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History of Conflict over Forests in India:

A Market Based Resolution

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Executive Summary

India's forest policy and legislation has contributed significantly to the process of deforestation. Forests in India are state-owned. The assertion of state monopoly right and the exclusion of forest communities have marked the organising principles of forest administration, since its inception in 1864. An important justification of state-property rights regime invokes the "tragedy of commons" argument. This notion undermines the concern and the ability of the forest dependent communities to preserve their own natural resource and ecosystem, placing the state forest departments in perpetual conflict with them.

On one side is the 'state', which views forests as an important source of revenue and hence argues the need to manage them scientifically. On the other are the forest dependent communities who are antagonistic to state control, and to whom management of forests essentially forms a part of lifestyle and cosmology. And thus it is that conflicts between the communities and the forest department have been a constant factor ever since the first legislation in 1965 promulgated by the British.

Deforestation often results from social injustice and political inequalities. Forests have great economic value and are a sustained source of income to many people. Therefore, they can be seen as a contested resource over which many different sectors of the society seek to assert control. Accordingly, the allocation of property rights with regard to forests assumes importance. In legal terms, to have a right is to have the capacity to call upon the collective power of an authoritative system to protect the said right, should the need arise. This authority system could be the government of a local village, a regional authority, or a national government. To have a property right, therefore, is to have secure control over a stream of future benefit. And the type of property rights regime that evolves in a community of the state has a strong bearing on the economic and social dimensions of those who relate to its management and steer its governance. The argument for welfare thus starts with the question: Efficiency or optimal allocation, and for whom?

This paper seeks to address the issue by first going into a debate between private property rights and common property rights. Then, an argument in favour of common property rights is put forward. There has been a failure in recognising 'common property' as a regulated form of resource, managed by a group of users with exclusive rights to do so. Consequently, the presumption that such use is inevitably destined to cause degradation of the resource, has had a profound impact on the thinking, policy and practice related to control and management of forests and other natural resources. In particular, it has contributed powerfully to the pursuit of land distribution policies that favour individual private landholdings, and has helped to justify state control of forest resources, ostensibly to ensure protection and productive use.

It is now recognised that the existence of the forest communities depends on a close and ecologically sustainable relationship with the forest they inhabit. Common property resources are seen to be equitably and sustainably managed resources by the community of users as opposed to the 'free-riding' common resources. So, a proper regime of property rights involving the politically and economically marginalised population who survive on forest produce, is essential to save the forests.

As long as the conflict situation continues between the Forest Department and the villagers, one cannot hope to preserve India's forests. Forests can be protected from the people only with the help of a social fence. The forest dependent communities have to find a vested interest in preserving them. That is possible only when their food, medicinal, fuel and fodder requirements are met and at the same time they are also involved in decision-making concerning the management of the forests. People's livelihood and conservation are the twin objectives of forests and both should be safeguarded. The law has to make provision for these imperatives by delineating property rights in their favour. Property rights determine the distribution of wealth. The key question becomes, not who gets all the rights (person, state or community) but rather who gets what rights, for how long, and under what conditions. So, an examination of forest legislation is imperative for a study of India's forest policy, especially as legislation has significantly contributed to the process of degradation.

Historically, once the commercial usefulness of forests became apparent, control over forests became a contentious issue. This issue is highlighted next by looking at how forest legislation in India has evolved. We find that the alienation of the people has been meticulous – and the laws reflect this.

The colonial rulers had established state property rights over the forests in the 1860s, prior to which there existed unrestricted-use rights in them. The forests continue to be under state property rights and therefore under the Forest Department. Ramachandra Guha (1983) has argued that before 1947, our forests served the strategic interests of British imperialism, and after independence, they served the needs of the mercantile and industrial bourgeoisie. The worthlessness of the law is spelt out very clearly.

Fortunately, the government has recognised this – as is evident from the National Forest Policy of 1988. The policy enunciates meeting the basic needs of the people (especially fuelwood, fodder and timber for the rural and tribal people), and maintaining the intrinsic relationship between forests and the tribal and other poor people living in and around the forests by protecting their customary rights and concessions on the forests.

However, joint forest management (JFM) is still viewed by forest officers as a strategy to regenerate degraded forestland. Conservation and forest management is still largely the domain of forest officers. The role of the forest dependent communities still lie on the peripheries, and the existing JFM has much scope for red-tapeism that threatens to derail the entire process. In fact, after the initial euphoria that JFM created, some success stories have turned sour.

The present arrangement of JFM is nothing but a share cropping arrangement between the state and local villagers. Still, most forest departments continue to perceive JFM as a grudgingly accepted ‘benefit’ sharing arrangement to buy some peace with the local villagers. Both the content and the process by which most state JFM resolutions have been framed reflect the inevitably unequal relationship between powerful state

bureaucracies and forest dependent communities. In fact, the forest departments can unilaterally cancel the JFM agreement if the latter are perceived as violating any given condition.

It is our contention that as long as the law related to forests remains unchanged, the trend of degradation of India's forests will continue and reversals, if any, will be temporary. In other words, JFM is not the panacea to save India's forests, but a positive step in the ultimate process of decentralisation of decision-making and building up of the institutional framework for meaningful preservation and efficient use of forests. It is a utopian idea that people would prefer to preserve their ecosystem even if they go hungry. A meaningful conservation can be expected only when a community is given property rights over the forests and thus rights on extraction from the ecosystem they conserve. 'Multiple stakeholder negotiations' must be accepted as the way out. This paper thus seeks to look at the law and economics of forests in India and identify this to be the root cause of conflict.

The paper also puts forth the fact that problems relating to use and conservation of natural resources in developing countries like India are qualitatively very different from those in developed countries. Whereas in developed countries it is primarily a question of protection of what remains in nature, in India the preservation of natural resources must necessarily consider the competing claims of humans on these resources for their sustenance and livelihood. And this includes a huge population that is completely dependent on the forests and is among the poorest. Forests form life support systems for them. Recognising the real relationship between the forest resource and the people surviving on them, any legal and administrative regime must aim to judiciously utilise these resources for addressing the concerns of livelihood while ensuring sustainability of their use.

We have argued for the recognition of the forest dependent communities to be primary in the scheme of forest management. The argument favours establishment of common property rights over forests and that this be technically backed by legislation. The existing

legislation should be repealed. It must be realised that JFM cannot be the ultimate goal but only the first right step in the direction of empowering the people to manage their ecosystem. Only then will the conflicts be a thing of the past.

However, in addition to these steps, the realisation of the benefits that will accrue to the forest dependent communities depends upon the realisation of just prices for their products. This translates to proper operation of the market mechanism for the forest products, especially for NTFPs. This however is a contentious issue as the authority of the state in the form of the Forest Department and its allies is firmly etched in the marketing and sale of these products.

Forests provide a host of benefits, some directly to the users and some indirectly. This has been illustrated convincingly in the paper. A better way to accommodate the non-direct benefits that arise out of forest protection might be to establish markets for these services or benefits. Forest communities could be paid for every hectare they reforest in the interests of flood prevention or carbon sequestration.

‘Multiple stakeholder negotiations’ is a way of resolving multiple interests in or use of forests. In the present global context of capitalism this is a market-oriented question. But for this, the property rights first need to be in place in favour of the stakeholders. This will enable the forest communities openly and substantially increase their bargaining strength. Linking the provision of these services to prices will also establish regular markets for these services, which could contribute to increase in the supply of these services.

Introduction

Forest resources in India have been increasingly subjected to deforestation and degradation.¹ The prevailing idea in the forest bureaucracy over the last fourteen decades has been that conservation is the sole prerogative of the state. This notion undermines the concern and the ability of the forest dependent communities to preserve their own natural resource and ecosystem. And the effective alienation of these communities from their life support systems has resulted in widespread forest degradation, at the same time placing the state forest departments in perpetual conflict with them.

The colonial rulers had established state property rights over the forests in the 1860s, prior to which there existed unrestricted use rights in them. The forests continue to be under state property rights and therefore fall under the control of the Forest Department (FD). Ramachandra Guha (1983) has argued that before 1947, our forests served the strategic interests of British imperialism, and after independence, they served the needs of the mercantile and industrial bourgeoisie. However, many view the present arrangement of joint forest management (JFM) as a historic turnaround in Forest Policy. Although this is true to an extent, yet in reality, the present arrangement of JFM is nothing but a share cropping arrangement between the state and local villagers. Still, most forest departments continue to perceive JFM as a grudgingly accepted 'benefit' sharing arrangement to buy some peace with the local villagers. Both the content and process by which most state JFM resolutions have been framed reflect the inevitably unequal relationship between powerful state bureaucracies and the forest dependent communities. In fact, the forest departments reserve the right to unilaterally cancel the JFM agreement if the latter is perceived as violating any given condition (Sarin, 1996).

As long as the conflict situation continues between FD and the villagers, one cannot hope to preserve India's forests. Forests can be protected from the people only with the help of a social fence. The forest dependent communities have to find a vested interest in preserving

¹ While deforestation is a change of land use from forestry to non-forestry uses, degradation is the conversion of good forest cover into secondary bush, finally leading to desertification.

them. That is possible only when their food, medicinal, fuel and fodder requirements are met and at the same time they are also involved in decision-making concerning the management of the forests. People's livelihood and conservation are the twin objectives of forests and both should be safeguarded. The law has to make provision for these imperatives by delineating property rights in their favour. Property rights determine the allocation of a society's resources to its individuals. In other words, they determine the distribution of wealth. Laws governing property form a bundle of rights. Thus the key question becomes: not who gets all the rights (person, state or community) but rather who gets what rights, for how long, and under what conditions. So, an examination and analysis of forest legislation is imperative for an understanding of India's forest policy, especially as legislation has significantly contributed to the process of degradation.

The economics of forests is characterised by inter-temporal choice, that is, the allocation of resources for consumption and production over time. Central to this theme is the question of determining the optimal rate at which the forests are to be harvested, or the question of 'sustainable harvesting'. Forests can be characterised as a renewable natural resource². However, they also require certain investments that may help in the regeneration process. The extraction rate should be less than the rate at which a forest regenerates, or else the resource will get exhausted within a finite period of time; the depletion might even result in a state from which the resource is not able to regenerate at all. This is the issue of 'efficiency'.

This implies that property rights should be fully delineated and backed by legislation, for in their absence, as prices rise due to scarcity, the resource will be depleted beyond its regenerative capacity.

Implicit in these arguments is the assumption that forests are useful in a variety of ways to a whole gamut of people (to even people unrelated to the forests directly) and the land should not be put to alternative use by depleting the forests. Holding this to be true for the

² Natural resources are materials found in nature. The word resource is from the Latin word 'resurgere', which means to rise again and again.

time being, we can see that the question of welfare implications assumes importance in this debate. The type of property rights regime that evolves will have a bearing on the economic and social dimensions of those who relate to its management and steer its governance. The argument for welfare thus starts with the question 'efficiency or optimal allocation for whom'?

We thus find that there are two broad aspects of any forest management policy. The first is the efficiency issue and the second the welfare issue. These two issues are often mutually exclusive. In other words, the first issue pertains to the sustainable utilisation of trees on the basis of optimal tree cycle or the Pareto efficient 'demand-yield' model for renewable resources. The second pertains to the distribution of benefits from the use of the renewable resource or the welfare implications, which has its basis on the property relations vis-à-vis the resource. So, in the former, trees are put first while the people are ignored, while in the second, the people are put first and it is assumed that the tree will be taken care of in the process. This second issue of welfare implications is at times more important than the former. The colonial policy very zealously implemented the first (the question of success or failure is not debated here), while the policy of JFM to an extent purports the latter view.

It is our contention that as long as the law related to forests remains unchanged, the trend in degradation of India's forests will continue and reversals, if any will be temporary. In other words JFM is not the panacea to save India's forests, but a positive step in the ultimate process of decentralisation of decision-making and building up of the institutional framework for meaningful preservation and efficient use of the forests. It is a utopian idea that people will prefer to preserve their ecosystem even if they go hungry. A meaningful conservation can be expected only when a community is given property rights over the forests and thus rights on extraction from the ecosystem they conserve. 'Multiple stakeholder negotiations' must be accepted as the way out. This paper thus seeks to look at the law and economics of forests in India and identify these to be the root causes of conflict.

Valuing the Forests

Let us now look at an earlier assumption, on which the entire argument stands - forests are useful in a variety of ways to a whole gamut of people (to even people unrelated to the forests directly) and the land should not be put to alternative use by depleting the forests.

The distinctions between stock (the forest) and flow (output) is one aspect of forest resource management that is often overlooked or misunderstood. The problem arises when we try to put a value to these. Valuation of the forests or the stock is quite different from valuation of forest output or the flow of benefits from this stock. While the functions that the forest performs is varied and to an extent still not absolutely clear to both ecologists and economists, the valuation of the flow of benefits is much simpler.

In the theory of 'forest economy', forests are analysed in terms of 'capital', and the 'interest' returned on it. The object is to manage the forest in a way that maximises the interest or revenue, and thus make the forest as remunerative as possible. The procedure then is to first know the objectives to which a given forest or species is to be put, such as heavy timber, fuel or poles, or protection against erosion, or preservation for climate; this is an aspect of 'forest utilisation' and is rarely understood properly. Nevertheless, after setting the objectives of forest utilisation, one must then measure the wood in the forest, calculate its annual growth, usually designated as cubic meters per acre. Since the annual growth varies not only according to species and locale, the forester must also identify the revolution (or 'rotation') at which the average growth (i.e., 'interest') borne is at the maximum. This is an extremely complicated task, technically as well as mathematically, and forms the major branch of forestry known as 'forest menstruation'. Since, the genre and species of forests vary from place to place (and this is really varied in India), having the expertise for such forest menstruation at all levels and places is quite a far-fetched argument. In fact, if at all, it is the local forest communities who possess the knowledge.

Nevertheless, from standard menstruation practices we know that for most species the highest annual growth (or 'yield') occurs somewhere between 40 and 120 years, which is

thus the optimal 'rotation cycle', or period between planting and harvesting. But foresters rarely adopt such lengthy rotations, for lack of expertise or otherwise, and thus instead tend to treat the forest as coppice. Consequently, even an undergraduate student in forestry economics can 'prove' that it makes economic sense to clear-cut a forest if its rate of growth in value is less than the rate of return on money invested elsewhere. Recent anomalies aside, forests would need to grow at over 10% a year to keep pace with long-term returns elsewhere. That represents a doubling in volume every seven years. Few forests grow that quickly. The axe and the torch, is then the rational choice.

However, forests provide numerous benefits and in this method of valuing forests, many other benefits are completely ignored. Such a valuation ignores the value of biodiversity. It ignores the value of medicinal products in the forest, especially to the locals. It ignores the local livelihoods dependent on the forest. It ignores the soils and watersheds that the forest stand protects. It ignores the carbon sequestered in the forest biomass. It ignores the benefits that forests provide as wildlife habitats. It ignores the support that forests provide for wilderness recreation. It ignores a host of related benefits that are still not understood properly. Valuation of forests is thus extremely difficult and complex. The longer-term social and environmental ramifications of current production and consumption decisions cannot be ignored. Economic rationality encompasses not only concerns of efficiency and equity, but also of ecological resilience and of intergenerational rights and obligations. The environmental services provided by forest uplands to the lowlands include water and soil conservation, air purification, acid rain buffering, among other functions. The value of these functions is generally much greater than any use value that could be derived from direct consumption. A recent study (Kong et al quoted in Nathan and Kelkar, 2001) found that the annual value of these functions in three forest areas in China was between two and ten times the gross output value of timber, wood processing, and orchard production.

Thus the question of preserving the stock or the forests *per se*, is beyond doubt. We next look at the issue of flows. These benefits range from harvested timber to a variety of non-timber forest produce (NTFPs) including medicinal plants and trees that provide subsistence needs during exigency.

The flows of benefits from the forests are undervalued in India. The reason is the absence of the market in these products. With the property rights vested with the state, marketing of the products have been least in the priority list. In fact, the needs of the industry have been so overwhelmingly strong that inherent subsidies, without economic justification, have reflected in under-pricing of the products. Subsequently, no market mechanism exists and the true value remains elusive. This has to be corrected immediately.

By the very definition of minor and major forest produce, the forest laws identify the priorities of the government. Forest fruits, medicinal herbs, twigs and branches for fuel, fodder and small timber for building purposes are the major forest produce for the forest dependent communities but are called 'minor forest produce' by the forest department. Timber is called the major forest produce, whereas for the local people, it is the opposite. The forest dependent community seldom needs timber. Timber is essentially used by the modern urban-industrial system. The government control over the forests has definitely meant a reallocation of forest resources away from the needs of local communities, and towards urban and industrial needs. This has resulted in both "increased social conflict and increased destruction of the ecological resource itself" (Agarwal, 1994, p.358).

The priorities of the government as reflected in the laws are overwhelmingly biased against the forest dependent communities and simultaneously against NTFPs. So the need to harness this potential is not (and never was) in place. This has led to the absence of the market mechanism. On the other hand, the forest communities have had to buy the forest produce from the Forest Department at exorbitantly high rates, which has killed many indigenous artisan and handicraft practices.

Box 1

In Maharashtra, the Tribal Development Corporation has monopoly of purchase in respect of 32 MFP items. In Madhya Pradesh, sal seeds, gums, harra seeds and tendu are nationalised. Resin, which is the main output from pine forests of the UP hills is nationalised. The Government of Kerala has created monopoly for 120 notified items of

non-timber forest products. The Scheduled Tribes and forest dwellers have no right to make any direct sale to an outside party. They have to sell it to cooperative societies which auction the products gathered by the tribals. A study calculated that the open market price was more than double the government price.

The Rajasthan Scheduled Tribe Area Development Cooperative Corporation Ltd. Udaipur has a monopoly over designated NTFPs. It buys Tholi Musli, a medicinal herb at Rs 250 - 400 per kg, although tribals could easily get the same from Rs 500 to 1000 in the open market. Similarly, the Corporation pays only Rs 18 per kg for honey as against the market price of Rs 50 per kg.

According to Orissa's laws, processing of hill brooms can only be done by the leaseholder, TDCC (Tribal Development Cooperative) and its traders. Tribals can collect hill brooms, but cannot bind these into a broom, nor can they sell the collected item in the open market. Thus the poor are prevented both from getting value addition through processing or the right to get the best price for their produce.

Recent studies have shown that the capitalised value of the income derived from such non-timber forest products can be extracted in a sustainable manner and this can greatly exceed that of timber harvests (Peters, Gentry and Mendelsohn 1989, quoted in Robert Repetto, 1997, p. 471). The reduction in non-timber forest products can also lead to an increased dependence on agriculture. We thus have all the more justification for preserving the forests. Forests indeed are the green lungs of the earth³. Not only do they confer a host of benefits environmentally or aesthetically to a variety of people, there remains a strong economic justification to harness them in a sustainable manner so as to provide livelihood and income flows in the long term. This is with the caveat that the market mechanism needs to play a larger role if the economic benefits are to be meaningful.

The Question of Property Rights

Deforestation often results from social injustice and political inequalities. Forests have great economic value and are a sustained source of income to many people. So, they can be seen as a contested resource over which many different sectors of the society seek to assert control. Accordingly, the allocation of property rights assumes importance. In legal terms, to have a right is to have the capacity to call upon the collective power of an authoritative system to protect the right, should the need arise. This authority system could be the government of a local village, a regional authority, or a national government. To have a property right, therefore, is to have secure control over a stream of future benefit.

Environmental problems like degradation of forests are property rights problems. Most conflicts in forests arise because of difficulties in clarifying the property regimes (Bromley, 1991). It has been argued that “(d)ifferent bundles of property rights, whether they are *de facto* or *de jure*, affect the incentives individuals face, the types of actions they take, and the outcomes they can achieve.” (Schlager and Ostrom, 1992, p. 256)

Then the question arises as to what form of property rights should be adopted – private property rights, state property rights or common property rights. The situation of no property right is ruled out, as this leads to in Hardin’s parlance “tragedy of commons”⁴.

Many economists have argued the efficacy of private property over common property. Common property regimes have been presumed to be inefficient on three counts. One is rent dissipation. No one owns the products of the resource until they are captured, and everyone engages in an unproductive race to capture these products before others do (Cheung, 1970; Dasgupta and Heal, 1979). The second is the high transaction and

³ By recycling oxygen, nitrogen and carbon; by influencing temperature and rainfall; by acting as enormous sponges to collect and distribute water; by protecting the soil from water and air erosion; and by maintaining biological diversity.

⁴ The term was coined by G.Hardin (1968), “The tragedy of commons”, *Science*, 162, pp. 1243-48. Hardin argued that it was in the interest of individuals to over-extract benefits from a commonly held resource. Even if a particular individual exercised restraint – others would not, leading to the resource being degraded in any case. In this formulation of the problem, the resource can be sustainably managed only through state regulation or privatisation. As noted by many, this formulation of the problem closely parallels the prisoners dilemma game or Olson’s collective action problem (Ostrom, 1990).

enforcement costs expected if communal owners were to try to devise rules to reduce the externalities of their mutual overuse (Demsetz, 1967; Coase, 1960). The third is low productivity, because no one has an incentive to work hard in order to increase his or her private returns (North, 1990).

The debate on the relative advantages of private property over common property has been marked by a confusion that pertains to the difference between common property and open-access regimes, but which has been made explicit by Ciriacy-Wantrup and Bishop (1975) in a now classic article.⁵

In a common property, the members of a clearly demarcated group have a legal right to exclude non-members of that group from using a resource (Bromley, 1991). In the absence of such a right, if the resource generates highly valued products, there will be no incentive system to conserve their use for anyone; misuse and over-consumption will follow leading to the situation called open-access regimes (*res nullius*).

Ostrom (1990) argued that common property regimes controlling access and harvesting from forests had evolved over long periods of time in all parts of the world, but were rarely given formal status in the legal codes of developing countries. On the other hand, the institutional arrangements that local users had devised to limit entry and use lost their legal standing, although the national governments lacked monetary resources and personnel to monitor the use of these resources effectively. Thus, resources that had been under a *de facto* common property regime enforced by local users were converted to a *de jure* government-property regime, but reverted to a *de facto* open-access regime leading to disastrous consequences. The result has been summarised by Bruce (1996) as follows: “In many parts of the world the national state has rejected or simply refused to recognise indigenous common property regimes, and by undermining them, has returned large areas to the relative chaos of open access. It has then often responded to this chaos by insisting

⁵ For a detailed exposition on this subject see Bromley, Daniel W. 1991. “Environment and Economy: Property Rights and Public Policy”, Oxford: Blackwell Publishers.

that the state must assume control of the resource.” The impact of state intervention has often been intensified by failure to understand the functioning of the existing systems.

Private property and common property need not be mutually exclusive, but can be seen as two types of property with a good deal in common (Bruce, 1996). As access to use of common property is confined to members of a defined user group, which excludes other potential beneficiaries, the common property therefore has some of the attributes of shared private property. Put another way, common property is a way of privatising the rights to use a resource without having to divide the resource into individual holdings (McKean, 1995). Moreover, the factors which encourage collective action, and the self-regulating capabilities of groups of users makes this form of property rights and management control over the forests all the more relevant. (Runge, 1986).

Breakdowns in common property systems may reflect deficiencies in policy or policy implementation, rather than their appropriateness for managing a resource. Common property seldom has the same degree of support in law, or elicits the same response from the authorities when threatened, as private property (Bromley and Cernea, 1989; Bruce, 1996). On the other hand, these forest protection groups are typically very small, often based in a single, ethnically homogeneous hamlet and frequently functioning within broader hamlet-level management activities. Increasingly these groups are getting involved in more active management of their forest areas.

While no single type of property-rights system will be successful in managing every type of CPR, it is possible to identify certain “design principles” employed in efficient governance of CPRs. “There is a huge body of literature that documents where people have overcome these CPR problems,” (Ostrom 1990). Some of these are the size of a group and its homogeneity, clear monitoring rules and authority to impose sanctions. Behaviour in social dilemmas is affected by many structural variables including the dependence of the participants on the benefits received, their discount rates, the type and predictability of transformation processes involved, the nesting of organisational levels, monitoring methods, and the information available to participants, besides face to face communication.

On the other hand, at a behavioural level, levels of trust, reciprocity, and reputations for being trustworthy, are positively reinforcing and affect levels of cooperation and net benefits. If the CPRs are able to achieve most of these, and there exists ample examples in support of it, then there is no reason to believe that common property rights are inferior to others. Moreover, in Indian forests it is very difficult to envisage private property rights.

Box 2

Lapanga is a village in Orissa, some 40 kilometres from Sambalpur. The village is a perfect example of Community Management of Forests (CFM), which was started way back in 1936 when some villagers who were landlords and dependent on agriculture for survival, donated 40 ha of land adjacent to the forest so that the forest could grow in size and sustain the people. The village Forest Protection Committee which was formed for the first time then, meets once a year when all the village people participate in the annual meeting, and new office bearers are chosen. Moreover, every two years, one-third of the committee members are changed. Villagers are free to collect NTFP and fuelwood. Once a patch of forest is harvested it is closed for 5-10 years. The forest was harvested in 1953 for the first time. Thereafter, it has been done in a cycle of three to five years.

Another village, Chadayapalli, which protects 1,800 ha of forestland, has a systematic way of collecting and spending the money earned from forest resources. It issues passes for timber and bamboo for fuelwood to villagers twice every week at the rate of Re 1 per piece of bamboo. The village has been earning Rs. 90,000 every year in this way. The village school is run on this money and recently the committee spent three lakh rupees for construction of a road to the village, out of which Rs. 42,000 was given as compensation for acquisition of land to the villagers. Clearly these villages do not depend on *panchayat* grant or government money.

There has been a failure in recognising ‘common property’ as a regulated form of resource tenure and use, managed by a group of users with exclusive rights to do so. Consequently the presumption that such use is inevitably destined to cause degradation of the resource, has had a profound impact on the thinking, policy and practice related to control and

management of forests and other natural resources. In particular, it has contributed powerfully to the pursuit of land distribution policies that favour individual private landholdings, and has helped to justify state control of forest resources, ostensibly to ensure protection and productive use.

Forest Laws at the Root of the Problem

The Hindu law is “older than any other existing legal system except perhaps the Jewish and... [f]or three thousand years its outstanding characteristics have been the freedom of juristic discussion and the wealth and variety of custom” (Vesey-Fitzgerald, 1998, p.257). The principles of equality were well enshrined in the ancient laws of India. The legal theory of ancient India as evinced by the scriptures and *Dharmasastra* was a unique combination of religion, law and morality. The advent of the British rule in India from 1754 brought about the decline of *Dharmasastra* law and ushered in radical changes in the then existing legal system. Initially in 1772, Warren Hastings appointed *Pandits* and *Moulvis* to interpret the Hindu and Muslim law respectively, spurred on by a curiosity for the indigenous and aware that it would be politically and socially cumbersome to administer English or western law to supplant an already complex set of native rules. In the Hindu law system, proof of usage clearly outweighs the written text of laws, and the Privy Council recognised this in 1868. However, this process of discovery was as inexact as it was purposive. Its inexactness led to what Gandhi later described as the “egregious blunders” committed by the British in their interpretation of native law.⁶ Most of the changes that emerged did not result from errors of understanding but constituted deliberate and adaptive re-creations. This practice was aborted and the courts took upon themselves the responsibility of interpreting the law. This marked the beginning of the institution of lawyers and advocates to do the work, which was hitherto done by the *Pandits* and *Moulvis*. Meanwhile, since 1833, the British had started changing the socio-political situation by codifying the laws. The process of legislation through regulations in the initial stage and then by statutory law threw the age-old ancient laws into oblivion giving place to laws based on English common law pattern. Macaulay, the law member of the

⁶ Rajeev Dhawan in the introduction to Marc Galanter (1994), *Law and Society in Modern India*, Oxford University Press, New Delhi, pp.xiv.

Governor General in Council, rejected the ancient legal and political institutions as “dotages of Brahminical superstition” and condemned them as “an apparatus of cruel absurdities”.⁷ Sir Henry Maine, one of the main exponents of the Historical School of Jurisprudence and the author of *Ancient Law*, criticised ancient Indian jurisprudence as “an idealistic imagination”. With the English preconception of seeing law as a single system and in the absence of detailed written text of the existing Hindu law, the manner in which the English lawyers approached Indian problems marked a transition in the Indian legal system. A direct fallout of this new system was that it reduced the caste tribunals or *panchayats*, which upheld the local custom and its associated *dharma* or justice as primary, to a position “resembling that of club committees or trade unions in England” (Vesey-Fitzgerald, 1998, p.261). On the other hand, one of the important objectives of the entire exercise was to further the interests of the crown or the ones who represented the crown, by bringing in momentous changes in the institutional structure and changing or twisting the legal mechanism to achieve it. This is typified by the 1865 Act and then more pronouncedly in the 1878 Forest Act, wherein the tribal customs, practices, relations and dependency on the forest and thereby their traditional customary rights on the forests, was totally and blatantly neglected. Macaulay gradually introduced the notions of British juristic concepts and brought about a codification of laws. In enacting these legislations, the British government did not wait for public opinion of the indigenous people. These codified British laws were akin to the Austinian concept of positive law, having the element of certainty, definiteness, effective enforcement and sanction. In this strict Austinian sense, the forest acts exemplified sanctions that were imposed in the name of ‘justice according to law’.

British forest consciousness in India had begun to take concrete shape around the middle of the nineteenth century, when in keeping with the bourgeois outlook towards forests, the British turned towards maximising the revenue. Down to the middle of the nineteenth century, traditional dues and cesses, which accrued to the colonial rulers, were the main source of forest revenues to the British. As early as 1850, a commission mandated by the British colonial administration prepared a report, a conclusion of which was that Indian forests

⁷ S.N.Dhyani (reprinted 1992), *Fundamentals of Jurisprudence – The Indian Approach*, Central Law Agency, Allahabad, pp. 143.

were being destroyed mainly due to local people's mismanagement (Agarwal, 1985). Consequently a full-fledged forest department was created in 1864. The assertion of state monopoly right and the exclusion of forest communities marked the organising principles of forest administration, since its inception in 1864. Towards this end, the first Forest Act was passed in 1865.

Section 2 of the 1865 Act contains the purpose for which the Act was promulgated. It gives powers to the Governor General of India as well as to the local governments, to declare any land covered by trees, brushwood or jungle a 'Government Forest'. The declaration is to be preceded by a notification in the 'Official Gazette', but with the caveat that such a notification "shall not abridge or affect any existing rights of individuals or communities". It must be mentioned that such rights seldom appeared on paper. And as Baden-Powell (1882) argued, "in the absence of recognised private rights of ownership, however originating, the [British] Government is, by ancient law, the general owner of all unoccupied or wasteland" (p. 88). What Section 2 provided, was a simple methodology by which any wasteland covered by trees, brushwood or jungle could be declared as 'Government Forest'. It must be recognised that the term 'jungle' is itself obscure. In common parlance it also means all natural growth on land before it is brought under cultivation. So, the Act merely sought to establish state-property rights, which translated into the right to cut down forests for imperialistic pursuits.

By specifically declaring certain activities as illegal or regulated, the legislation aimed at restricting access of the local people in the forests. So, in effect, this Section aimed to put forth the exclusive claims of the colonial government over the forests. The villagers had traditionally carried on activities like collection and removal of leaves, fruits, grass, honey, etc. for centuries, sometimes for mere subsistence. The colonial government failed to recognise this aspect. The government had no interest in such forest produces either, at the time of the promulgation of the Act. Restricting access by banning activities inside the forests was the *modus operandi* of establishing state-property rights. Conflicts were the end-result and the legislation had to empower those involved in managing them.

Section 5 gave power to the local government to prescribe punishments for infringement of the rules. It noted that the fine prescribed should not exceed five hundred rupees. It must be realised that such an amount was excessively high in the 1860s and was introduced as a deterrent. However, even this amount was criticised to be insufficient by the British bureaucracy (Guha, 1983).

In fact, the Act was hurriedly drafted and passed mainly to facilitate the acquisition of those forest areas “earmarked most urgently for railway supplies” (Guha, 1990, p.66). Thus the Act merely sought to establish state property rights on the forests. Again, the definition of forest (and the legislation in general) did not propagate conservation and afforestation. The provisions of protection applied only after a forest was selected and declared a “government forest”. Going by the definition of ‘forest’, a barren land could not be demarcated and used for afforestation. Overall, the Act was silent on the principles of forest management.

Unfortunately, revenue generation and commercial exploitation became all pervasive and continued to be the edifice on which the legal system for forests was built and on which the machinery of the forest department operated.⁸ The process totally annihilated the community. The policing orientation of the forest department excluded villagers who had the most long-standing claim to the forests. The understanding of this fact is very important in the analysis of forest legislation in British India.

By the second half of the nineteenth century, economics/commerce and accountability considerations started playing a crucial role. It no more made economic sense for forest officers to be paid out of ‘His Majesty’s Court’ or exchequer (as perhaps was the case in 16th century Britain). They had to generate surplus.⁹ Factors like procurement of timber for

⁸ Voelcker (1897), comments that, “the forest department by its intervention, has stopped in good measure the work of destruction, and has brought in a large, and ensured a continuous, revenue to Government”. (p. 135), “Report on the Improvement of Indian Agriculture”, Government Press, Calcutta.) Overall it can be said that it was the duty of the forest department to systematically exploit forest resources and to preserve them for continuous exploitation.

⁹ The Financial Department repeatedly chastised the Madras Presidency (which was reluctant to introduce and implement forest legislation in the beginning) as its operation failed to show any

railway sleepers became important considerations.¹⁰ Slowly, it was also realised that conservation and protection of forests is necessary in order to ensure a steady flow of revenue in the future. Undoubtedly, commercial considerations were the driving force behind the enactment of forest laws in India.¹¹ Large-scale deforestation is testimony to the efficacy of this philosophy. In fact, the resource endowment landscape is replete with evidence that bears testimony to the fact that natural resources, far from being judiciously harnessed for development, have been damaged, depleted and eroded in significant measures.

The 1865 Act was replaced by a much more repressive Act in 1878 as it was thought to be 'inadequate',¹² with commercial considerations and revenue generation becoming overriding. In fact, all the provisions of the 1865 Act were found to be defective, except Section 8, which according to Baden-Powell, the chief architect of the 1878 Act, "gives the one satisfactory power in the Act, and must be maintained in the new law; arrest without warrant is absolutely essential" (Guha, 1983, p. 1941).

surplus. See Progs No. 8-23, October 1879, Revenue and Agriculture (Forests), National Archives of India. Also see Ramachandra Guha (1990), "An Early Environmental Debate: The Making of the 1878 Act", *Indian Economic and Social History Review*, 27, 1, p. 65-84.

¹⁰ Perhaps it would be no exaggeration to support Guha, (1990, p. 66), when he states that "the Indian Forest Department owes its origin to the requirements of railway companies"; and the legislative backing to the effective functioning of this department, created in 1864, was provided in the following year, when the first legislation on forests was passed.

¹¹ It is interesting to look at Farooqui (1997, p. 40-47). "The denudation of trees of all species appears to have ...reached its climax... [when] the demands of the railway authorities induced numerous speculators [and contractors] to enter into contracts for sleepers; and in order to secure a certain favourable area for themselves, these men were allowed, unchecked to cut down acres of old trees, very far in excess of what they could export.....The haphazard way in which the railway contractors used the forests was one of the reason behind the Government's decision to take steps to do away with this unplanned manner of deriving profits from forests. Forests had to be worked methodically to yield a regular income. In other words, a plan had to be drawn up by trained personnel for the effective utilization of forest resources..... The desire to make money out of the trees and not preservation in itself was the motive behind the working plans. The statements of the British administrators regarding forests were usually couched in the in the language of preservation, but always hinted at profits.

¹² The colonial bureaucracy was unanimous that the 1865 Act exercised only a tenuous control over forest estates, and the search for a more stringent and inclusive piece of legislation started quite early. In fact Brandis, the first Director General of the Indian Forest Department, prepared a new preliminary draft as early as 1869.

The 1878 Act was a comprehensive document. The Act was entirely different, both in form and content, as compared to the previous legislation. While the 1865 Act had only 19 Sections, the 1878 Act had 83 Sections, divided into 14 Chapters and a Preamble.

For the 1878 Act, establishment of absolute state property rights and so a firm settlement between the state and its subjects over their respective rights in the forests represented the chief hurdle to be overcome. As Brandis put it, “Act VII of 1865 is incomplete in many respects – the most important omission being the absence of all provisions regarding the definition, regulation, commutation and extinction of customary rights...[by the state]...” (Guha, 1983, p.1944). Thus the establishment of absolute state property rights over forests along with the legal separation of customary rights became the primary objectives of the 1878 Act.¹³ Towards this end, the classification of forests – into reserved forests, protected forests and village forests – and the procedure for forest settlement in these, were the twin features. The demarcation, an inherent feature of the definition of forests, is based purely on administrative grounds. However, the commercial motive was the guiding principle.

In reserved forests (Chapter II), the lands were the absolute property of the government. In protected forests (Chapter IV), although the lands were the property of the government, the use-rights of the villagers remained. In village forests (Chapter III), the government held only the rights of management. Village forests consisted of residue forest wastelands with hardly any forest department control. The reserved/protected classification was guided by the goal of profit from timber. Obviously in village forests, profit was absent and non-existent. In the beginning, only those areas needed for the requirements of the country and for export to England were designated as reserved forests.¹⁴ However, it was not possible to

¹³ The 1878 Act was passed after a prolonged and bitter debate within the colonial bureaucracy, on the procedure for the legal separation of rights. The final Bill marked the triumph of the “annexationists”, of which Baden-Powell was the high priest. He was unwilling to accommodate any customary rights of the villagers. For an excellent discussion on the debate, see Guha, *op. cit.*, pp. 65-84.

¹⁴ Within the country, requirement for railway sleepers necessitated an insatiable demand for timber. In the 1870s it was calculated that “well over a million sleepers were required annually”, at the rate of 860 sleepers per mile of railway track construction. Each sleeper was calculated to last between 12 to 14 years. However, the pace of railway expansion was greater than perhaps what calculated - it expanded from 1349 kilometers of track in 1860 to 51,658 kilometers of track in 1910. Again it was well known that the success of England during its war with Napoleon and

assess the demand needs right away. So, with time, the area under reserved forests increased. Protected forests were designated with the ultimate goal of converting them into reserved forests¹⁵. And as the demand for forest resources increased, the conversion took place. There were 14,000 square miles of state forests in 1878. This increased to 56,000 square miles of reserved forests and 20,000 square miles of protected forests in 1890 and to 81,400 and 8,300 square miles respectively in 1900 (Gadgil and Guha, 1992, p. 134). There was a bar on the further accrual of rights.

The laws enacted by the British, which realised total control over common property resources never mentioned 'reserved' for whom, 'protected' against whom, and in favour of whom; nor do the 'revenue' land laws mentioned as to who the beneficiaries of revenue were going to be. This is because the British had a straightforward purpose in declaring land which generated wealth for the local people as 'revenue' land, and in so doing the wealth available to the local people as 'revenue' became available solely to the Crown. The policy adopted was to either have reserved forests under strict state control or have forests with no restrictions. The report of the 1928 Royal Commission on Agriculture in India reiterated this fact. "There can be little doubt that the protected forest was by and large, a myth, and it is precisely this fact that shows that preservation was a farce" (Farooqui 1997, p. 27). Revenue and commercial considerations were the guiding motives.¹⁶

the latter maritime expansion was due to the permanent supply of durable timber from India. "Ships were built in dockyards of Surat and on the Malabar Coast, as well as from teak imported into England". In fact, even in the second decade of the 20th Century, "well over one million sterling worth of teak wood [were] being imported annually into Britain". See M. Gadgil and R. Guha (1992), *This Fissured Land : An Ecological History of India*, Oxford University Press, New Delhi, pp. 118- 143. Also see E.P. Stebbing (1922), *The Forests of India*, Vol. I, and R.G. Albion (1926), *Forests and Sea Power*, Harvard University Press, Cambridge, Massachusetts.

¹⁵ Initially only three kinds of trees, deodar, teak and sal were used for railway sleepers. However, around 1912, research proved that the blue and chir pines were also suited for this purpose. In the next few years, the extensive pine forests of Garhwal and Kumaon regions were reserved.

¹⁶ The revenue and surplus of the forest department increased from 5.6 and 1.7 million rupees respectively, for the period 1869-70 to 1873-74, to 55.2 and 18.5 million rupees respectively for the period 1919-20 to 1923-24. See Stebbing (1922-27), Vol. III, p. 620.

What distinguished the reserved forests from the protected forests was that “in a reserved forest everything is an offence that is not permitted; while in a protected forest everything is an offence that is not prohibited” (Gadgil and Guha, 1992, p. 125).

The Chapter on village forests remained a “dead letter”. The chapter had only one Section – Section 27 – on the formation of village forests. Village forests could not be constituted straightaway. The land had to be first constituted as reserved forest and the local government “from time to time” was empowered to assign any such forestland to any village-community. The local government could also cancel any such previous assignment. All provisions within the Act relating to reserved forests also applied to village forests. And by Section 13 (within the Chapter on reserved forests), the villagers could not barter or sell timber or any other forest produce, if prior permission had not been acquired. The overall effect was that the villagers were confused about the legal status of village forests, as they understood that their control was not a formal one. Clearly, village forests were a residue and the constitution of which depended on the whims and fancies of the colonial bureaucracy, guided largely by commercial considerations. Again, effective control was never extinguished by the state. It could, whenever it wanted to, usurp the rights of the villagers directly or indirectly. Overall, in all kinds of forests, the state was emphatic in its assertion of absolute property rights.

The procedure of settlement of the customary rights of the villagers further strengthens this argument. A distinction was made between ‘rights’ and ‘privileges’. ‘Rights’ referred only to those assertions that unquestionably existed earlier and were perhaps recorded in earlier land settlements, giving them a strictly legalistic interpretation. On the other hand, ‘privileges’ were more of concessions, for example, the use of grazing, collecting firewood, etc., and which were “always granted by policy of the state for the convenience of the people”. The distinction, “by one stroke of the executive pen, attempted to obliterate centuries of customary use by rural populations all over India”(Gadgil and Guha, 1992, p. 134).

The Act outlined a detailed settlement procedure. Such a procedure was to be followed whenever a reserved forest was to be constituted.¹⁷ It is contained in Sections 4 to 15, under Chapter II on reserved forests. The local government, after issuing a notification in the local Official Gazette, declaring the proposed constitution of a reserved forest and specifying the limits, would appoint a Forest Settlement Officer (hereafter FSO). The FSO would then publish the same proclamation in the local language asking people to come forward with claims of rights of use. Thereafter, he would take this down in writing and inquire into the validity of all claims made. He would then decide to admit or reject them in whole or part. If the claim to rights admitted was of pasture or forest produce and not in or over land, the FSO would record the extent of the claim admitted. The FSO could also alter the limits of the proposed forest. If the claim to a right was specifically in or over land, and if such a claim was admitted in whole or part, the FSO would either exclude such land from the limits of the proposed forest or extinguish the right by paying compensation or transferring the exercise to another block of forest. Thus at the end of the settlement, no “rights” remained in the reserved forest. Yet in the whole exercise, the FSO had tremendous flexibility. The Act in general also had a great deal of flexibility in interpretation, despite the apparently restrictive and precise wording of the various provisions. In fact, Baden-Powell commented that if such interpretations were “intelligently done, it is surprising often to find how much better off we (i.e., the colonial state) are than a casual or hopeless elimination of existing sections would at first suggest” (Guha, 1983, p. 1942).

It is also important to point out that there existed no certainty that the notifications issued under the forest laws would actually reach the people whose land was being taken away or that they would even be able to read such notifications. There was nothing in the forest

¹⁷ Village forests had to be first designated as a reserved forest. Again the notification for a protected forest cannot be made unless “the nature and extent of the rights of the Government and of private persons in or over the forest-land or wasteland comprised therein have been enquired into and recorded at a survey or settlement” (Section 28). Thus the procedure of settlement applied to all forests, over which the government wanted to establish its rights, and not just reserved forests (which is the impression that Section 3 carries).

laws which made the officials accountable to the people should the notice was undelivered. The second problem from the people's perspective was that the notion of legal limitation of time did not exist in the forest laws. For most Indian forests the rights of the people have not been settled as yet, including those in the National Parks and Sanctuaries. Many problems concerning ecological fragility would not have been there today if people's rights had been settled within a specified period of time.

The several amendments to the 1878 Act and the ambiguous language used necessitated a single piece of legislation that would do away with all kinds of ambiguity. So the 1927 Act was promulgated. In fact, there are only minor differences between the 1927 Forest Act and the 1878 Forest Act (read along with the various amendments).¹⁸ The 1927 Act continues to be the basis of Indian forest legislation.

The Indian Forest Act of 1927 is timber oriented. Its title says "An Act to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce". There is no mention of conservation. According to the Act, no person can claim a right to private property in forestland merely because he is domiciled there, or his forefathers lived there for centuries. Nor do such people have any rights over forest produce. A careful reading of Section 3 of the Indian Forest Act of 1927 demonstrates that this Act starts with the assumption that the common land which the forest and the people cohabit is the property of the government, and that the latter is *ipso facto* entitled to the forest produce. This is one of the basic assumptions on which the Act rests, and which is faulty. Moreover, Section 2 of the Act does not define 'forests', and simply leaves it as 'whatever the government notifies'. The status of land notified in Section 4 is not specified.

The purpose behind the Forest Act is very clearly to lay down the procedure by which the government can acquire property and generate revenue from it. Two fundamental issues

¹⁸ For example, the word 'State Government' has replaced the word 'Local Government' throughout the Act. Again 'Land Acquisition Act, 1870' has been replaced by 'Land Acquisition Act, 1894' in the 1927 Act. Wherever a substantial deviation has taken place, it is highlighted in the analysis.

can be clearly identified. The first pertains to the method through which the government acquires land, the nature of control it may exercise on it, and the way it may negotiate its proprietary rights with existing rights holders and claimants. The second pertains to control of timber and other forest produce in transit, the duty leviable on them and the collection of drift and stranded timber. Clearly, exploitation and appropriation of the forest resources is the unidirectional aspect of the Act.

Box 3

Sayagata village in Chandrapur District of Maharashtra is no different from many of the Indian villages vis-à-vis its escapades with the forest department. The forest adjoining the village was quite dense till the 1960s. However, after independence the Forest Department stepped in, banning all access to the forest. On the other hand, the collusion with the timber mafia or the timber contractors resulted in illegal logging that reduced the once-lush forests to a lone banyan tree near the village temple.

Villagers lost their livelihood. There were no *tendu* leaves, gum and *mohua* to sell in the market. Most of them were forced to cultivate their lands or work as bonded labourers elsewhere. But agriculture did not reap any benefits as the land was unproductive.

Finally, in 1979 the villagers got together. They formed a committee. They fenced the forests. But they did not plant any new tree. The stress was on regenerating natural rootstock. Groups of ten people guarded the degraded forests day and night. By 1982 the forest started showing signs of recovery.

However this is when the forest department came back. They claimed back the land under the Forest Act. The officials even prevented them from collecting fodder. Even today the battle between the forest department and the people are far from over.

Down to Earth, April 30, 2000.

The Indian Forest Act does not depict the forests as nature or as an ecological catchment, nor does it portray forests as a habitat where man dwells and lives in harmony with it. Neither does the Act speak of biodiversity or the relevance of conservation. Even the definitions of 'forest produce' and 'tree' are economic definitions in the sense that the Act enlists only those forest products and plants which have economic values.

The government of India came up with a Forest Policy in 1952. One of the prime concerns of the forest department prior to the 1952 Forest Policy was to increase revenue generation from the forests. The 1952 Forest Policy added the dimension of increasing the forest cover. It envisaged a tree cover of 33 percent of the total geographical area. It did not matter what was the composition of the forests. So it did not matter whether the forest dependent communities, who are primarily tribals, favoured and benefited from such a policy. Consequently, eucalyptus was planted in all kinds of land throughout the country. On the other hand, forests were recognised to serve the needs of the mercantile and industrial bourgeoisie. So, increased forest cover also translated to increased forest products, especially timber for the industries.

The short-sightedness of the Indian government after independence is also highlighted as no further amendments were made to the basic Act of 1878. The 1894 policy spoke about the 'rights' of the rural communities over forest produce. Slowly it became 'rights and privileges', which was given a legal status in the Indian Forest Act 1927. One would have expected the post-independence government to undo this damage. But the 1952 policy turned the phraseology to "rights and concessions." Forests were not perceived as a whole, and the focus was on timber, which is but a component of the complex whole. The colonial government turned land without individual titles into state property. Consequently, the forest laws turned the forest dwellers into 'encroachers'. After independence, the process intensified. As a result tree cover declined from 70 million ha in 1950 to 35 million ha in 1990.

Box 4

Even if a state government extends privileges over forests to local people, those privileges may be curtailed by oppressive actions of State Forest Department personnel. The opinion issued in *Fatesang Gimba Vasava vs. State of Gujarat* (AIR 1987 GUJ 9) documents such a situation. Petitioners were tribals granted privileges to obtain bamboo from a reserved forest. They fashioned the bamboo into articles that they sold to private traders. Petitioners charged that the State Forest Department officials barred traders from transporting bamboo articles by truck and requested the local railway administration to cease transporting the goods. The alleged motive for these actions was a scheme between the forest officials and a local paper mill to force the tribals to sell the raw bamboo to the paper mill.

The Forest Conservation Act of 1980 was a crisis driven response. When remote sensing data of the 1970s showed a remarkable decline in forest cover (about one million hectare a year over the decade) the then prime minister Indira Gandhi brought in the Forest Conservation Act. The Act was promulgated to stop the use of forestlands for non-forest purposes like roads, dams and buildings, which affected forest cover. This was achieved by bestowing the central government with the sole authority for granting such permissions.

The end result of this legislation was that the state governments neglected the small but important activities and requirements of villagers to build schools, electric poles or bridges. As a result, Uttarakhand, the very area which gave birth to the Chipko movement saw a Jangal Kato Andolan in the 1980s against the Forest Conservation Act.

The Forest Conservation Act of 1980 was a two-page document that further strengthened the 1927 Act. The Act is not really a substantive law, it is a delegated legislation, which empowers the Minister to make the decisions about how to use the forestlands. It is hence a land use law and depends upon the whims or fancies of the minister or his commitment to the use of forest resources in a suitable way. Further, this Act only forbids “reserve forests” from being denotified by the states. The main spirit of the Forest Conservation Act, one presumes, is to conserve forests. This however cannot be achieved unless the law mandates

decision making on a scientific basis and the conflict of powers of land utilisation under the Indian Forest Act and the Forest Conservation Act is resolved. The 1927 Act is branded as a ‘use law’ and the 1980 Act as a ‘conservation law’. In reality while the former is an ‘exploitation law’, the later is ‘no law’. None of the forest laws cover wetlands, mangroves, deserts, estuarine, riverine, etc., and any definition of forests without covering these ecosystems, is incomplete.

In 1988 the Forest Conservation Act of 1980 was amended to stop the use of forestlands for establishing plantations by private parties, in keeping with the 1988 Forest Policy of forests being managed for the needs of the forest dependent communities. The amendment mandated that wood-based industries should source their raw material from farmlands. However, the amendment does not prohibit the forest departments from undertaking plantations. Using this loophole, politicians have tried to allow access of industrial firms to government forestlands, wilfully disregarding the spirit of the official forest policy (Agarwal, 2000, p.4).

At the same time, the government came up with a new Forest Policy in 1988 – marking a historical turnaround in forest policy. The rights and needs of the forest dependent communities was prioritised over other aspects. However, the 1988 amendment to the Forest Conservation Act of 1980 places all the forestland under the jurisdiction of the forest department. Thus while on one hand the Indian government has adopted a policy sympathetic to the needs of the forest dwellers, on the other it has enacted laws that restrict access of these people to the forests. “In the case of the government of India, the left hand does not know what the right hand is doing. As regards forest development, the right hand is undoing what the left hand is trying to do” (Singh 1995, p. 185).

Box 5

The women living in the desert area of Santalpur Taluka of Banaskantha district, Gujarat survive mainly on gathering gum from the *babul* trees planted by Forest Department. The Forest Department insists on licenses for gum collection, and since the women had no licenses, they were in the past collecting gum ‘illegally’ and selling to private traders.

After joining SEWA they formed DWCRA groups and demanded licenses, so that they could 'legally' sell the gum to the Forest Corporation. The rates for gum are fixed by the Forest Corporation, and to the women's dismay, their legality has resulted in getting poorer rates from the Forest Corporation than what they could get from the open market. The tragedy is that these women can get a better rate for gum in the open market, but the Forest Corporation will not allow the gum pickers to enter the open market, and they have to sell their gum for one-third to one-fourth of the market price.

In 1981-82, the paper industry paid the Madhya Pradesh Forest Department Rs. 0.54 for a length of bamboo, while for the same piece the forest dweller had to pay over Rs. 2.00.

“The laws have totally destroyed the traditional systems of village management... have started a free for all... The result is that village communities have lost all interest in their management and protection... This alienation has led to massive denudation of forests” (Agarwal and Narain, 1989, p.27).

Joint Forest Management

The policy relating to forests underwent a sea change in 1988. The role of the village communities in the preservation and management of the forests came to be recognised. This historical turnaround gave birth to the policy of Joint Forest Management and is hailed as the appropriate institutional arrangement for halting forest degradation as well as regeneration of degraded forests. JFM has had its fair share of success too.

JFM attempts to change the centralised, top down, bureaucratic forest management system introduced by the British in the last century to one centred on decentralised, participatory, local need based planning and management. Central to the JFM concept is the premise that local forest dependent woman and men have the greatest stake in sustainable forest management because of their cultural, economic and environmental dependence on forests.

There exist many instances of successful management of forests by the forest dependent communities wherein such initiatives started much before the 1988 Forest Policy

declaration. The two most well-known pilot experiments to emerge out of the initial initiatives, which provided the basis for subsequent official JFM frameworks are Arabari in West Bengal, which started in 1972, and Sukhomajri in Haryana, which was started in the mid-1970s. What JFM did was to spread the mantra of community based management officially, increasing the quantity and spread of such success stories (i.e., the tacit permission or support of the state and supportive actions by Forest Departments). But JFM has certain drawbacks and it is our contention that this arrangement is unsustainable in the long run.

However, it is now acknowledged that both these experiments have failed to live up to their expectations and the success stories have degenerated. There are a host of reasons for this but the failure in both these cases can be traced to the alteration of the initial incentive structure by the Forest Department by virtue of its holding the property rights in these forests.

In the execution of JFM, participation has been limited to protection activities and wage labour for crop establishment. As a result, JFM appeared to be similar to other forms of 'welfare forestry' and was often seen as just another funding scheme, which, with people's participation, would enable the forest department to more effectively protect the forest. Decision-making is still biased towards timber and revenue production. The opinions of socially weak subgroups and women, whose primary interests may be lie in non-wood forest products, are not reflected in decision-making by the FPCs.

The idea of JFM implies the handing over of certain rights to village communities to appropriate natural resources for their own use. However, the lack of a clear definition of who precisely the right holders are and the kinds of rights and sanctions that can be applied impeded the process of establishing social institutions. The policy failed to understand the social and economic features at the local level and the user's responses to changes. One reason for the failure of JFM policy is its top down approach, because of which the diffusion of the institutional elements was difficult. There was also the constraint of user groups being organised for collective action by external interventions. The lack of proper

incentives for the users to participate and the legal flexibility to enforce regulations fail to address the assurance problem. In general the following observations can be made about JFM.

- JFM is based on the abstract notion of an undifferentiated community.
- The current imbalance of power and control that appears to be part of the institutional relationship between the Forest Department and the local community at times is geared to extending the Department's control over the community.
- Restrictions on areas eligible for JFM means that barely 30 percent of the total forested area of the country is eligible for management .
- Most state orders under JFM assure the participating villagers 25 to 50 percent share of the net income from timber on 'final felling' of mature trees. This implicitly pre-defines JFM's primary management objective as the production of timber, diverting attention away from the diversity of existing forest usage and dependence. Even the villagers' share of timber is often offered to them in the form of monetary revenue, and ironically many a times the villagers have had to buy back the same timber for meeting their own requirements, albeit at a much higher price.
- Around 300 million people live below the 'poverty line' in India, and around 200 million of these are partially or wholly dependent on forest resources for their livelihoods. So NTFPs play a crucial role in their livelihood. However, most states have monopoly rights over collection and marketing of NTFPs, either through forest departments or forest corporations or agencies created for this purpose. But NTFPs do not fall within the provisions of JFM agreements. As a result either the local populace cannot collect the NTFPs and thus lose out on the revenue generated from its sale, or are forced to sell the NTFPs to these nationalised bodies at a very low administered price. None of the JFM orders promulgated by Indian states mention these existing institutional arrangements for the collection and disposal of NTFPs from forest areas, which remain in force even after the area is brought under JFM, thus creating confusion over the status of NTFPs (Mayers and Bass, 1999, pp. 137-8).
- The institutional arrangement of JFM vis-à-vis the 1988 Forest Policy is very fragile and inadequate.

- JFM is being implemented in a context of deeply entrenched institutions like the Forest Department, designed for achieving very different ends. These institutions continue to function at cross-purposes (Mayers and Bass, 1999, pp. 137-8).

The forest policy of 1988 remains a non-statutory and advisory statement issued by the government of India and is not backed by law. This means that the property rights remain vested with the state or the Forest Department. It also means that the law relating to forests is essentially the 1927 Indian Forest Act, which is more or less the 1978 legislation, enacted by the colonial rulers to serve imperialist goals and in that scheme of things, neither forests nor the forest communities were important. This was illustrated before. It was also argued that assigning property rights is of utmost importance from an economic standpoint.

We need to abandon the out-dated forest law. The forest question can be addressed only if the restoration of the rights of the people is placed on the agenda. The various schemes that are aimed at encouraging the people to participate in forest management, even if they succeed in enlisting the support of the local inhabitants, cannot be a substitute for the rights. The present discussion on JFM, although by no means complete due to the limitation in scope, seeks to explain that good intentions and ad-hoc arrangements do not matter. There remains a lot of loopholes in the existing structure and till the property rights are not vested with the local forest dependent communities, arrangements like the JFM can have temporary success. The laws need to be changed if conflicts are to be solved as JFM appears to be contradictory to current legislation, such as the Indian Forest Act of 1927 and Forest (Conservation) Act of 1980.

Conclusion

The problems relating to use and conservation of natural resources in developing countries like India are qualitatively of a different nature than those of developed countries. Whereas in developed countries the primary issue is protection of what remains in nature, in India the preservation of natural resources must necessarily consider the competing claims of

humans on these resources for their sustenance and livelihood. And this includes a huge population that is completely dependent on the forests and is among the poorest as forests form life support systems for them. Recognising the real relationship between the forest resource and the people surviving on them, any legal and administrative regime must aim to judiciously utilise these resources for addressing the concerns of livelihood while ensuring sustainability of their use.

Historically, forest dwellers have never truly owned the forest in the modern legal sense. What 'they have had is occupancy rights', i.e. rights to possess the forest and use its products. The *Artha Veda*, *Brihat Parasara* and other related texts clearly reveal that in the Vedic period the Aryan kings, after they conquered an area, realised taxes for land granted but did not usurp occupancy rights. This tendency became more pronounced in the Mauryan and Buddhist periods. Forest dwellers were granted life tenures. Later, Hindu and Muslim monarchs continued this tradition, even though they proclaimed sovereignty over all land under their jurisdiction.

The British used monarchical claim over land to introduce the institution of common property over which the sovereign has absolute rights. This was justified in legal theory in the name of a new 'act of the state' jurisprudence. Having introduced this, the first legislation – Bengal Regulation Act I of 1824 – was enacted. This allowed the acquisition of land by the Crown. The provision of this Act was slowly extended to the whole of India by 1857 under British Sovereignty. The law was amended in 1870 and then again in 1894, yielding the Land Acquisition Act, which, in its amended form, is still in operation in India. This Land Act, however, deals mainly with private land and property. For the regulation and acquisition of common property a parallel set of regulations had to be enacted, and these came to be known as the Forest Laws.

Hence, in the strict legal sense, even the *zamindars* had only an occupancy right and were mere tax collectors. Although the British vested property rights in the *zamindars* they did not do this for forest dwellers. This was despite the fact that, legally, the land granted to

forest dwellers by earlier monarchs generated similar occupancy rights for them, as it did for those who cultivated non-forest lands.

We see thus that the same fact – of having occupancy rights – is interpreted in two different ways, both to assert and deny property rights, to achieve similar ends. In the first case it represents the desire to simplify the procedure for revenue collection. In the second, since forests were virgin lands with massive resource potentials and since the tribals living in them were not educated enough to set up administrative machinery for revenue collection, it represents the desire to directly usurp the land. Consequently, such common lands were declared ‘revenue’ lands by the Forest Act and complete control was gained over the resources.

After independence, various Land Reform Acts were promulgated in different states. The Land Acquisition Act of 1894, enacted by the British earlier was also amended in various ways to allow land reform. Together with this came the Zamindari Abolition Acts. An essential aim of all such Acts and amendments was to give property rights to those who had toiled or lived on the land for long but who remained mere occupants at the mercy of the landlords; in other words to convert occupancy rights into property rights. The Acts required occupancy of twelve years or more for entitlement to property rights. Without going into the success or failure of such land reform measures, if those who have occupancy rights on cultivable land for more than twelve years are entitled to property rights, why does this principle not apply to forest dwellers who have had occupancy rights on non-agrarian lands for centuries? Indians, like the British, have continued to use double standards with occupancy rights, and for similar ends – the exploitation of resources from the common land.

The Indian Forest Act adopts the procedure of the Land Acquisition Act of 1894 for the settlement of rights, but does not take the dominion status of the land dependent on the settlement of such rights. The government can simply proclaim the land to be ‘forests’ by notification and declare it to be government land without defining what a forest is and acquire dominion status over it without compensation to the original title holders,

something which is not possible under the Land Acquisition Act. Through this process the British converted almost half of India's geographical land area into government land, of which around 40 percent belonged to the Forest Department alone.

Consequently, the 'rights' that the forest dependent people enjoyed over their forests became 'rights and privileges' in the Forest Policy Resolution of 1894, and became 'rights and concessions' in the National Forest Policy Resolution of 1952, and subsequently were regarded only as 'concessions'. In fact, the Scheduled Areas and Scheduled Tribes Commission, set up in April 1960 under the chairmanship of U N Debar, severely criticised the forest policy and its implementation by the Forest Department, attributing the atmosphere of forest conflicts solely to such faulty policy.

According to Singh (1986), "The Indian Forest Act represents a point in the dialectics which is neither discoverable nor applicable in this manner. Hence, strictly it lacks all the characteristics of law. It is merely a decree by political fiat being passed off as law within a political system that permits this". The realisation of the rights is the *sine qua non* for the realisation of distributive justice. Unless solutions to the problem of distributive justice are sought in the wider context of property relations, the problem of forest degradation will remain unresolved.

The title of this paper is 'Conflicts over Forests'. The conflicts are essentially between the forest dependent communities and the Forest Department. The root cause of the conflicts was traced to the lack of community property rights and repressive forest laws that bias against the forest dependent communities.

Section 64 of the Indian Forest Act of 1927 elaborates how well entrenched this bias against the forest dependent communities is and how omnipotent is the procedure with which the Forest Department is equipped to harass and alienate the forest dependent communities. Section 64 gives full power to a forest officer to arrest anyone without a warrant if he deems that person to be committing an offence pertaining to forests. This clearly makes all such offences cognisable, even though the Forest Act does not describe it.

Making an offence cognisable gives a greater right to the state to regulate the individual's actions, and, consequently, limits the individual's liberties. The criminal law normally provides that no arrests can be made for *non-cognisable* offences without a warrant (Sec. 41, Cr. P.C.). Schedule I of the Cr. P.C. enumerates a comprehensive (although not exhaustive) list of cognisable and non-cognisable offences. It is important to note, however, that offences concerning the forest and its produce do not find specific mention in this Schedule; nor does the Indian Forest Act define the exact nature of offences falling within its scope. Normally, as is the case in Indian criminal law, an offence is made cognisable only if the action can cause drastic deprivation or injury to the victim, such as murder, dacoity, rape, etc., or else if an imminent danger to the security of the state is perceived, such as in acts of terrorism, smuggling, inciting the armed forces to revolt, and so on. The reason for the British was clearly to facilitate the economic exploitation of forest resources through coercion and decree.

Box 6

Until forest dwellers are made stakeholders in their forests, corruption and exploitation will continue. The Gujjars – nomadic herdsmen – were faced with a peculiar problem in the autumn of 1992. The forest guards, who normally granted them entry into a state-owned forest presented them with a new demand. The 'entry fee' had gone up. They were told that the prime minister had gone to a foreign land called Rio where it was agreed that human beings would not be allowed into the forest. Now the guards could allow the Gujjars in but at a personal risk. Thus instead of the usual rate of 1 kg of ghee per milking animal each month and 1 kg of milk per day for each animal, they needed to double the bribe and for the *ghass salami* (literally meaning 'salute for the grass'), instead of Rs. 30 per animal, they now needed to pay Rs. 80 per animal. The 'Rio payment', as this came to be known, is paid till date. Such payments are not unusual. Poor forest dwellers and villagers regularly pay them for their survival.

Down to Earth, October 31, 1998.

Thus it is extremely clear that conflicts and protests are a natural corollary to such abusive measures. In a major way the Jharkhand, Chipko, and other similar movements are nothing but a demand for the rights in common. “The history of the struggle of forest dwellers for their rights is as old as the legislation governing them” (Singh, 1986, p. 26). However, tribal protest has always been treated as a law and order problem, which further aggravates the situation.

Historically, in the context of forests, countries have tended to focus on the forest stand, ignoring the institutions and policies that surrounded it. And, not surprisingly, even with some of the best forestry expertise brought to bear on looking after the stand, unsustainable forestry persisted. Two decades of economic analysis have demonstrated that ignoring economic policies will inevitably undermine the forest. More recent findings relating to institutional capacity draw similar conclusions.

Property right, however, is not just a single right, but also a bundle of rights. It should include (1) right to manage the forests, (2) right to use and sell its products, and (3) right to residual income and its disposal.

Box 7

In 1931, the Van Panchayats were constituted in the hill areas of Uttarakhand, which in principle are very similar to the Forest Protection Committees formed under JFM. The Bharaki-Urgam Van Panchayat was established in 1951. Today, this Van Panchayat is one of the richest in Chamoli district with a cash reserve of Rs 2,93,085 as on May 26, 1998 and Saraswati Devi, a woman *grampanch* is at the helm of affairs. Main sources of income include: permits of dead trees issued to members, auctioning of grasslands to members; lodging charges from pilgrims staying in the guesthouse constructed by the Van Panchayat and from fines imposed on members and outsiders for the violation of rules.

Economic and Political Weekly, September 25, 1999

Tenurial security is an important precondition for sustainable resource management, principally because it encourages long-term planning and greater investments of labour and resources. In the words of Harvard economist Theodore Panayotou (1989), “Property rights need to be secure. If there is a challenge to ownership, risk of appropriation (without adequate compensation), or extreme political or economic uncertainty, well-defined and exclusive property rights provide little security for long-term investment such as land improvements, tree planting, and resource conservation”. And security can only be brought about by proper legislation.

We have argued for the recognition of the forest dependent communities to be primary in the scheme of forest management. The argument favoured establishment of common property rights over the forests and this should be technically backed by proper legislation. The existing legislation should be repealed. It must be realised that JFM cannot be the ultimate goal but is only the first right step in the direction of empowering the people to manage their ecosystem. Only then will the conflicts be a thing of the past.

However, in addition to these steps, the realisation of the benefits that will accrue to the forest dependent communities depends upon the realisation of just prices for the product too. This translates to the proper operation of the market mechanism for the forest products, especially for NTFPs. This however is a contentious issue as the authority of the state in the form of the Forest Department and its allies is firmly etched in the marketing and sale of these products.

A forest provides a host of benefits, some directly to the users and some indirectly. This was illustrated before. A better way to accommodate the non-direct benefits that arise out of forest protection might be to establish markets for these services or benefits. Forest communities could be paid for every hectare they reforest in the interests of flood prevention or carbon sequestration.

‘Multiple stakeholder negotiations’ is a way of resolving multiple interests in or uses of forests. In the present global context of capitalist markets this is a market question. But for

this the property rights needs to be first in place in favour of the stakeholders. It will enable the forest communities openly and substantially increase their bargaining strength. Linking the provision of these services to the prices they receive for them will also establish regular markets for these services, which could contribute to increase in the supply of these services.

The government should give up some of its functions to the market, instead of trying to do everything itself. For instance, retail sale of fuelwood and bamboo can easily be undertaken by the open market. There is no need for having controls under the excise laws on *mahua* flowers. Its processing and sale can be easily left to free market operations. For marketing NTFPs, the government should not have a monopoly, nor create such a monopoly for traders and mills. The solution is to denationalise NTFPs gradually, so as to encourage healthy competition.¹⁹ Nationalisation reduces the number of buyers and does not help gatherers in the long run. The Forest Department should set up processing units within the

¹⁹ In the specific context of NTFP gatherers, there are several factors why they are in a weak bargaining position *vis-a-vis* the traders, even for those products which are not nationalised. The reasons are:-

Restrictions on the free movement of NTFPs- Laws restricting free movement of NTFPs, even when these are not nationalised, bring uncertainty in market operations, and inhibit gatherers from maximizing returns to production.

Market information - Gatherers' information and awareness about buyers, the prevailing market price, and government rules may be inadequate. In a competitive and efficient market information should circulate freely. In Andhra Pradesh, although price differentials exist for quality, NTFP collectors tend to be unresponsive to this for lack of knowledge or lack of confidence.

Market access - Gatherers' contact is generally limited to the village buyer alone, whereas in a competitive and efficient system there should be a large number of buyers and sellers. Gatherers seldom ever bring their produce to the town. They are uncertain about the price they would get in the town for their produce in relation to the costs and risks of transporting NTFPs. Thus, although these products ultimately reach a very large market, the market is geographically limited as far as gatherers are concerned.

Entry into trade - Often traders need licenses to buy from gatherers, which are difficult to get. The limited number of buyers thus operate in monopolistic conditions and exploit the gatherers.

Poverty of gatherers - Most forest extractors are poor, chronically indebted to middlemen or landowners, and are thus not in control over their labor or other terms of exchange. They would stagnate at the subsistence level, and not benefit from high prices, unless they get out of their serfdom. Thus underdeveloped rural credit markets influence the disposal of NTFPs at a low price (Mott 1998).

Intermediaries - The number of middlemen between the producers and consumers is large, though gatherers do not have choice of many intermediaries. This may be due to interlocking of credit and output markets forcing the gatherer to sell to the moneylender. In a competitive and efficient system there should be choice of several buyers.

tribal areas and there should be targets fixed towards this end, enabling the Forest Department to play the role of a facilitator, and not of a regulator.

Monopolies exist for not only NTFPs, but also for the share of timber that belongs to the JFM committees, as only the Forest Department can market these. Many FPCs feel that their profits could be enhanced by a factor of 3 if they had the option to directly deal with the market.

Jurists usually seek the roots of laws in the Latin maxim of Roman law: '*Salus populi est suprema lex*', i.e., the welfare of the people is paramount law. The forest laws urgently need to reflect this.

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