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GATEKEEPER SERIES

116

**LAWS, LORE AND
LOGJAMS: CRITICAL
ISSUES IN INDIAN
FOREST CONSERVATION**

Madhu Sarin
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THE GATEKEEPER SERIES of the Natural Resources Group at IIED is produced by the Sustainable Agriculture and Rural Livelihoods Programme. The Series aims to highlight key topics in the field of sustainable natural resource management. Each paper reviews a selected issue of contemporary importance and draws preliminary conclusions for development that are particularly relevant for policymakers, researchers and planners. References are provided to important sources and background material. The Series is published three times a year and is supported by the Swedish International Development Cooperation Agency (Sida), the Swiss Agency for Development and Cooperation (SDC) and the Rockefeller Foundation. The views expressed in this paper are those of the author(s), and do not necessarily represent those of the International Institute for Environment and Development (IIED), Swedish International Development Cooperation Agency (Sida), the Swiss Agency for Development and Cooperation (SDC), the Rockefeller Foundation, or any of their partners.

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EXECUTIVE SUMMARY

India's forests support a rich assemblage of floral and faunal biodiversity and have also been the ancestral habitat of diverse tribal and indigenous communities. However, recent government legislation combined with action by the Indian judiciary aimed to stem the rapid loss of forests and wildlife is undermining rather than contributing to conservation and social justice. The contradictory nature of these interventions is creating new distortions and conflicts by failing to address the root causes of forest degradation.

This paper discusses the three main obstacles to sustainable and just forest management:

1. Poor procedures and unsound premises for defining and identifying forests
2. Dissonance between tribal and conservation laws
3. Neglect of democratic decentralisation of forest governance

Unless these underlying causes are tackled, neither conservation nor social justice objectives can be achieved on a sustainable basis. Achieving these objectives requires the democratic decentralisation of forest governance. Among the many actions listed in this paper, the author recommends:

- Ensuring clear demarcation of the forest resource, including details of its ecological characteristics and livelihood functions, and clear jurisdictional authority.
- Replacing the *ad hoc* forest policy objective of 33% national forest cover with state-specific objectives based on ecosystem, biodiversity and land capability surveys.
- Harmonising the implementation of conservation laws with the constitutional provisions for protecting the cultures, livelihood systems and resource rights of tribal and indigenous communities.
- Moving away from centralised, bureaucratic forest management (including 'Joint Forest Management') towards holistic community-based forest and natural resource management. The focus should be on devolving responsibility and management authority for conservation and sustainable use to local community institutions based on clear common property rights.
- Nurturing self governing, democratic and gender equal local institutions, building upon existing community initiatives, traditions and resource management systems.

LAW, LORE AND LOGJAMS: CRITICAL ISSUES IN INDIAN FOREST CONSERVATION

Madhu Sarin

INTRODUCTION

Forest conservation in India has got stuck in a deadly quagmire of contradictory policies, legislation and executive/judicial action, none of which addresses the basic causes of forest degradation. Unless these underlying causes are tackled, neither conservation nor social justice objectives can be achieved on a sustainable basis.

These causes may be grouped into the following three broad categories:

1. *Poor procedures and unsound premises for defining and identifying forests:* The national forest estate has been assembled through unsound processes, resulting in serious tenurial and land use conflicts, unclear boundaries, jurisdictional disputes between different departments and inappropriate management objectives for non-forest lands declared state 'forests' through sweeping notifications. Unless these conflicts are addressed and the forest estate rationalised, forest conservation cannot be placed on a sound footing.
2. *Dissonance between tribal and conservation laws:* There has been widespread negation of communal tenures and the role of forests in tribal livelihoods and culture through rigid application of conservation laws superimposed over tribal areas. This is in violation of the constitutional provisions for safeguarding tribal cultures, livelihoods and resource rights. Implementation of tribal welfare and conservation laws needs to be harmonised if the symbiotic relationship between tribal people and forests is to be restored.
3. *Neglect of democratic decentralisation of forest governance:* Centralised forest administration and management designed for revenue generation cannot achieve the revised forest policy objectives of biodiversity and ecological conservation while upholding social justice and equity. Achieving these objectives requires the democratic decentralisation of forest governance. Provisions of the *Panchayats*

(Extension to the Scheduled Areas) Act (PESA), 1996 as well as section 28 of the Indian Forest Act (IFA) provide legal opportunities for such devolution of forest management. Ignoring these legal options, however, the Ministry of Environment and Forests (MoEF), promotes Joint Forest Management (see footnote 14) which is characterised by imbalances in power and authority with one-sided expectations of transparency and accountability by the forest department (FD). The lack of any tenurial security or clear common property rights and insensitivity to the diverse livelihood functions of forest lands are undermining the effectiveness and sustainability of JFM approaches (Sarin *et al.*, 2003).

Officially, 23% of India's area is 'recorded' as forest but only about 12% has dense forest cover (FSI, 2002). India's forest policy, however, aims for 33% forest cover. Concerned at the rapid loss of forests for other land uses, the Government of India enacted the Forest Conservation Act (FCA) in 1980 which made it mandatory for state governments to seek central permission before diverting forest land to other uses. Heightened prominence of the need for wildlife and biodiversity conservation during recent decades has made the Indian Judiciary intervene actively to protect the environment. But in the context of the above three failings, these interventions are creating new distortions and conflicts, instead of promoting forest conservation.

In this paper I discuss these three key issues and make suggestions for priority actions for addressing them.

POOR PROCEDURES AND UNSOUND PREMISES FOR DEFINING AND IDENTIFYING FORESTS

There are major discrepancies between real forests on the ground and the area declared as state 'forests' (Sarin, 2003a). This has serious implications for the ecological management of these lands and for the people whose livelihoods are intimately associated with them. During the colonial period, while some forests were selectively reserved for commercial exploitation, large areas of the uncultivated commons (called 'wastes' because they did not yield land revenue) were declared state forests through blanket notifications. Rather than identifying forests, the objective was to assert state ownership over non-private lands.

Post-Independence, the *net* 'national' forest estate was further enlarged by 26 million hectares (m ha) between 1951 and 1988 (from 41 m ha to 67 m ha). This

increase was achieved by declaring the non-private lands of ex-princely states (merged with the Union of India after Independence) and of *zamindars*¹ as state forests (Saxena, 1995 & 1999). Again this was largely done through blanket notifications, without surveying their vegetation/ecological status (Box 1) or settling the rights of pre-existing occupants (Box 2). Many of these lands are yet to be clearly demarcated on the ground and finally notified as forests under the Indian Forest Act (IFA). Consequently, even their legal status as state ‘forests’ is open to challenge. Only some states in the north-eastern region escaped such usurpation of the commons by the state. Consequently, in this region communal land and forest ownership managed in accordance with customary law by traditional community institutions provides an interesting counterpoint to centralised state forest management in the rest of the country. However, even customary resource management in the north-east is now facing increasing state regulation, for example, through the overlapping classification of communal shifting cultivation lands as ‘unclassified forests’.

Many of the above lands, although entered as ‘forests’ or ‘wastelands’ in official records, harboured, and in many areas continue to harbour, a wide diversity of communal property use and management systems by pre-existing communities, recognised by custom rather than formal law. These include(d) shifting cultivators, hunter-gatherer pre-agricultural tribal communities, forest-based settled cultivators and nomadic pastoralists, as well as other communities with diverse livelihood systems. They also included tenant cultivators of *zamindars* and private forest owners, as well as village/community forests for *bona fide* local use. On the whole, these pre-existing users and customary tenures are poorly recorded in official records.

In one stroke, notification of these lands as state ‘forests’ converted them from local livelihood resources into ‘national forests’. Local management authority was simultaneously replaced by a uniform, centralised management system for sustained yield of timber and other commercially valuable produce for state revenue generation. Both processes seriously impoverished forest dwelling communities through severely curtailing their forest access for livelihoods, and converting many into ‘encroachers’ on their ancestral lands, with even their unsurveyed villages notified as state ‘forests’. This has left these predominantly tribal people vulnerable to forcible displacement without rehabilitation and to decades of rent seeking and exploitation by revenue and forestry staff.

1. *Zamindars* were large landlords to whom the British had assigned the responsibility of collecting revenue from tenants.

Box 1: Vast lands declared 'forest' without surveys

In 1893, all uncultivated common lands (unmeasured lands) in Uttaranchal under direct British rule were declared state-owned 'District Protected Forests' without any vegetation or ecological surveys being conducted. Large parts of this land could never support forests because they were above the tree line. Subsequently, parts of this land were notified as reserve forests. Much of the remaining land has been converted to other uses over the last 110 years. In its submission to the Supreme Court under an ongoing public interest litigation (the Godavarman case)² in 1997, however, the then UP³ government asserted that this land continued to be 'forest' to which the *Forest Conservation Act, 1980* (FCA) applies.

Sweeping notifications issued in 1896, 1897 and 1952 similarly declared all government 'wastelands' in Himachal Pradesh (now covering 66% of the state's area) as protected forests, irrespective of their actual use or vegetation cover. Over 55% of this 'forest' land is incapable of supporting tree cover because it is under alpine pastures, permanent snow or above the tree line (Sharma, 2000). A forest sector review revealed that only about 22% of HP's total area could realistically be brought under tree cover (IIED & HPFD, 2000), whereas the national forest policy prescribes that this should be 66% in the hills. In 1998, the state government issued a notification that "areas classified as 'gair mumkin' and 'charagah bila drakhtan' (grazing land without trees) in the revenue records" should be excluded from the wastelands declared as state forests by the 1952 notification (for which detailed surveys and settlements are yet to be completed in most districts). However, the Central Empowered Committee (CEC), set up to monitor implementation of Supreme Court orders under the Godavarman case, recently ruled that the state government's 1998 notification violated the FCA, thereby insisting that even village grazing lands without trees continue to be notified as state 'forests'.

Because of the way 'forest lands' are defined in the FCA⁴, after 1980 the state 'forests' of both HP and Uttaranchal suddenly increased by about one third (from 44% to 66%) in Forest Department (FD) records without any change in forest cover on the ground. Similar situations of poorly defined state forests exist in most other states.

2. Godavarman filed a public interest litigation (PIL) case in the Supreme Court in 1995 against illicit felling of forests which used to belong to his family but were taken over by the government after Independence. The judges expanded the mandate of the PIL to cover practically every aspect of forest management in the entire country. The case is still continuing and the Court has issued several hundred interim orders which have had far-reaching consequences for forest management.

3. In the year 2000 the mountainous area of the undivided state of Uttar Pradesh (UP) was made into the new state of Uttaranchal.

4. Originally, the FCA was applicable to forest lands notified as state forests after completing the procedure for settling rights under the Indian Forest Act and to lands 'recorded as forest in government records'. Subsequently, a Supreme Court judgement ruled that the FCA was also applicable to lands for which only the preliminary intention of the government to notify them as state forest had been issued. In its interim order under the Godavarman case in December 1996, the Supreme Court extended the purview of the FCA to all lands as per 'dictionary definition' of forests, irrespective of ownership.

Box 2: Tribal and community lands declared state forests without surveys

Revenue land settlements carried out during the 1970s in Orissa did not survey hilly lands steeper than 10 degrees because of the expense involved. They were declared (including their unsurveyed villages and cultivated lands) as state owned forests or 'wastelands'. Yet these hilly lands are predominantly inhabited by the state's 7 million *adivasis* (the vernacular term used for India's tribal communities); 44% of Orissa's supposed 'forest land' is actually shifting cultivation land used by tribal communities whose ancestral rights have simply not been recognised. 55 per cent of Orissa's supposed 'forest' area is under the jurisdiction of the revenue department, and in areas surveyed for revenue settlements this land is not recorded as 'forests'. Consequently, the revenue department has been using it for different purposes for 30-40 years. About 40% of even Reserve Forest is 'deemed' to be so without any survey or settlement (Das M C & Associates, 1995). Cases against 'encroachers' on forest land due to their lacking land titles have been thrown out by the courts as the FD cannot produce notifications under section 20 or 29 of the IFA.

In Andhra Pradesh, *adivasis'* fallow shifting cultivation lands were declared Reserve Forests in which no usufruct rights are allowed and many *adivasis* have still not been granted land rights over the limited cultivable land left in their possession. The acute impoverishment of Orissa and AP's *adivasis* is rooted in their lands and forests being usurped by the state. In some of the north-eastern states in comparison, where communal lands and resources have remained under community ownership and the management of traditional institutions as per customary law, both the status of indigenous communities and the condition of their community forests is far better (see for example Nongkynrih, 2004; Singh, 1996).

Contradictions in the Forest Conservation Act, 1980 and the Supreme Court's interim orders in the Godavarman case

The FCA was enacted to curb the rapid clearance of forests for other uses by making it mandatory for state governments to obtain central government clearance for diverting any forest land to other uses. The FCA, however, froze legal land use for lands declared 'state forests' through the deficient processes described above. Even lands notified under section 4 of the IFA⁵ were brought under the FCA's purview, in addition to '*any area recorded as forest in the government records*'. Not only is the quality of government records notoriously poor (in many states, the same land is recorded under different categories by both the revenue and forest departments or revenue records do not show notified forest lands as forests, as in Orissa), but the word 'forest' has also been used generically for recording even community grazing and other common lands. Ninety per cent of the country's natural grasslands, harbouring rich biodiversity, have been destroyed by being declared state 'forests' and the timber focused forest departments consequently planting them with exotic tree species.

⁵ This declares only the government's *intention* to reserve an area for which the final notification, after the legally required settlement of pre-existing rights, has not been issued.

Box 3: Cancellation of legal land titles for land recorded using the term ‘forest’

In a bizarre interpretation of the Court’s interim order, the Maharashtra FD has pressurised the revenue administration to transfer all lands declared private forests under the *Maharashtra Private Forests (Acquisition) Act, 1975* to the FD. Entries of private ‘forests’ in government records, however, bear little correlation with reality: the area in question is not forest land at all. In 1975 in four districts alone (Thane, Raigad, Ratnagiri and Sidhurdurg), over 303,000 ha of agricultural land holdings were declared ‘private forest’ without the knowledge of the more than 100,000 (mostly tribal) cultivators. With one stroke of the pen, and without any verification on the ground, these lands were acquired and vested in the state. Following the Court’s 1996 interim order, the process of removing the cultivators’ names from the land records has begun. Ironically, many cultivators received titles to their lands under the post-Independence land reform legislation. (Lobo, 2002). Kashtakari Sangathna, an activist organisation working in the area, has been agitating to get the process stopped by the Commissioner to prevent *adivasi* cultivators being evicted as ‘encroachers’ on ‘forest’ land despite having legal titles.

Requiring strict enforcement of the FCA, the Supreme Court’s interim orders under the Godavarman case further extended the FCA’s application to all forests as per ‘dictionary definition’, irrespective of ownership. All ‘forest lands’, so defined, now need to be managed in accordance with working plans/schemes prepared by FDs and approved by the MoEF. This approach has given unfettered discretionary powers to forest officers and assumes ‘forests’ are areas divorced from any socio-economic or cultural contexts and ignores existing tenurial arrangements for their management. This is leading to undue harassment and threatened eviction of people even with legal titles to land still ‘recorded’ as forest (Box 3), and even the occasional illegal appropriation of private lands on the grounds of their being ‘forests’ as per dictionary definition. In the north-east, households which earlier managed their private lands for timber production now have to seek FD permission for harvesting timber for sale, compelling many to clear their land of trees to grow alternative crops. Similarly, due to the overlapping classification of communal shifting cultivation lands as ‘unclassified forests’ to which the FCA now applies, permission for diversion of such lands for other uses has to be sought from MoEF instead of the land owning communities.

Bringing community lands with diverse tenurial status and livelihood functions under the FCA’s purview due to their being ‘recorded’ using the term ‘forest’, has confused their management objectives, diluted or erased community rights, created jurisdictional conflicts between forest and revenue departments,

*panchayats*⁶ and traditional community institutions, while being difficult to enforce. As pointed out by the Central Empowered Committee (CEC) itself in its recommendations to the Court on how to deal with ‘encroachments’ on ‘forest’ lands, “*In respect of deemed forest area, unclassified forest and areas recorded as forest in Government records, which are not legally constituted forests, the provisions under which an offence can be booked are not clear*” (pt 12 (v) of CEC recommendations for evicting encroachments).

The biggest beneficiary of the Court’s interim orders has been the forest bureaucracy, which has been given more powers to control land and forest use. This is despite its widespread forest mismanagement in the past, which has led to degradation. It is also ironic given that Godavarman filed a Public Interest Litigation against the bureaucracy because of mismanagement.

Lack of scientific basis for achieving 33% ‘forest cover’

A target of ‘33% forest cover’ (effectively equated with ‘tree’ cover) was included in India’s 1952 forest policy on the ground that countries with high forest cover were more ‘prosperous’. Yet in India today, the highest concentrations of poverty are in tribal-forest areas where forest dwelling communities have been deprived of their customary resource rights—their very means of survival—by declaring their ancestral lands as state forests. The FCA is designed to prevent the reduction of the current area of forest land so as to meet the 33% objective; permission for diverting forest land to other uses is conditional on ‘compensatory’ afforestation of an equivalent area elsewhere. Isolated patches of ‘compensatory afforestation’ on other lands, however, do not make up in any ecologically meaningful way for the destruction of natural forests for other uses as they are parts of complex ecosystems and provide habitat for diverse flora and fauna.

Together, the imposition on poorly-defined forest lands of the 33% forest cover objective, the FCA and the interim orders of the Supreme Court (governed by the first two policies) has compounded the injustice to tribal and other forest dwelling communities whose rights are yet to be settled. The 33% forest cover objective has also empowered forest departments to lay claims on additional community as well as cultivated lands to increase the present forest area, further alienating local communities instead of increasing their incentives for conservation.

6. Panchayats are constitutionally mandated local government institutions.

Action Points

1. Sound conservation management cannot take place without clear demarcation of the resource, details of its ecological characteristics and livelihood functions, and clear jurisdictional authority. Surveys and settlements, with clearly marked boundaries on the ground, must be concluded within a fixed timeframe. This process should exclude non-forest lands declared as 'forests' through blanket notifications. Village grazing lands and forests traditionally used for meeting community needs should be excluded from the 'national' forest estate and restored to community based management in recognition of their livelihood functions. Revenue and forest land records must be updated and made compatible simultaneously.
2. Within the rationalised forest estate as above, sound ecological management must be ensured. For example, natural grasslands and similar ecosystems should not be treated as 'degraded blanks' to be 'afforested'. Planting trees where they do not belong does as much damage to natural habitats and biodiversity as the destruction of natural tree cover.
3. No subsistence cultivators and settlers on unsurveyed lands should be treated as 'encroachers' until their rights, including common property resource rights, have been enquired into and settled and final notifications under sections 20 or 29 of the IFA issued.
4. The ad hoc forest policy objective of 33% national forest cover should be replaced with state-specific objectives based on ecosystem, biodiversity and land capability surveys. Under no circumstances should additional tribal lands be declared state forests on grounds of increasing forest cover as such lands have been disproportionately appropriated in the past. In states with little forest cover, incentives for land owners and communities to increase forest cover on their lands should be developed.
5. No lands 'recorded' as forests in government records should be brought under the purview of the FCA without verification of their actual use and status on the ground. Community grazing and forest lands, even if recorded as 'forests,' should be left under local community management and control in accordance with existing rights instead of being transferred to FDs for 'scientific forestry'. The distinction between the livelihood functions of community lands with substantial use rights by local people, and state forests must be maintained so as not to further undermine local livelihoods.
6. In the absence of MoEF or the Central Empowered Committee petitioning the Supreme Court to revise the Court's interim orders under the Godavarman case, Parliament needs to address the growing distortions in approaches to forest conservation by enacting new legislation. Among other things, such legislation should exclude lands recorded as forest in government records from the purview of the FCA unless duly notified; recognise the customary rights of *adivasi* and other forest dwelling communities to forest land and resources, and restore common grazing lands and community forests traditionally used for supporting local livelihoods to communities for local management.

DISSONANCE BETWEEN TRIBAL AND CONSERVATION LAWS

Any government interventions in tribal areas need to be in harmony with the constitutional provisions and other policy directives for safeguarding the culture, resource rights and livelihoods of tribal communities and the governance of tribal areas. Most states with large tribal populations have enacted laws forbidding the transfer of private tribal lands to non-tribals, although these have been poorly enforced. However, in total dissonance with the constitutional protection for *adivasis*, the IFA, FCA and Wildlife Protection Act (WLPA) continue to be used to hound them, even in Schedule V⁷ areas. The government itself has been the biggest violator of the spirit of the constitutional provisions through indiscriminate notification of customary tribal lands as state forests or protected areas, often without even settling their rights. Tribal economies have been based on managing cultivated lands and the uncultivated commons as an integrated resource base through diverse communal resource management traditions and systems. The poor recognition of communal tenures in India (except in the Schedule VI areas) has decimated their economies and livelihood security.

The National Forest Policy, 1988 suggests involving tribal people closely in the protection, regeneration and development of forests (given their ‘symbiotic relationship’ with forests) and ensuring ‘full protection’ of their rights. However, it says nothing about restoring their ownership and control over their forest resources or the contradictory coercive provisions of conservation laws now governing them. The impacts have been tragic (Box 4). Narrow interpretations of the Forest Conservation Act and the Supreme Court’s interim orders in the Godavarman case are leading to new displacements through evictions and cancellation of existing land titles. This must be stopped urgently.

An existing framework for resolving tribal-forest conflicts

Since 1990 a framework has existed for resolving disputes over forest land between tribal people and the state, but it remains unimplemented. A set of six circulars was issued by MoEF on September 18, 1990 which potentially set the framework for dealing with some of these conflicts.⁸ But MoEF’s emphasis over the years, also

7. The Constitution of India provides for safeguarding the interests of tribal communities through declaring tribal majority areas under Schedules V & VI of the Constitution.

8. Circular No. 13-1/90-FP of Government of India. The six circulars under this were: FP (1) Review of encroachments on forest land; FP (2) Review of disputed claims over forest land, arising out of forest settlement; FP (3) Disputes regarding pattas/leases/ grants involving forest land; FP (4) Elimination of intermediaries and payment of fair wages to the labourers on forestry works; FP (5) Conversion of forest villages into revenue villages and settlement of other old habitations; FP (6) Payment of compensation for loss of life and property due to predation/depredation by wild animals

Box 4: The injustice of tribal displacement

The absence of recognised land rights has made displacement without any compensation a recurring experience for Orissa's *adivasis*. In the 1970s, for example, the Soil Conservation Department raised cashew plantations on 120,000 hectares of land after evicting its tribal cultivators. It then leased the plantations to private parties. Ironically, this was done under a scheme called 'Economic Rehabilitation of the Rural Poor' (Saxena, 2001)! The most vulnerable pre-agricultural tribal communities and shifting cultivators have suffered the most from the loss of their customary land and habitat rights. Even where settlement procedures have been completed, their rights have been more or less overlooked, at best treating shifting cultivation as a 'concession' which can be withdrawn at the discretion of forest officers. These groups suffered because of their dependence on communal property resource use systems; settlement officers largely recognised only private property rights. In parts of Orissa where such settlements were done, only those lands under permanent occupation for at least 12 years were recorded in the cultivators' names using the principle of adverse possession. This clearly excluded both fallow and cultivated shifting cultivation lands, whose traditional cultivators became 'encroachers'.

Since Independence throughout the country, large numbers of *adivasis* have been displaced, without rehabilitation, for dams and mines as they have no title to their private or communal lands. Threats of displacement are acquiring even more ominous portents as major investments are now planned in the mining and power sectors (coal-based as well as hydro-electric) in tribal forest areas. According to the draft National Policy on Tribals prepared by the Ministry of Tribal Affairs in 2004, by 1990 about 8.5 million tribals (about 12.6% of all tribals) had been displaced by mega projects and the declaration of national parks and wildlife sanctuaries. Although tribals constitute only 8% of the population, they comprised at least 55% of the total displaced. Particularly due to their land rights still not being settled in many areas, only 2.1 million of the displaced tribals were rehabilitated, and as many as 6.4 million left to fend for themselves.

reflected in the judicial orders in the ongoing Godavarman case, has been on enforcing only one of these circulars: the first one, dealing with 'encroachments' on forest land. The other circulars on crucial issues such as 'Review of Disputed Claims over Forest Land Arising out of Forest Settlement' and 'Disputes Regarding Pattas⁹/leases/grants Involving Forest Land', which would help determine the distinction between an 'encroachment' and a 'disputed claim', have been collecting dust in official files till recently. MoEF's more recent order issued on February 5, 2004, for 'Regularisation of the Rights of the Tribals on the Forest Lands' (No.2-1/2003-FC(Pt)), openly admits that while many tribal areas "*were being brought under the purview of relevant Forest Acts, (the tribals') traditional rights could not be settled due to a number of reasons, making them encroachers in the eyes of the law.*" This circular, however, while expecting the complex issue of unsettled rights (left festering for

9. Conditional or temporary land titles.

five decades) to be completed within a year, applies only to tribals despite many non-tribal people being in the same situation. It also makes MoEF approval for settled rights conditional on the prior eviction of all non-eligible encroachers and fails to specify a role for the constitutional bodies responsible for tribals in the process. Given that powerful encroachers may delay their eviction by going to the courts, respite for the forest dwellers was likely to remain a distant dream. To complicate matters, the court stopped implementation of this circular and another year has passed while MoEF attempts to get the court's stay overturned. During this time, brutal evictions of *adivasi* and forest dwellers from forest lands have continued.

Action Points

1. The implementation of conservation laws needs to be harmonised with the constitutional provisions for protecting the cultural diversity and resource rights of tribal communities. Forest management needs to recognise the multiple values and functions of forest lands, particularly their role in supporting diverse livelihood systems, and adopt a holistic ecosystem-based land use planning framework.
2. All conflicts related to forest lands, leases/pattas etc. and conversion of all forest villages into revenue villages must be resolved within a fixed but realistic timeframe and through a transparent and open process. The best approach is to use teams of Tribal, Revenue and Forest officials together with respected local elders and NGOs for verifying claims in open village assemblies.
3. A specific approach should be developed for recognising and recording the habitat and communal property rights of pre-agricultural tribal communities and shifting cultivators. Under no circumstances should these be treated as 'encroachers' on their ancestral lands. Instead of classifying regenerating shifting cultivation fallows as forests, the FAO's term 'forest fallows' should be adopted together with clearly classifying them as arable lands. A different governance system for these lands is needed to combine their livelihood uses with maintaining ecosystem integrity.

NEGLECT OF DEMOCRATIC DECENTRALISATION OF FOREST GOVERNANCE

MoEF promotes Joint Forest Management¹⁰ (JFM) as the means not only of more effective forest protection, but also for improved livelihoods and poverty alleviation among forest dwellers. Officially, 14.25 m ha of forest land (18% of total forest area) are already being protected by roughly 62,890 village organisations under JFM (INFORM, Oct, 2001), although little is known about how many of these are actually functioning or how effective they are.

¹⁰ In theory, JFM represents partnerships between the FD and local village organisations for joint protection of local forests. These partnerships should entitle the village organisations to specified shares of forest product benefits if they honour the multiple responsibilities assigned to them.

Box 5: Converting *adivasi* land into state forest through JFM in Andhra Pradesh

In Andhra Pradesh (AP), most Schedule V area land (meant to protect tribal rights) has been notified as state forest, doing the exact opposite. Official records note that 32,360 hectares of land in AP's 'reserve forests' was under cultivation by *adivasis* prior to enactment of the FCA in 1980. A 1987 government memo that required regularising *adivasi* rights over this land went unheeded for eight years. A 1995 memo, after the AP World Bank funded Forestry Project was initiated, directed that the 1987 memo be 'suppressed' and the *adivasis*' cultivated lands be brought under joint 'forest' management, effectively changing their legal status to state-owned 'forest' land. Among the Bank project's phase-I achievements, the FD proudly claims having 'retrieved' 37,000 ha of 'forest' land from 'encroachments' in the district of Vishakhapatnam alone (APFD, 2004)—clearly a cynical use of a 'participatory' programme to illegally convert still more of the *adivasis*' land into state 'forest'.

To some extent, JFM has reshaped the adversarial relationship between forest dwellers and FD staff and helped improve the quality of forest cover in some areas where local villagers have enjoyed improved resource use rights. However, serious problems have also become evident as JFM has not attempted to address any of the three key issues discussed in this paper.

In many states (AP, Karnataka, Orissa, UP and Chhattisgarh) the FDs have used JFM for planting disputed cultivated lands with trees to convert them into state forest lands (Box 5). Many of the shifting cultivators in AP and Orissa have uprooted such JFM plantations to revert to shifting cultivation. In Mangara village in Koraput district (Orissa), the villagers burnt a JFM teak plantation created on their shifting cultivation land. Clearly, JFM in such areas is meaningless until the tenurial status of the land itself has been clarified and forest dwellers' livelihoods protected (Vasundhara, 2004).

In areas not riddled with land related conflicts, the continuing imbalance in power and authority between villagers and FDs has emerged as a serious shortcoming of JFM. While thrusting substantial protection responsibilities on villagers, most FDs are unwilling to devolve any *authority* to them for honouring the same. Not only is the structure of partner village organisations prescribed by FDs, with most states requiring the forest guard/forester to be their member secretary-cum-joint account holder, but FDs also retain the unilateral right to disband village organisations if they violate any of the FDs' terms. In contrast, there is little the villagers can do to hold the FD accountable. Other than in West Bengal, there has been limited sharing of income from major produce, while in Gujarat and Orissa, some JFM forests

painfully protected by villagers have been leased to paper companies without even informing the villagers (Vasundhara, 1998).

In the same vein, FDs have unilaterally revised state JFM orders several times, in Gujarat and Rajasthan, *reducing* the benefits promised to villagers when they initiated protection. In other cases, although on paper the revised orders look progressive, several evaluations indicate that the majority of villagers know little about their content (Sarin *et al.*, 2003). The most blatant example of retrospective superimposition of a new, highly prescriptive framework for JFM groups is the all India National Afforestation Programme (NAP) implemented by the National Afforestation and Eco-development Board (NAEB). NAP's guidelines and the structure of the Forest Development Agencies (FDAs) through which it is to be implemented raise serious concerns about democratic governance, decentralisation and community empowerment through JFM. Although ostensibly 'federations' of JFM Committees, all decision making power and control of FDAs lies with forest officers. All JFMCs are also to have the forest guard as their member secretary-cum-joint account holder who is also to nominate all the JFMCs' executive committee members, including the treasurer¹¹ – an ideal recipe for the guard to select an amenable partner for siphoning JFM funds.

Instead of developing genuine partnerships with local communities based on a balanced sharing of decision-making authority, responsibility, benefits and accountability, JFM remains a top down, one sided deal. Besides becoming a 'scheme' for marshalling huge funds over which FDs retain a firm control, JFM is also being used as a means for increasing FD control over the limited remaining areas of community lands by targeting them for afforestation. Under the NAP, FDAs' mandates include bringing village common lands and water bodies under JFM committees, enabling the FDs to encroach even on the *panchayats*' jurisdiction. In Punjab, 13 *panchayats* have filed a case against the government for channeling funds directly to JFMCs.

The NAP's bureaucratic notion of 'participation' displays total insensitivity to the diversity of socio-economic and ecological contexts in the country. These include unique traditional governance institutions and community tenures which have survived by being protected by the VIth Schedule of the Constitution in the north-eastern states where the FDs own little land.

¹¹. For details of NAEB's guidelines, visit <http://envfor.nic.in/naeb/sch/napcp.htm>

THE WAY FORWARD: DEMOCRATIC DECENTRALISATION OF FOREST GOVERNANCE

All over the world, the trend is towards democratic decentralisation of forest governance and restoring the rights of indigenous communities over their ancestral lands and forests. Innovative collaborative governance systems with tribal and indigenous communities for biodiversity and forest conservation are being developed after restoring their customary tenures and resource rights and building on their indigenous knowledge and cultural diversity. The Convention on Biological Diversity requires that signatories (including India) pay special attention to these aspects. Yet despite existing legal provisions permitting devolution of forest management authority to local communities, the Supreme Court's interim orders have made it mandatory that all forest lands be managed in accordance with working plans prepared by forest departments. This is the antithesis of community participation mandated by the 1988 forest policy and the constitutional mandate for decentralisation of governance. It needs to be recognised that forest departments do not have a monopoly over forest management knowledge and that serious concerns have been raised about the ecological insensitivity of 'scientific forestry'.

Strong community capacity for conservation

Although lacking official recognition, a wide diversity of community based conservation initiatives exist all over the country. These include community based management and conservation of local forests, pasturelands, agro-biodiversity, bird and wildlife habitats, ponds and fisheries, both inland and coastal. Community stakes in conservation may be rooted in increasing livelihood security, protecting ecosystem services or for cultural and spiritual reasons (Kothari *et al.*, 2000). Communities are also increasingly forming informal or formal alliances through federations for resolving conflicts and to negotiate with the government for policy changes in accordance with their priorities.

In Orissa alone, over 6,000 villages are actively protecting and managing state appropriated forest lands in their vicinity. Through their federations, these community forest management (CFM) groups have been demanding the replacement of JFM, which they see as a mechanism for the FD to regain control over their community initiatives, by a CFM policy which places management and decision-making control in the hands of local communities (Sarin *et al.*, 2003; Vasundhara, 1999 & 2000).

Democratic and autonomous community management of legally demarcated village forests by elected *van panchayats*¹² has existed in Uttarakhand for over seven decades, together with functioning traditional community forest management institutions. A recent study based on satellite imagery found that the quality of *van panchayat* forests is as good as RFs, despite the *van panchayats* being starved of funds and government support (Somanathan *et al.*, 2003). Many communities in the north-eastern states have preserved their rich traditions of sustainable management of communal lands, forests and agro-biodiversity, including the supply and reserve forests of Mizoram (Nongkynrih, 2004; Singh, 1996).

All these initiatives display a sense of community ownership and collective decision-making, although there are still problems of inequity and limited space for women's participation. Excepting Uttaranchal's *van panchayats* and the shifting cultivators in north-eastern states, a major problem facing these community initiatives is lack of tenurial security over their CPRs.

There is a need to strengthen such community traditions and initiatives with the help of unambiguous rights and authority, together with effective, non-bureaucratic mechanisms for ensuring accountability and conflict resolution. Unfortunately, there has been almost total official reluctance to acknowledge such community-based processes and their demands. In Orissa, there has been a deafening official silence to the CFM federations' demand for replacing JFM with a CFM policy which places management and decision-making control in the hands of local communities. Instead, the Orissa Forest Department has been seeking donor funding for 'promoting' community participation in forest management through JFM.

Existing legal opportunities

Governance is to do with how and by whom resource management decisions are made. The Supreme Court's interim order expanded the FDs' authority to make management decisions over widely diverse 'forest' land categories, further delinking resource users and owners from the authority to manage their resources. Blind faith in a discredited bureaucracy needs to be replaced by democratic decentralisation of

¹² *Van panchayat* literally means an elected forest *panchayat* (or council). In Uttarakhand (now the new state of Uttaranchal), whereas village *panchayats* are responsible for general development/governance functions, *van panchayats* are exclusively responsible for managing the community forests. Historically, they functioned more holistically. Now, due to a constitutional amendment making it mandatory to have elected *panchayats* in most parts of the country, there is some conflict and confusion over the respective roles of village *panchayats* and *van panchayats* in Uttaranchal.

forest governance. Legal opportunities for decentralised forest governance exist both in the IFA and in the legislation for Panchayati Raj Institutions¹³ (PRIs). Section 28 of the IFA provides that “*The [State Government] may assign to any village community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village forests*”.

Provisions in the *Panchayats (Extension to the Scheduled Areas) Act, 1996* (PESA) offer a more radical constitutional and legislative mandate for devolution of local self-governance in Schedule V areas. In contrast to JFM, which establishes new village committees under Forest Department supervision and control, PESA mandates community-based natural resource (including forest) management by *gram sabhas*¹⁴, also giving them ownership of minor forest produce. The FDs argue that PESA provisions cannot be applied to customary forests which have been notified as state forests under the FCA and the Court’s orders, but neither the FCA nor the Court bars use of section 28 of the IFA.

Action Points

1. Section 28 of the IFA and PESA in Schedule V areas should be used to promote a shift away from centralised, bureaucratic forest management towards community-based forest and CPR management. The focus should be on devolving responsibility and management authority for conservation and sustainable use to local community institutions based on clear common property rights.
2. Self governing, democratic and gender equal local institutions should be nurtured, building upon existing community initiatives, traditions and resource management systems instead of creating new ones through top down prescriptions, as done under JFM. These should have the right to set their own management objectives in *gram sabhas* for enhancing livelihood, ecological and cultural security based on local knowledge and priorities within a framework for maintaining ecosystem integrity. Existing community conservation initiatives need to be assured of unambiguous rights and authority, with effective, non-bureaucratic mechanisms for ensuring accountability and conflict resolution.
3. State governments should be asked to constitute Autonomous District Councils (based on the north-eastern model) in Schedule V areas as required under PESA to facilitate restoration of tribal people’s control over the governance of their customary lands which were declared state forests.
4. The role of forest departments, particularly in Schedule V and VI areas, should be to provide facilitative and technical support in tandem with tribal welfare authorities, instead of exercising unilateral control over all aspects of community decision-making related to ‘forests’.

¹³. Constitutionally mandated institutions for local self governance.

¹⁴. Village assemblies of all resident adults.

Postscript

In response to a sustained 'Campaign for Survival and Dignity' by a conglomeration of about 200 grassroots organisations fighting against the threat of evictions of *adivasis* and other forest dwellers from forest lands, the present Government of India has decided to table a bill titled *The Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Bill, 2005*, in the budget session of Parliament which began on February 25, 2005. The responsibility for drafting the bill has been assigned to the Ministry of Tribal Affairs instead of MoEF. The author has been associated with the Campaign and drafting of the bill which will hopefully tackle some of the major issues highlighted in this paper.

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