have arisen as a result of weak forest governance and insecure rights of forest dependent people in context of the excessive reliance of the poor people on forest resources.

Over a long period of time, forests were encroached upon for many reasons. These forest encroachments can now be classed as forest encroachment/conversion for farming, habitation, building public infrastructure, and building social infrastructure (Sherpa et.al. 2016). This shows that the direct causes of encroachment are embedded in the social, economic, environmental, biological, cultural, historical and political context of the country (Iftekhar and Haque, 2005).

Some of the major causes of forest encroachment and settlement are mentioned and described briefly in following points:

1. Population growth and problem of settlement

The increased population growth invokes the need of and demand for land for settlement i.e. there shall be the increased demand for land, houses, infrastructures, etc. As a result, people may encroach upon forest areas to establish settlements, especially when alternative land options are limited. Population pressure will lead to competition of space for settlement, farming, and agriculture to support the growing population. With such conditions, forest resources become

alternatives to livelihood security (Florence, 2021). This ultimately gives rise to the issues of forest destruction and encroachment to meet the rising needs.

2. Indigenous dependence on forest and lack of alternative livelihood

Many indigenous communities all over Nepal have traditional lifestyles and cultural practices closely tied to forest resources. They rely on forests for their sustenance, including food, medicine, shelter, and cultural practices, for e.g. the Tharus, Lepchas, Rautes, etc. Therefore, the lack access to alternative livelihood opportunities outside the forests because their lifestyle, culture everything is dependent on forest.

3. Infrastructural development

Forest encroachment may be accelerated by the construction of roads, highways, dams, and other infrastructure projects. These developments often require the clearing of land, including forested areas, to make way for construction and human settlements. Mostly the projects of National Pride have been one of the major aspects aiding to the indiscriminate use of forest lands.

4. Illegal Logging Practices

The demand for timber also increases due to the increased population both domestically and internationally ultimately resulting in the illegal logging practices. This therefore results in the depletion of forest resources and paves the way for further encroachment.

5. Weak governance and lack of proper enforcement of law

Inadequate governance, corruption, and weak law enforcement can create an environment where forest encroachment and illegal settlements are not effectively prevented or punished. This is to say that mis-governance, increased corruption etc. create the ground for uncertainty and major hamper in the effective application and enforcement of the forest related laws, regulations, policies, and programs. In the absence of proper law enforcement, it can lead to a sense of impunity and encourage further encroachment.

Prevailing National Legal Provisions

Constitution

Constitution of Nepal has adopted a federal structure of governance consisting of three tiers of government; Federal, State/Province and Local Level. The operation of local government levels is a crucial step in establishing the federal structure outlined in Nepal's constitution. A primary necessity for these local units to function effectively is the sustainable management of forest and watershed resources.

The Constitution envisions distinct roles for various bodies within the federal structure. Federal power related to forest and natural resources encompasses national and international environmental management, national parks, wildlife reserves, wetlands, national forest policies, and carbon services. The State Government's jurisdiction covers the use of forests and waters, as well as environmental management within its territory. Additionally, concurrent powers of the Federal, State, and Local levels include several forest-related matters.

Constitution of Nepal in the article 30 provides for the right to clean environment. As per the constitution, every citizen shall have the right to live in a clean and healthy environment. Furthermore, constitution guarantees for the right to obtain compensation, in accordance with law, for any injury caused from environmental pollution or degradation.

Furthermore, one of the major policies of the government under the article 51(g)(5) is to conserve, promote, and make sustainable use of, forests, wildlife, birds, vegetation and bio-diversity, by mitigating possible risks to environment from industrial and physical development, while raising awareness of general public about environment cleanliness. Furthermore, another major policy of the government as stipulated in the article 51(g)(6) and 51(g)(7) is to maintain the forest area in necessary lands for ecological balance, adopt appropriate measures to abolish or mitigate existing or possible adverse environmental impacts on the nature, environment or biological diversity.

Forest Act, 2076 (2019)

If any person does, or causes to be done, or make attempt to do, the act to deforest the national forest or plough, dig, excavate mining or cultivate in the land of forest area, build a road or other infrastructure, to make a house or shed, operate business or make encroachment therein he or she shall be deemed to have committed the offence under section 49(c) of the act. Moreover, the registration of forest as private asset is prohibited by this act under section 7. Section 12(1) of the act has strictly restricted for the forest containing trees to be used for settlement and resettlement purpose.

In addition to this, as per section 42(1), in case of no any alternative from using forest area for conducting the National Priority projects, projects approved for investment from Investment Board, project operations of National Pride, and if the EIA report shows lesser harm to the environment due to such construction, such forest area can be used for conducting such projects.

National Park and Wildlife Conservation Act, 2029 (1972)

This act for the first time provisioned for Buffer Zone. As per section 2(e)(2), it means a peripheral area of national park or reserve prescribed under section 3(a) in order to provide facilities to use forest resources on a regular and beneficial basis for the local people. The Government of Nepal may as per necessity declare via the Nepal Gazette an area as a buffer zone as per section 3(a)(1). Regarding the management and conservation of the buffer zone, it shall be done by the conservator under the management plan and policy made by the National Park and Wildlife Conservation Department under the recommendation of related users group. Furthermore, under section 3(b)(1) it is mentioned that in the name of conservation, the geo-ownership of the local people shall not be violated.

Furthermore, the act restricts for the entry inside the national park and protected areas without permission as per section 4(1). Moreover, inside those areas, the acts of hunting wildlife, smuggling, construct houses, buildings, etc. and possess anything as such, encroach, clean, farm, harvest, etc. as per section 5(1).

Forest Encroachment Control and Management Strategy, 2068 (2012)

The major objective of this strategy is to maintain 40% of land coverage by forests in Nepal and work in all possible ways to stop forest encroachment. In case of previous encroachments, restoration of those encroached forests applying various mechanisms. The strategy mentions that forest areas are to be protected as they are the issue of national priority. The forests can be made available only for conducting national priority projects.

Strategy regarding Construction and Operation of Physical Infrastructure Inside Protected Areas, 2065 (2009)

The major objective of this policy is to conduct various infrastructural projects including the production of hydroelectricity via the public-private partnership program, uniformity in the existed, existing and soon to be existent projects inside such places and to consolidate economic and technical sources to conduct such programs.

It provides for the provision of national parks and wildlife reserves, buffer zones and other protected areas for only the national priority projects.

Procedure Regarding the Use of National Forest for Conducting National Priority Projects, 2074 (2017)

Number 3 of the procedure provides for making the feasibility report in such a way that those forest areas may not be required for the conduction of project but in case of no alternative, should prepare the report in such a way that least area of the

forest shall be used. Furthermore, the EIA and IEE to be conducted along with the feasibility study report under number 4.

Standard for Determining National Priority Projects, 2079 (2022)

Number 3 of the standard provides for the following standards to be fulfilled by the project to become National Priority projects:

1. Detailed feasibility report to have been submitted
2. Certification of security of source and investment
3. To come under the purview of project under national priority as set by the current plan
4. Conducted Environment Impact Assessment and Initial Environment Examination and approved thereby
5. Secretary-level decision of the concerned ministry.

Discussion

National Priority Projects, Laws and the Issues of Land Encroachment

National priority projects are the large-scale infrastructure projects that are considered emblematic of the country's development and national pride. These projects are usually aimed at enhancing transportation, energy, tourism, and other key sectors. National Pride Projects are known to be the projects impacting on the various strata of human development as it impacts the socio-cultural, economic, political, situational aspects of human beings. Thus, we can say that the infrastructural development have both the positive as well as negative connotations.

The constitution of Nepal has provisioned for the right to clean and healthy environment for every citizen. Forest is one of the very important aspects of the environment. When forest destruction occurs, it can indeed violate the right to a clean and healthy environment as enshrined in the Constitution of Nepal. Forests play a vital role in maintaining ecological balance, regulating climate, and providing various ecosystem services. The destruction of forests through encroachment can have detrimental effects on the environment, leading to air and water pollution, soil erosion, loss of biodiversity, and climate change impacts.

National Park and Wildlife Conservation Act, 2029 establishes provisions for the demarcation and management of protected areas, national parks, wildlife reserves, and community forests. The act has introduced the concept of buffer zones around national parks and wildlife reserves. These buffer zones are transitional areas that aim to provide a buffer between the protected areas and adjacent human settlements. The act outlines specific regulations and guidelines for land use, resource utilization, and community participation within these buffer zones to minimize encroachment and promote sustainable practices.

The Forest Act of Nepal plays a crucial role in addressing the issues of forest encroachment. It aims to promote sustainable forest management, conservation, and utilization of forest resources in Nepal and emphasizes the protection and conservation of forests as a fundamental objective.

In addition to this, it addresses the issue of encroachment by defining forest land and prohibiting its unauthorized occupation. It empowers the Forest Officer to take necessary actions for the control and removal of encroachments on forest land. Moreover, defines various offenses related to illegal logging, encroachment, illegal trade of forest products, and other activities detrimental to forest conservation. It prescribes penalties and fines for such offenses to deter encroachment and promote compliance with forest conservation regulations. Act aligns with the principles of decentralization and local governance. It recognizes the role of local governments, such as rural municipalities and municipalities, in forest management and conservation.

But, Forest act, procedure, strategy, and the standard as mentioned above in other way provides ground for the national priority projects, to get validity if the EIA report shows the lesser harm to environment and if there is no alternative. However, various national pride projects in Nepal have faced criticism and controversy due to their potential impact on forest encroachment and environmental degradation. For example, road expansion projects, such as the East-West Highway, construction of roads inside the national parks and wildlife reserves, etc. have resulted in deforestation and fragmentation of forested landscapes. Similarly, the construction of hydropower projects has led to the inundation of forested areas and displacement of local communities. Therefore, this is a greater loophole of this law which validates the intervention in the natural environment. This is therefore none other than the politically constructed encroachment by the government on the natural heritages validated by the prevailing law.

In one way the act recognizes the significance of community participation in forest management and provides provisions for the establishment and management of community forests, where local communities are granted the rights to use and manage forest resources sustainably. In other way, providing the ground for destruction of forests under the veil of national pride projects can disproportionately affect biodiversity along with the marginalized communities and indigenous peoples who rely on forests for their livelihoods and cultural practices. Although the acts and strategies have mentioned regarding trees plantation in the rate of 5 trees per destruction of one, the appropriate mechanism to oversee the implementation of such provision is hardly mentioned. Moreover, destroying existing ecosystem and planting new plants in other place shall not guarantee the conservation of forests ecosystem in general.

In addition, the Forest Encroachment Control and Operation Strategy, 2068 (2012) states both the forests as well as infrastructural development projects to be the issues of national priority. Here the laws of Nepal have recognized, the national pride projects as well as the forests to be the areas of national pride and priority. But, giving a space for conducting infrastructure development inside forests; mainly the protected areas (claiming the unavailability of alternative) shows a paradoxical problem at a policy level as forests are been declined in the name of national priority projects. That is to say, both forests and the infrastructures of national priority are the priority of the nation but destroying one factor of national priority for the sake of other is a policy level loophole in context of Nepal.

In the case of **Dhananjaya Khanal v Office of the Prime Minister and Council of Ministers et.al.** Supreme Court of Nepal established a precedent stating that; “the designation of protected areas implies that these areas are more sensitive than other areas. Since such sensitive areas are not only national but also of international importance, protecting these areas is the main responsibility of the nation”. Therefore in this context, the validation for carrying out the national priority projects provided by the forest act and the related strategy and standards have nonetheless validated the utmost risk to the environment and biodiversity. Not only the biodiversity and the environment alone, such activities shall affect the indigenous communities’ people who have been subsisting in the forests.

Moreover, in the case of **Prakashmani Sharma et.al. v. Office of Prime Minister and Council of Ministers**, the Supreme Court of Nepal halted the construction of the project on 6 December 2019 due to an improper environmental impact assessment (EIA). On 26 March 2022, the court gave a final verdict that quashed all the previous decisions of the government taken so far to build the Nijgadh airport and ordered the authorities to build the airport by conducting a proper environmental impact assessment ensuring that the environmental damage is minimal. This shows that although the law has mandated the EIA and IEE reports to be the prima facie documents to be approved so as to term a project as a national priority project, these reports have been blatantly made without proper examinations and investigations and even approved under the “so called politico-economic vicious circle” of the government and the constructors. This has ultimately shown how government resource and revenue have been misappropriated in conducting such sensitive researches. This is therefore a due question on validity and reliability of such reports and it cannot be said otherwise that because of such faulty reports, the government is putting our natural heritage at stake and even investing in such a manner that the investment goes out with no proper return.

Impacts of National Pride Projects on varied areas of our socio-cultural and environmental episteme

Forests provide a wide variety of regulating, cultural and supporting services for human well-being. These are collectively known as the ecosystem services or the environmental services. Effective protection against deforestation and forest degradation, cautious management, and efficient exploitation are all necessary for the survival of the forest eco-system. In a hilly nation like Nepal, forests are crucial for the preservation of biodiversity, the protection of soil and water resources, as well as for their contributions to environmentally sound rural livelihoods.

Majorly, the forest encroachment for the purpose of infrastructural projects poses following impacts on environment and biodiversity:

1. Issues on Resettlement

Large infrastructural projects require large area therefore leading to the forest encroachment and even displacement of the people residing in the subsequent place to conduct such infrastructural activities. This shall result in displacement and disruption in the lifestyle and practices of people displaced.

2. Deforestation and carbon emissions

Trees are frequently cut down as a result of forest encroachment, which causes deforestation. Because of large deforestation taking place, carbon level sinks rampantly, forests slow down climate change by absorbing carbon dioxide from the atmosphere. When forests are cut down, the carbon that has been stored in them is released as carbon dioxide back into the atmosphere, increasing greenhouse gas emissions and causing global warming.

3. Loss of biodiversity

Forest encroachment often results in the destruction and fragmentation of natural habitats, leading to the loss of biodiversity. A variety of plant and animal species can be found in forests, many of which are endemic and cannot exist outside of their particular habitat. These species lose their habitats and can go extinct when forests are invaded or turned into towns.

Numerous species, including mammals, birds, insects, and plants, depend on forests as vital habitats. When forests are cut down to make way for towns, the natural habitat is disrupted, which causes many species to be displaced or to perish. Population losses, disruption of ecological processes, and ecosystem imbalances can all be brought on by this disturbance.

4. Disruption of ecosystem services

Forests provide a wide range of ecosystem services, including water regulation, air purification, and climate regulation. By interfering with these functions, forest encroachment for the purpose of infrastructural development can alter local and regional temperatures, lower water quality, and increase vulnerability to natural disasters like landslides and floods.

5. Increased human-wildlife conflict

As, infrastructural developments inside the protected areas encroach upon natural habitats, there is an increased likelihood of human-wildlife interactions and conflicts. Infrastructural development increases the mobility of people in those protected areas. Displaced wildlife may therefore venture into such areas in search of food and shelter and pose potential risks to human safety.

Conclusion

The impacts of forest encroachment on biodiversity and the environment are significant and wide-ranging. While Nepal's national pride and priority initiatives serve as a symbol of the nation's development goals, they also present issues with forest encroachment and environmental destruction. The laws are made in such a manner that; balance between the forests, associated culture of humans, biodiversity and the projects are seriously in conflict in one another since they have various implementation issues of those laws. To address these impacts, it is crucial to prioritize sustainable land use practices, strike balance between development and environment, protect and restore forest ecosystems, establish protected areas, and involve local communities in conservation efforts in a pragmatic approach based on enforcement mechanisms. Similarly, it is essential to implement policies that prioritize forest and biodiversity conservation, along with promoting alternative and sustainable livelihood options.

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