ADB

Land and Cultural Survival

The Communal Land Rights of Indigenous Peoples in Asia

Edited by Jayantha Perera

Asian Development Bank

Land and Cultural Survival

The Communal Land Rights of Indigenous Peoples in Asia

Edited by

Jayantha Perera

2009

Asian Development Bank

ISBN 978-971-561-801-4
Publication Stock No. BKK090139

Cataloging-In-Publication Data

Asian Development Bank.
Land and cultural survival: the communal land rights of indigenous peoples in Asia.
Mandaluyong City, Philippines: Asian Development Bank, 2009.

1. Indigenous peoples. 2. Communal land. 3. Asia. I. Asian Development Bank.

Cover photo by Joyce Munsayac.

Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
Tel +63 2 632 4444
Fax +63 2 636 2444
www.adb.org

For orders, contact
Department of External Relations
Fax +63 2 636 2648
adbpub@adb.org

In this book, "$" refers to US dollars, unless otherwise stated.

Table of Contents

Chapter 7

Indigenous Peoples' Forest Tenure in India

Kinsuk Mitra
Radhika Gupta

In India, the indigenous peoples are predominantly composed of the large and diverse tribal populations scattered across several states. Anthropological literature suggests that the tribal designation arose as a colonial construct, in which all those living on the margins of mainstream agrarian society but within the structure of the Hindu caste system were delineated as "primitive" and "tribal". In Indian languages, there is no exact equivalent for the word "tribe", but close synonyms are *vanavasis* (forest dwellers) or *adivasi* (original inhabitants).[52] The *1891 Census Report* arranged different castes according to their traditional occupations, and forest tribes were assigned a separate category from that of agricultural and pastoral castes (Xaxa 1999a). Thus, both etymologically as well as spatially, the lives and livelihoods of tribal communities in India are intrinsically linked with forests.[53]

This umbilical relationship of tribals with forests began to be disturbed during the British colonial era when large tracts of forests were regularly

[52] It has been argued that the definition of indigenous peoples as "original settlers" is problematic in the Indian context. Sociologists like Dube (1977) and Beteille (1998) have pointed out that "tribal traditions themselves make repeated mention of migration of their ancestors. There is considerable evidence to suggest that several groups were pushed out of the areas that they were first settled and had to seek shelter elsewhere."

[53] Today more than 50 million of tribal people live in and around forests. There is a clear overlap between the forest and the tribal maps of the country, as well as an overlap with poverty (Poffenberger and McGean 1996).

harvested for commercial purposes. After India gained independence in 1947, most of the forests were nationalized. The issue of tribal people's rights in those forests has been fraught with contention and is central to political and development policy questions in India.

This chapter examines the history of the debate and demonstrates how communal tenure over forest land is not only a pressing practical issue but a symbol of concerns over indigenous peoples' rights. And it analyzes how legal and policy changes have addressed those concerns.

The Tribal Forest Dweller: A History of Change

Historically, tribals living within and on the fringe of forest areas have derived their livelihoods from forests.[54] Forests in fact have influenced their collective imaginations, belief systems, and culture, thereby shaping their very identity. Even today, there is evidence of the coexistence of tribals and forests (Poffenberger and McGean 1996). Although romanticized to some extent, the dependence of Indian tribal people on the forest was characterized by customary rules of use and extraction, governed by religious beliefs and practices that ensured that forests were not degraded. Beginning with the arrival of colonial forestry, however, there has been unabated deforestation.

British administrators in the 19th century viewed vast tracts of Indian forests as impediments to the prosperity of the colonial exchequer, as these lands could otherwise be utilized as revenue-yielding property (Pathak 1994). Thus, forests were rapidly razed to the ground both for revenue earned from timber supplies and for maximizing land revenue by putting the cleared tracts into cultivation (Guha 1994). The growing ship-building industries in England in the 1800s and the expansion of the railway network in India in the 1850s further spurred the demand for timber, leading to rapid deforestation. The risks inherent in unregulated logging were noted by some imperial officials, and they created the Forest Department

[54] The term "tribals" is used in the day-to-day language of the state to denote the official administrative category of the state (scheduled tribes). Most scheduled tribes now refer themselves as adivasis.

to protect and govern the use of forests. They pointed out that continued exploitation of forests would severely impair the potential of forest stock to yield timber, and they advocated insulating forests from the pressure of local use. Toward this end, legislation to curtail the previously free access enjoyed by village communities was proposed. A debate ensued within the colonial bureaucracy, finally resulting in the passing of the Indian Forest Act of 1865. [55]

A privilege, not a right

The Imperial Forest Department was established in India in 1864. State monopoly over forests was first asserted through the Indian Forest Act of 1865. This law simply established the government's claims over forests. Thirteen years later, however, it was reissued with far-reaching amendments as the Forest Act of 1878. This version curtailed centuries-old, customary-use rights of local communities over forests and consolidated the government's control over all forests. The Forest Act of 1878 established that forest use by villagers was not a right but a privilege of concession given by the government.

The Indian Forest Act of 1927 consolidated the existing laws relating to forests, the transit of forest produce, and the duty leviable on timber. It introduced three categories of forest distinguished by the degree of privileges enjoyed by communities over forests. Forests free from all claims were categorized as "reserve forests". These were exclusively designated for the use of the Forest Department, and forest-fringe communities had no rights other than the ones explicitly permitted by the state. The category of "protected forests" provided communities with certain rights solely for household consumption and not for commercial purposes. Their exclusion from forest management was, therefore, both physical and social—physical because they were denied or restricted access to forests and pasture, and social because as "right holders" they were allowed only a marginal and flexible claim on the produce of the forests. The act formed a third

[55] The government strongly felt that the task of curtailing communal rights over the use of forest was difficult. This is evident from the statement of Brandis that "in many cases, the proprietary right of the state in forests had been 'deliberately alienated' in favor of peasant and tribal communities" (Gadgil and Guha 1995).

category called "village forests", which provided village communities with more concessions in using forests for their livelihood. According to the act, the state government may assign to any village community the rights of government to or over any land that has been constituted as a reserve forest. But the state government can cancel such an assignment. The government makes rules for regulating the management of village forests: how the villagers may use timber and village produce and pasture, and their duties for the protection and improvement of such forests.

The stereotypical attitudes of colonial administrators toward tribal uses of forests were most acutely captured in colonial policy on shifting cultivation, or *jhum* agriculture. Shifting cultivation, also known as swidden, is not an exclusively tribal practice, but it characterizes tribes, as it is different from the dominant culture of the plow that has been a key characteristic of the mainstream Hindu society. The prohibition of jhum in the Forest Act of 1927 led to an acute sense of deprivation among tribal communities, violating, as Guha puts it, "the aboriginals' notion of property wherein forests and forest produce belonged to the community, every member of which had a prescriptive right to harvest what they needed" (Guha 1994).

When a forest settlement officer of the Forest Department decided to take over a forest as reserve or protected forest, the officer gave 3 months' notice to the communities to contest this decision. If communities failed to respond and file a claim within this period, the forest was vested in the state, and communities lost any user-rights that they had. The official procedures for the settlement of claims and the demarcation of the forest boundaries were written in a way that was ostensibly favorable toward local communities. But in practice, the communities could not benefit from such processes because of their illiteracy and marginal social status. Their lack of capacity to negotiate effectively excluded them from benefiting from the complicated rules of notice, appeal, and settlement. As a result, most communities were physically displaced without appropriate compensation (Poffenberger and Singh 1996). Moreover, the local high-caste elite and landowning households exploited to their personal advantage the limited access to forests that the communities had.

The colonial state radically redefined the nature of private and communal property rights. While private property rights were limited to lands

that had been cultivated regularly, resource-use practices such as grazing, forest product collection, and swidden farming were not considered as a basis for land ownership, even if land taxes had been paid for such lands. The priorities of the new system of forest management and control, imposed by the colonial state, conflicted sharply with local systems of forest use and control. In short, the forests of rural communities were being taken over by the state, and the rights of the village communities to such forests were progressively eroded.

After India gained independence in 1947, a landmark policy to take over the princely states controlled by independent rulers impinged further on the customary rights of forest dwellers, although it did not eliminate them entirely.[56] And the decision to nationalize the forests in those areas created a rush of exploitation, as people tried to beat the deadline of the new governmental authority. As a result of these changes in control, over 20 million hectares (ha) of forest were either logged or converted to agriculture throughout India (Poffenberger and Singh 1996).

The forest policies of colonial India continued into the postcolonial period, as exemplified by the National Forest Policy of 1952, which further reinforced the right of the state to exclusive control over forest protection, production, and management. Just as the fulfillment of imperial needs was the priority of colonial forest policy, the demands of commercial industry became the cornerstone of postcolonial forest policy. While communities were excluded from using forests, many industries were granted raw materials at extremely low prices. Large tracts of forests were diverted for agriculture, hydroelectric projects, and other development projects in the years after independence. It is estimated that between 1950 and 1980, the rate of diversion of forests to sites of commercial industries was about 150,000 ha per year (Saigal et al. 2002).

---

[56] While the government took over control over the forests and banned cultivation on such lands, certain usufruct rights or privileges were in actuality granted to the village communities for the use of certain forest produce. These rights, also commonly known as *nistar* rights (forest usufructs established during Mogul period or under customary law), have gone through various changes in legislation whereby communities further lost the right to harvest and manage these resources themselves; rather, they could collect the listed forest produce from forest depots at subsidized rates (Poffenberger and Singh 1996).

An issue of survival

At present, about 95% of the total forest area belongs to the government, and the tribal population of India has been divested of much of its legal communal rights. This is a major practical concern, because the rural economy of India is largely biomass-based. People are directly dependent on forests and common lands for a variety of non-commercial-timber forest products for food and fuel, small timber for housing, and herbs and medicinal plants for meeting their subsistence livelihood needs. In the absence of alternative sources of livelihoods or an ability to eke out sustenance from marginal landholdings, there is a continued high level of dependence on forests for survival.

The relationship between ancestral land rights and tribals has perhaps been most acutely brought into focus in the forestry sector in India and continues to be fraught with contention as communities experience new forms of encroachment on their customary rights by developmental interventions such as large dams, mining, and conservation. Saxena (2005) states that "nearly [8.5 million] tribals had been displaced until 1990 on account of some mega project or the other reservation of forests as National Parks, etc. Tribals constitute at least 55.16% of the total displaced persons in the country." This is visibly acute in a mineral-rich state such as Orissa, the developmental history of which is spattered with conflicts between tribals and the state on mining-related issues. The violence witnessed during tribal resistance to mining projects in the Kashipur area of the Rayagada district in Orissa is a grim example of this struggle. There has been a sustained and exacerbated threat to the rights of tribals to forest land that has been both a cause and a consequence of a larger process of political, economic, and cultural marginalization during the colonial and postcolonial eras.

Conflict and the Law

Xaxa (1999b) argues that the root cause of the tribals' demand for "indigenous peoples" status is their complete loss of power over natural resources. The forest dwellers of India who have been so severely disenfranchised have seized on the term as a rallying point to gain development assistance and demand back their lost rights.

The adoption of the Declaration on the Rights of Indigenous Peoples was one of the key objectives of the First United Nations (UN) Decade of Indigenous Peoples (1995–2004). A long process of intense negotiations and discussions between states and indigenous peoples' groups took place over the precise text and clauses of the declaration. The most contentious of these was the issue of collective rights of indigenous peoples, including their ownership of lands and resources. Articulated by indigenous peoples in many parts the world as the right to ancestral domains and self-determination, these principles posed a challenge to the very idea of territoriality that allows a state to imagine itself as a nation. The Indian government to date prefers to use the word "tribals". The debate over wording in the international forum was but a reflection of the prolonged and often violent struggles between indigenous peoples and states over land. In the Indian case, the locus of this struggle has been the forests—who owns them, who lives in them, and who can use them. It is for the same reasons that India has not ratified the International Labour Organization Convention 169 Concerning Indigenous and Tribal Peoples in Independent Countries.

The encroachment of the state on forests and customary tenure rights of tribal forest-dwelling communities did not go unchallenged during the colonial and postcolonial periods. Environmental history in India has directed a significant amount of attention not only to the fate of forests in the country and its effects on forest-dwelling tribal/adivasi peoples and their subordination but also to their resistance to increasing commercial exploitation and state control (Arnold 2001).

Undeterred by the provisions of the Indian Forest Act of 1927, many tribal groups have mounted a sustained challenge to the continued denial of their communal rights over forests. Gadgil and Guha provide us with one such example. "In 1957, a movement broke out among the Kharwar tribals of Madhya Pradesh, which called upon the people to stop payment of rent to revenue-collecting agents, utilize timber and forest produce without making any payment, defy magistrates and forest guards, and flout the forest laws which violated tribals customary rights. The movement slogan 'Jangal, zamin azad hai' (forests and land are free) succinctly expressed tribal peoples' opposition to state control and commercial use of forests" (1995).

However, until the 1980s, tribal resistance to the Forest Policy of 1952 had been sporadic, and as a result, the Government of India did not pay much

attention to tribal peoples' rights or the need for recognizing their communal rights over forests and other common property resources. In fact, it has been argued that tribal peoples' alienation and eventual physical eviction from forests in the post-independence era have become increasingly entrenched, as the postcolonial state has been even less responsive to tribal claims than the colonial government was. The example of the *van panchayats* (forest councils) demonstrates this point. In response to agitations, the colonial government gradually recognized the existence of some local community rights over forests and their resources, and these were incorporated in the Indian Forest Act of 1927. The act provides for constituting "village forests" to meet local needs, and this led to the creation of forest councils in Uttar Pradesh through a new state law passed in 1931. All the "de-reserved" marginal reserved forests were reclassified into Class 1 forests and placed under the jurisdiction of the van panchayats, in which local tribal communities play a key role in forest administration. More than 4,000 van panchayats were created, although the area under their control did not exceed 8% of the total forest area of India. Nonetheless, they represent an example of a forest tenure system in which communal tenure is recognized by law (Sarin 2003).[57] Moreover, as mentioned earlier, the India Forest Act of 1927 provides for declaring the intention of the state to reserve an area as forest. It also provides for the appointment of a forest settlement officer to arbitrate preexisting claims of occupants and users. These safety clauses, Sarin argues (2003), have often been dispensed with after independence whenever the state appropriates tribals' communal land. The issue of what is deemed by the Forest Department to be encroachment on forest land has been highly contentious. The state has taken over many areas that tribal people considered as their ancestral property and has classified them as state forests and labeled tribals as encroachers on state land. These actions have undermined the application of Article 338(9) of the Constitution of India, which places the protection and welfare of tribal people as a "sacred trust" of the state.

Tribal areas in India are governed by two separate schedules of the Constitution—Schedules V and VI—and by the Panchayats Extension to the Scheduled Areas (PESA) Act (1996). However, the constitutional guar-

[57] However, it is important to note that after independence, the state has attempted to dilute the van panchayat system by increasing bureaucratic control over the councils.

antee that tribal people could earn their living from forests was seriously eroded by the Forest Conservation Act 1980 and the Wildlife Protection Act of 1972 (Sarin 2003).[58] For example, in Andhra Pradesh, almost all tribal areas under Schedule V of the Constitution have been designated as "forests". About 77,700 acres of land in Andhra Pradesh's reserve forests were cultivated by tribals before the enactment of the Forest Conservation Act of 1980. A government memorandum in 1987 required the regularization of all cultivated lands by tribal communities. This memorandum remained unheeded for 8 years before it was superseded by another memorandum issued in 1995. The latter directed that all such lands should be brought under the World Bank-funded Joint Forest Management Project, a participatory forestry program. This effectively changed the legal status of such tribal lands into state-owned forest lands. Thus, environmental concerns regarding forests have clearly been accorded higher priority than tribal peoples' communal rights, despite their constitutionally guaranteed right to use forests for survival.

Decline of the forests

Despite the increasing state control over forest areas in colonial and postcolonial periods in India, forest statistics reveal that the total size and quality of forest have declined. According to an assessment by the World Watch Institute, India lost 40 % of its forest cover between 1951 and 1991. The National Remote Sensing Agency of India estimated that the annual average rate of deforestation between 1975 and 1982 was 1.3 million ha, representing the degradation of 10.4 million ha of close forest (canopy cover) in 7 years (Rangachari and Mukherji 2000).[59] Thus, by the late 1980s, the failure of the "fences and fortresses" approach to forest conservation was acknowledged with a concomitant recognition that a reversal of the

[58] The Wildlife Protection Act of 1972 refers to a sweeping package of legislation enacted in 1972 by the Government of India. The act provides for the protection of wild animals and plants and for matters related to their protection. It extends to the whole of India, except the state of Jammu and Kashmir, which has its own wildlife act (Anon 1998).

[59] In 1980, the central government enacted the Forest Conservation Act with the intention of arresting the loss of forests. The act made it mandatory that state governments seek the central government's approval before diverting any forest land for non-forestry use. This brought down the rate of forest land diversion to only about 25,000 ha per year between 1980 and 1995, with a further decline in the rate in recent years (Saigal et al. 2002).

situation would require the involvement of local communities as stakeholders in a system that legitimized participatory management.

The participatory approach is outlined in the National Forest Policy of 1988. One key objective of the policy is to provide in the forests the basic needs of fuel wood, fodder, and small timber of rural and tribal communities. Furthermore, in 1990, the Ministry of Environment and Forests issued guidelines for "joint forest management". This is a forest management strategy under which the state (represented by the Forest Department) and a village community enter into an agreement to jointly protect and manage the forest land adjoining villages and to share the responsibilities and benefits of such endeavors.

Joint forest management has been seen as an important innovation that benefits forest-fringed communities who have no rights or limited rights over forest usufructs or access to them. However, it could be considered as a step back for communities that have had legally recognized communal rights over forest products. A good example is the case of the van panchayats in Uttar Pradesh State. Although joint forest management has been widely practiced over two decades, it has not been institutionalized through legislation. Some critics argue that it has distracted attention from the injustices of the underlying property regime based on the government's claim of ownership over India's forests (White 2004). Others say it creates new obligations for communities without resolving their old claims over forests and forest produce. Thus, the joint management program is best seen as an incremental improvement in user rights of communities dwelling in and around forests.

The widely used state right of "eminent domain" allows the state to acquire private and common property for public purposes. The eminent domain right has remained supreme, overriding all other policies, laws, and regulations. It is under the right of eminent domain that the state acquires land to build infrastructure, mines, dams, and other projects. With an estimated $30 billion proposed as investment in mining-related projects in the next decade, communal land will continue to be a site of intense conflict between tribal people and the state.[60]

---

[60] *Protected Areas Update*. 2005, December. Editorial.

Recent Tribal Policies and Laws

India in recent years has witnessed some significant forest tenure reforms. The decade-long movement for a forest rights bill culminated in the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (FRA). This law is an attempt to arrest "historical injustice" through the acknowledgment of tenurial rights of tribals and other forest-dwelling communities. It was the result of strenuous political advocacy involving a range of social and political actors, and it is still contentious. Along with this legislation, the Draft National Tribal Policy of 2006 acknowledges that there has been "no single policy which looks at the issue of protection and development of Scheduled Tribes in an integrated and holistic manner." The government's acknowledgment of historic injustice and policy neglect is a definite leap forward toward recognition and legalization of "third generation" rights.[61]

The main beneficiaries of the FRA will be scheduled tribes and other traditional forest dwellers who have lived in and depended on forests for their livelihood for three generations—75 years prior to 13 December 2005. Essentially, the act aims to provide a framework to record the rights of forest dwellers, allowing them to cultivate forest land that they occupy, up to a limit of 4 ha, guaranteeing them the right to collect, use, and dispose of minor forest produce, and ensuring rights inside forests that are traditional and customary, like grazing and maintaining homesteads. But the most significant provision is under section 3(i), which pertains to the right to protect, regenerate, conserve, or manage any "community forest resource" that they have traditionally protected and conserved for sustainable use.[62] The FRA also makes it mandatory for rights holders to ensure sustainable use, conserve biodiversity, and maintain ecological

---

[61] "Third generation of human rights" is a term used for those rights that go beyond the mere civil and social expressed in many international law documents, including the 1972 Stockholm Declaration of the UN. The first generation of rights dealt with liberty and participation in political life, while the second-generation rights are related to social, economic, and cultural equity.

[62] "Community forest resource" means a customary common forest within the traditional boundaries of the village or seasonal use of the landscape in the case of pastoral communities.

balance, thereby strengthening the conservation regime of forests across the country.

The FRA has run into obstacles from the beginning, because it does not recognize the varied uses of forest lands and it is too theoretical in its language. A major bone of contention has been the section in the act providing for certain areas to be declared, after due scientific study, as "critical wildlife habitats" and prescribing a clear procedure for moving people out of such areas. Over 32,000 square kilometers of land in various tiger reserves have already been designated as critical tiger habitats and as out of bounds for human beings in keeping with the requirements of the amended Wildlife Protection Act. Thus, village communities lying in those areas will be relocated. Tribal rights activists, however, see this as an effort to arbitrarily sabotage the rights of indigenous peoples and remove them from forest areas (Anon 2007).

The arguments over the FRA include probing questions about the pragmatism of removing centuries of injustice with one sweeping law and about the government's failure to follow up with procedures and safeguards needed to put the law's directives into practice. The 2006 act hardly empowers the tribal population at large. Therefore, it is reasonable to question whether tribal communities can enforce and manage their legal rights to land while continuing to be marginalized in a macro-socioeconomic context.

Even the rules of the act have attracted criticisms. For instance, it is argued that they are inadequate in the matter of eco-conservation by the *gram sabhas* (village assemblies). The act forbids diversion of forest land without the consent of the gram sabhas, but the fear is that they could be manipulated by commercial interests, particularly when those forces are too powerful and deeply entrenched. The law itself is not explicit enough on this matter (Roy-Burman 2008).

While the basic principle behind the law is sound, the lack of a larger framework required to bring about reform of such a grand scale clearly raises questions about the motives behind its hurried passage. The law itself sends out a strong political message, but it is unlikely to make a

significant difference unless there is a continued constructive engagement between the state and tribal people.

The Critical Role of Common Lands

Common lands are vital for the livelihoods of millions of people in India, which is still largely an agrarian economy. The majority of the country's farming people work on small farms. In fact, about 60% of landholdings are categorized as marginal, which means less than 1 ha of landholding. Furthermore, over two-thirds of the cultivated area in India depends on erratic rainfall with little or no access to irrigation. Thus, only a single crop a year could be cultivated in most rain-fed farming areas. The dry, harsh, and risky environmental conditions of a large part of India have discouraged the privatizing of large tracts of land to be used as agricultural fields. As a result, many of the rural communities supplement their meager household incomes by depending on common property resources such as forests for their basic subsistence and livelihood. "Balancing of intensive (by cropping) and extensive (by pasture/forest) uses of land, as required by the resource characteristics, became a part of collective strategy for risk management and production enhancement" (Jodha 2001).

In India, about 170,000 villages with a total population of 147 million are located in the vicinity of forests (Ellsworth 2002). A vast majority of rural Indians thus depend on forests for meeting their basic needs of fuel wood, fodder, small timber for agricultural implements and house construction, and food and medicines. Resources from the "commons" provide the poorest of the poor with last-resort livelihoods as well as security of tenure in the form of a "place in the world" (Ellsworth 2002). Studies have shown that the rural poor in India depend significantly more on common lands to earn their livelihood than do the poor elsewhere (Jodha 1986; Pasha 1992; Singh et al. 1996; Beck and Ghosh 2000; Menon and Vadivelu 2006).

A large number of tribal groups in India live off communal land. Even where some households own land, the area is usually very marginal and therefore largely unproductive (Brits et al. 2002). Where land reforms have

taken place, such reforms have not been complemented with better literacy, development of skills, and provision of access to extension services. Moreover, the substitution of customary law with codified law has progressively limited communal management of common lands. In many areas, rich farmers have taken possession of land parcels previously held by communities. The laws have sometimes regularized such encroachments. This was possible because traditional institutions that used to control common property resources are no longer recognized by national and state laws (Gadgil and Guha 1995).

Conclusion

The tribal forest dwellers of India may not fit the classic anthropological model of "indigenous" in the sense of being original settlers or primitive and isolated. However, the term is appropriate as it conveys notions of customary rights, notions that are central to the international discourse on indigenous peoples. Communities living in and around the forests of India have been disenfranchised of their customary rights to forests and forest produce. Today, indigenous peoples do not have de jure communal tenure rights, and there is much conflict between communities and the state over the continued though limited exercise of de facto rights over forests. This historical loss of access to land has been central to the crystallization of an *adivasi* identity among tribes in different parts of the country. This is also reflected in a number of social movements in which "*adivasi* consciousness" is inextricably tied to the struggles over ancestral land, water sources, and forests.

The Indian government's efforts to give tribal communities a key role in forests through the joint forest management program indicates the government's realization that traditional regulatory approaches to forest management have not succeeded in abating forest degradation. However, the joint management approach has not addressed the key issue of common property rights, although it has put it on the national political agenda. In India, the dependence of large populations, tribal or not, on common property resources such as forests will continue to be huge owing to the limited availability of alternative livelihoods in rural and remote areas. Agriculture, except in some fertile tracts of the country well served with irrigation facilities, does not afford more than a subsistence livelihood to

farmers. Therefore, the conservation of the commons is central to achieving sustainable resource management as well as sustainable livelihoods. The time has come to seriously examine new and alternative approaches to reconciling this conservation-versus-livelihood dilemma. Developing markets for forest services could be a viable option. However, unless the issue of communal tenure is addressed and some security of tenure is provided to rural communities, especially to tribal communities, any approach to sustainable forest management, old or new, will not succeed.

References

Agarwal, A. 2002. Common Resources and Institutional Sustainability. In Ostrom, E., T. Dietz, N. Dolšak, P.C. Stern, S. Stonich, and E.U. Weber, eds. *The Drama of the Commons*. Washington, DC: National Academy Press.

Anon. 1998. *Handbook of Environment, Forest and Wildlife Protection Laws in India*. Delhi: Vedam Books.

Anon. 2007. Government Notifies Forest Rights Act. *Infochange Environment.* infochangeindia.org/200801026795/Environment/News/Govt-notifies-Forest-Rights-Act.html (accessed on 24 Oct 2008).

Arnold, D. 2001. Disease Resistance and India's Ecological Frontier, 1770–1847. In Scott, J. and N. Bhatt, eds. *Agrarian Studies: Synthetic Work at the Cutting Edge.* New Haven: Yale University Press.

Beck, T., and M.G. Ghosh. 2000. Common Property Resources and the Poor: Findings From West Bengal. *Economic and Political Weekly.* 35.

Beteille, A. 1995. Construction of Tribes. *Times of India.* June 19.

———. 1998. The Idea of Indigenous People. *Current Anthropology*. 39 (2).

Brits, A.M, C. Grant, and T. Burns. 2002. Comparative Study of Land Administration Systems. Paper presented at the Regional Workshop on Land Policy Issues, Asia Program. www.landequity.com.au

Dube, S.C. 1977. *Tribal Heritage of India.* Shimla: Indian Institute of Advanced Study.

Ellsworth, L. 2002. A Place in the World: Tenure Security and Community Livelihoods, A Literature Review. Washington, DC: Forest Trends.

Gadgil, M., and R. Guha. 1995. *This Fissured Land: An Ecological History of India.* Delhi: Oxford University Press.

George, J., and S. Sreekumar. 1994. *Tribal Development, Legislation and Enforcement.* Delhi: Commonwealth Publishers.

Guha, R. 1994. Fighting for the Forest: State Forestry and Social Change in Tribal India. In Mendelssohn, O., and U. Baxi, eds. *The Rights of Subordinated People.* Delhi: Oxford University Press.

Jodha, N.S. 1986. Common Pool Resources and Rural Poor in India. *Economic and Political Weekly*. 21.

———. 2001. *Life on the Edge: Sustaining Agriculture and Community Resources in Fragile Environments*. Delhi: Oxford University Press.

Kothari, A., N. Pathak, R.V. Anuradha, and B. Taneja. 1998. *Communities and Conservation: Natural Resource Management in South and Central Asia*. Delhi, Thousand Oaks, and London: Sage Publications.

Khare, A. et al. 2000. Joint Forest Management: Policy, Practice and Prospects. *Policy That Works for Forests and People series,* no. 3. World Wildlife Fund-India and International Institute for Environment and Development.

Kumar, A. 2002. *Tribal Development in India*. Delhi: Sarup & Sons.

Kumar, N. et al. 2000. *OECD: Evaluation Country Case Study*. Washington, DC: World Bank.

Landell-Mills, N. 2002. Marketing Forest Environmental Services—Who Benefits. *Gatekeeper series*, no. 104. International Institute for Environment and Development.

Martínez Cobo, J. 1981. *Study on the Problem of Discrimination Against Indigenous Populations*. Final Report, UN Doc.E/CN.4/Sub.2/476.

Mehta, A.K., and A. Shah. 2003. Chronic Poverty in India: Incidence, Causes and Policies. *World Development*. 31 (3): 491–511.

Mendelssohn, O., and U. Baxi, eds. 1994. *The Rights of Subordinated Peoples*. Delhi: Oxford University Press.

Menon, A., and G.A. Vadivelu. 2006. Common Property Resources in Different Agro-climatic Landscapes in India. *Conservation and Society.* 4 (1).

Mosse, D. 2003. *Rule of Water: Statecraft, Ecology and Collective Action in South India*. Delhi: Oxford University Press.

Nathan D., and G. Kelkar. 2003. Civilizational Change: Markets and Privatization Among Indigenous Peoples. *Economic and Political Weekly*. 17 May.

National Research Council. 2002. *The Drama of the Commons.* Washington, DC.

Pasha, S.A. 1992. CPRs and Rural Poor: A Micro Level Analysis. *Economic and Political Weekly*. 27.

Pathak, A. 1994. *Contested Domains: The State, Peasants and Forests in Contemporary India*. Delhi, Thousand Oaks, and London: Sage Publications.

Prabhu, P. 2003. Nature, Culture and Diversity: The Indigenous Way of Life. In Kothari, S. et al., eds. *Value of Nature: Ecological Politics in India.* Delhi: Rainbow Publishers.

Poffenberger, M., and B. McGean, eds. 1996. *Village Voices, Forest Choices: Joint Forest Management in India.* Delhi: Oxford University Press.

Poffenberger, M., and C. Singh. 1996. Communities and the State: Re-establishing the Balance in Indian Forest Policy. In Poffenberger, M., and

B McGean, eds. *Village Voices, Forest Choices.* Delhi: Oxford University Press.

Rangachari, C.S., and S.D. Mukherji. 2000. *Old Roots New Shoots: A Study of Joint Forest Management in Andhra Pradesh,* India. Delhi: Winrock International and Ford Foundation.

Roy, R.D. et al. 2007. *Indigenous Peoples and the ADB*. BankWatch.

Roy-Burman, B.K. 2008. Ambiguities, Incongruities, Inadequacies in Scheduled Tribes and Other Technical Forest Dwellers (Recognition of Forest Rights) Act 2006: A Case for Constructive Engagement. *Mainstream.* 46 (15).

Saigal S., H. Arora, and S.S. Rizvi. 2002. The New Foresters: The Role of Private Enterprise in the Indian Forestry Sector. *Instruments for Sustainable Private Sector Forestry series*. Ecotech Services and International Institute for Environment and Development.

Sarin, M. 2003. Bad in Law. *Down to Earth.* 12 (4).

Saxena, N.C. 2005. Draft National Policy on Tribals: Suggestions for Improvement. National Advisory Council, Ministry of Tribal Affairs, Government of India.

Scherr S., A. White, and A. Khare. 2004. For Services Rendered: The Current Status and Future Potential of Markets for the Ecosystem Services Provided by Tropical Forests. *Technical series* no. 21. International Trade and Timber Organization.

Scott, J., and N. Bhatt, eds. 2001. *Agrarian Studies: Synthetic Work at the Cutting Edge.* New Haven and London: Yale University Press.

Singh, K., N. Singh, and R.P. Singh. 1996. Utilization and Development of Common Property Resource—a Field Study in Punjab. *Indian Journal of Agricultural Economics*. 51.

Singh, K.S. 1993. Marginalised Tribals. *Seminar*. 412.

White, A. 2004. Introduction: The Problem of Inadequate and Insecure Community Property Rights Over Community Forests. In White, A., and L. Ellsworth, eds. *Deeper Roots: Strengthening Community Tenure Security and Community Livelihoods.* New York: Ford Foundation.

Xaxa, V. 1999a. Tribes as Indigenous People of India. *Economic and Political Weekly*. 18 December.

———. 1999b. Transformation of Tribes in India. *Economic and Political Weekly.* 12 June.

Land and Cultural Survival: The Communal Land Rights of Indigenous Peoples in Asia

Development in Asia faces a crucial issue: the right of indigenous peoples to build a better life while protecting their ancestral lands and cultural identity.

An intimate relationship with land expressed in communal ownership has shaped and sustained these cultures over time. But now, public and private enterprises encroach upon indigenous peoples' traditional domains, extracting minerals and timber, and building dams and roads. Displaced in the name of progress, indigenous peoples find their identities diminished, their livelihoods gone.

Using case studies from Cambodia, India, Malaysia, and the Philippines, nine experts examine vulnerabilities and opportunities of indigenous peoples. Debunking the notion of tradition as an obstacle to modernization, they find that those who keep control of their communal lands are the ones most able to adapt.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries substantially reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.8 billion people who live on less than $2 a day, with 903 million struggling on less than $1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org
ISBN 978-971-561-801-4
Publication Stock No. BKK090139

Printed in the Philippines