Forest Governance

From Co-option and Conflict to Multilayered Governance?

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SHARACHCHANDRA LELE

The Forest Rights Act provides a much-needed counterweight to state-centric forestry, as it reinstates the rights of forest dwellers in all dimensions of forest governance. However, the multi-stakeholder ecosystem of forests requires a multilayered governance framework in which the regulatory, funding and operational roles are separated and democratised. This will help resolve the prevailing tension and confusion regarding forest governance in the post-FRA era.

Sharachchandra Lele (*slele@atree.org*) is a senior fellow at the Centre for Environment and Development, Ashoka Trust for Research in Ecology and the Environment, Bengaluru.

The question of what should be the relative role of, and relationship between, the state and the community in forest governance has been long debated in India. The question first emerged with the colonial takeover of the country's forests. It was then reignited in independent India by the Chipko movement (Guha 1989) and protests elsewhere (Krishna 1996), and popped up yet again in the mid-1990s when the Indian Forest Act (IFA) 1927 was proposed to be revamped (Guha 1994; Hiremath et al 1995). Each time, the state has attempted some redressal. Forest grievance committees set up by the British led to some localised concessions, as in Kumaon and Kanara. The Forest (Conservation) Act (FCA) passed in 1980 and tree-felling bans were supposedly responses to Chipko. A new National Forest Policy was adopted in 1988, which led to the joint forest management programme. That apart, the Supreme Court has also intervened in a major way. But, all these measures turned out to be either band-aids, incomplete or even misdirected (Lele and Menon 2014).

The Forest Question

The Forest Rights Act (FRA) of 2006, albeit triggered originally by protests over evictions of historically settled Adivasis from forests, became the first comprehensive legislative response in independent India to the forest governance question. But, a combination of deep-rooted structures, insecurities, and misunderstanding has led largely to the stalling and undermining of its key provisions related to forest governance. To understand what answers the FRA offers, why they have evoked such a negative response from powers that be, and the possible way ahead, it is useful to first step back and understand the nature of the forest question.

All governance questions are about "who decides and who implements, through what process," but the issues that need decisions and implementation change from sector to sector. What are the key dilemmas or issues that confront the forest sector and who creates them? The starting point is that forests generate multiple benefits that cannot be simultaneously maximised. Forests are valuable because they produce tangible products, such as timber, bamboo, fodder and wild honey; moderate the hydrological behaviour of watersheds; provide habitat for wildlife; and sequester carbon dioxide (CO_2). But, there are trade-offs involved (Lele 1994). Maximising, say, timber production will necessarily reduce some of the other goods and services. Conversely, managing forests for wildlife conservation means timber harvesting has to be curtailed drastically, if not given up altogether. Other trade-offs are more complex, poorly understood and ecosystem-specific, but they exist nevertheless.

An equally important factor is that these benefits accrue to different groups in society. While the tangible products may benefit local villagers or logging contractors, hydrological regulation benefits downstream water users, while climate change mitigation due to CO_2 sequestration benefits the entire world. At the same time, the disservices of forests, such as crop raiding by elephants carnivore attacks on livestock, are experienced entirely by local communities. And with forests being slow-growing entities, current benefits may come at the cost of future generations. The distribution of benefits is also shaped socially. Returns from timber harvesting may accrue primarily to local communities, to logging contractors, or to the state, depending upon how rights are allocated. Social norms will also determine whether wildlife is seen primarily as a local benefit (for food, aesthetic or religious value) or a global benefit (cultural heritage of humankind). Thus, decisions about which benefit to maximise or prioritise are also decisions about whose benefits to maximise or prioritise. Forests also have

features of common pool resources at the local level, because regulating access by non-rights holders is not easy, and their slow-growing nature makes it tempting to violate harvesting regulations, as the impacts may be felt much later, by future generations. But, forests also have the feature of externality: local communities can modify the forest and thereby affect regional or global stakeholders who are located "downstream."

Just as different "forest-like" land uses —timber plantations, firewood forests or old-growth areas—vary in what benefits they provide, "non-forest" land uses also vary in their environmental impacts, making the boundary between forest and non-forest fuzzy. Certainly, barren lands or mines cannot provide any ecosystem benefits. But, other land uses, such as coffee or rubber plantations, legally classified as non-forest, also provide several of the ecosystem benefits (such as hydrological regulation) that forests provide. So, where are forest conservation rules to be imposed and when should non-forest conversion be allowed is not an ecological "given;" it needs to be decided upon socially (Lele 2007).

Thus, the core dilemmas in the forest sector are: how should forests be managed, for maximising which/whose benefit and how should the boundary between forest and non-forest be defined and regulated. The core forest governance questions then are: who should decide on these dilemmas and through what process? Most importantly, who should manage the forests on a day-to-day basis and within what limits? Forest governance is, thus, much more than making management choices (which trees to plant, how to protect and what to harvest). It is about deciding which stakes are recognised as legitimate, which stakes are to be prioritised and where, allocating rights and responsibilities to groups and organisations, and structuring their interactions (what Schlager and Ostrom [1992] call "constitutional" choices as against "operational" choices) to realise these goals.

Conventional Answers

The colonial government's answers to these forest governance questions were simplistic and of a single dimension. Only one stake was recognised—that of the colonial (or nation) state in revenue generation through harvest of major commercial products; so the question of trade-offs was largely irrelevant. And once the forest was demarcated,[1] the operational decisions were entirely in the hands of the forest department in each province.

This arrangement displayed not only colonial arrogance but also disconnect from the unique context of South Asia, an ecologically diverse landscape that has been densely settled and intensively used by a diverse set of communities in different ways over millennia. Today, the livelihoods of 100–250 million people are intertwined directly with forests, and they obtain food, fibre, fuel, fodder, leaf manure and a huge variety of timber and non-timber forest products from these lands, in addition to having a variety of cultural and religious relationships with them. Forest management practices vary from shifting cultivation systems in the North East, to pasture–woodland combinations in the Western Ghats, to the intensively lopped oak forests of the Himalayas, and the grazing practices of many pastoral nomadic communities.

In such a context, deciding whose priorities should prevail and anticipating what the trade-offs under different management practices might be is much more difficult and complicated than it would be in a sparsely populated, low diversity, commercial forestry operation that is characteristic of some temperate countries.[2] Local voices, stakes, historical uses and customary rights should have, therefore, received far more attention than they did, even if outsider interests have some legitimacy. Even practically speaking, local communities are better placed to manage the forest on a day-to-day basis. Instead, zoning was used simplistically to accommodate priorities of local communities: "reserve forests" were high quality forests reserved for state purposes, while "protected forests" allowed local use, but not local management. Only where protests were very severe, such as in Uttarakhand, were management rights also granted to local communities in some pockets, while the state maintained regulatory powers (Agrawal 2001).

Post-independence governments unfortunately did not revisit these answers for a long time. Even when Chipko challenged them, the response was to restrict timber-oriented forestry and shift the focus gradually to conservation, without paying attention to local needs or changing the allocation of management rights. This coincided with an increasing attention to wildlife conservation, both nationally and internationally, and led unthinkingly to the formation of wildlife sanctuaries and national parks (that is, protected areas) where local rights were extinguished without due process or thought to the long-term role of those communities in conservation. Similarly, the 1996 verdict in the *T N Godavarman Thirumulkpad v Union of India & Others* case by the Supreme Court made the process of deciding on the conversion from forest to non-forest stricter, albeit without providing forest-dependent communities any voice in the matter.

The joint forest management (JFM) programme tried to offer some new answers. It recognised "meeting local needs" as important, and also the need to involve local communities in managing the forests from which these needs are met. But, it did so half-heartedly. By restricting itself to degraded forests initially and tightly limiting the areas given for JFM in any case, the programme kept participation literally on the margins. It did not have legislative backing and was heavily funding-based. Here, participation was an instrument, not a goal in itself. Moreover, "joint" management meant forest officials controlled the whole process, and there was no separation of operational and regulatory roles (Lele 2014).

Radical Answers

The FRA offers a radically different set of answers, and it covers all the questions, including some that have been altogether missed out earlier. The premise in all of the earlier discussions on forest governance was that the "settlement" process adopted by the British and written into the IFA ensured that settlements in and around the forests and their

cultivation rights had already been recognised, and the debate was only about their access and (more important) management rights on forested lands.[3] But, poor implementation of the IFA processes, ironically after independence, meant that millions of historical forest dwellers became encroachers in their traditional lands. The FRA says that these forest dwellers' rights to live and cultivate must first be recognised.

Further, it says that all non-timber forest produce belongs to forest dwellers. More importantly, it also allows them to claim management rights over their forests, and only imposes a broad requirement of sustainable use on them. By doing so, it is effectively saying that wherever human populations live and depend upon forests, day-to-day forest management must be in the hands of those forest dwellers.[4] It does not even exempt protected areas from this process.

The FRA takes on the question of when the management objective for a forested area should shift from meeting local livelihood needs to conserving biodiversity in the national interest. It lays down a process for identifying Critical Wildlife Habitats[5] and further lays down a process for determining in each case whether achieving conservation goals really requires shifting out the forest dwelling population. By implication, in those areas where such shifting is not required, the forest dwellers would continue to have management rights, albeit within the dual limits of the FRA and the Wildlife (Protection) Act, 1972. Finally, the FRA gives forest dwellers a voice in the conversion of their forests to non-forestry activities under the FCA, a concept that was upheld by the Supreme Court in the Niyamgiri case (Menon 2015).

Never before has a single piece of legislation sought to answer all the forest governance questions across such a vast spatial, historical and legal terrain in such a radical and comprehensive manner. So, it is not surprising, even if unfortunate, that the forest departments have vehemently opposed the FRA's community forest resource (CFR) rights provisions. For 160 years, forest officers have been the owners, managers, police, knowledge-producers and policymakers for about 70 million hectares (or 20% of India's land). To now be deprived of day-to-day control over almost three-quarters of this estate is a huge blow to their prestige and pelf.

Some of the silences, gaps and weaknesses in the FRA also give an excuse for the foresters to feel insecure. While the procedures for recording individual cultivation or settlement rights—a one-time activity—are fairly clear, the institutional structure for a post-CFR landscape is not spelt out. The impression given is that either forests only matter for the benefits they generate to local communities, or that the mere specification of sustainable use and biodiversity conservation as necessary, it will somehow happen automatically. If pre-FRA forest governance took little or no cognisance of the rights of local communities, the FRA does not tell us how the voices of the regional and global stakeholders in wildlife, climate, or hydrological regulation will be heard. The impression of community-wise laissez faire it creates makes even well-meaning foresters and conservationists dismiss the act as ill-conceived romanticism and a threat to India's forests.

Multilayered Governance

How does one move beyond this impasse? The starting point has to be the acceptance of the idea of multilayered governance. This concept implies that, in a vast country with densely populated and diverse landscapes, day-to-day operations, regulation, and policymaking are best separated and carried out at different levels by different actors/organisations. Local communities have the right, and are generally best positioned, to make operational decisions about their forests. But, since there are some legitimate stakes, at scales beyond the local, credible and impartial processes need to be put in place to operationalise the concepts of sustainable use and conservation.

Our conversations with the proponents of the FRA and grass-roots communities indicate that, up to this point, there is no disagreement. But, they reasonably demand that any such process must be democratic and transparent. The fear is that if the forest departments automatically become the regulators and policymakers, then the same old domination, pro-timber mindset and unaccountable functioning will continue. After all, the reason that the FRA had to be passed in the first place with the Ministry of Tribal Affairs as the nodal agency was the persistent refusal of Indian foresters to introspect, to recognise major errors in the forest reservation process, and to substantively devolve operational control, as was done in neighbouring Nepal under its 1993 law.[6]

How, then, might the contours of truly democratic multilayered governance look? Some hints are available from the mechanism put in place for claiming the rights, where a three–departmental committee that also contains forest dweller representatives adjudicates all claims. A still better analogue might be the pollution control boards that are mandated to regulate water and air pollution emitted by industries. The boards do not "jointly" manage the industries, nor do they (generally) dictate technologies that industries should use in their production. They do not even set the standards they enforce; the standards are set by the ministries with public consultation. Their primary task is monitoring and enforcement. This is not to suggest at all that our pollution control boards are paragons of democratic and accountable functioning (Lele and Heble 2016). But, they do represent a basic acceptance of the idea of separation of roles.

Given that modern forestry science in India has not focused on the ecology of non-timber forest products or multiple use forestry, it is even more necessary that the process of defining sustainable use and conservation be controlled by non-foresters, and be consultative, transparent, context-specific, and soft or learning-oriented, not (at least at this early stage) penalty-oriented. Notably, going back to the pollution analogy, industries have access to an appellate authority if they are aggrieved by a board's orders. A similar mechanism would be required at a district level for CFR gram sabhas. The FRA committee set up in 2010 had made detailed recommendations regarding such a structure (Joint Committee 2010: Chapter 8).

Separation of roles is also required in other spheres, such as funding. Conventionally, it has been foresters sitting in the central ministry formulating funding programmes for colleagues in state forest departments or through forester–controlled district-level Forest Development Agencies. Under the new Compensatory Afforestation Fund Management and Planning Authority (CAMPA), a much larger amount of funding will flow to the states. But, the decision-making structure in CAMPA repeats earlier mistakes: de facto control rests with a steering committee stacked with foresters and other bureaucrats, and there is no recognition that gram sabhas with CFR rights could be legitimately demanding funds for forest management in competition with the territorial or wildlife wings of the forest departments. The CAMPA decision-making bodies need to be decentralised and be composed of non-foresters.

Conclusions

Will the politicians see the need for such a revamp of forest governance? Will foresters rise constructively to this challenge of scrutinising their own power and (over)reach? Will conservationists stop confusing operational control with management goals, and recognise the possibility that communities might in fact manage protected areas even better, if they get resources in other ways (such as revenues from ecotourism) and harness their own knowledge at the same time? Will advocates of community rights openly accept the need for, and propose democratic mechanisms for, external regulation in which foresters might have some role? A process of dialogue between these various protagonists of Indian forests is required, before the ongoing development juggernaut makes the whole debate itself irrelevant.

NOTES

1 At the stage in which the revenue department was involved, cultivated areas were excluded, and some local rights were recorded.

2 Even here, indigenous communities are contesting conventional forestry.

3 In creating protected areas, it was further assumed that rights to forests had already been settled.

4 Or can be, if they so want it.

5 A process is missing in the Wildlife (Protection) Act.

6 All recent moves by the forest departments, whether it is to substitute JFM committees for gram sabhas, or to pass a parallel set of Village Forest Rules in Maharashtra, lend credence to the concern that the departments are not willing to accept loss of operational control.

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