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Crisis of the forest community in postcolonial Indian forest policies and laws

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ABSTRACT

The paper highlights a crisis of the forest community in contemporary India and its incompatibility for the realization of democratic forest governance, even after the passage of the Forest Rights Act 2006. A discourse analysis of the forestry sector brings forth the permeation of the broader politics in shaping the forest community in the policy and law documents. The article argues that a mere recognition of rights of the forest community does not subvert the colonial legacy of the state–forest community relationship. In fact, the state sees the forest community as static i.e. apolitical and non-changing to maintain its control over the forests, which is evident through a content analysis of the forest policies and laws in India. This results in a myopic view of the forest community and fails to factor in the changing and contested nature of it, further reducing recognition as a one-time effort and not a process.

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1. Introduction

The passage of the Forest Rights Act 2006 (henceforth, FRA 2006) marks a conceptual shift by recognizing the forest community as rightsbearing citizens (Kumar, Singh, and Kerr 2015). This is significant in the backdrop of colonial and early postcolonial statist policies, which marginalized the local forest community by turning them into the subjects of modern state (Baumann 1998) and labelled them with the attributes of ‘encroachers’ (Sarin 2005:2131) and ‘destroyers’ (Jewitt 1995) of forests. Hence, the contemporary narrative on the forest community is about the recognition of its rights over the forest land and its resources. This paper counters this dominant narrative by arguing that this shift, albeit important, does not alter the colonial understanding of the forest community as apolitical and static. Therefore, a substantive shift will be one which responds to the dynamism and deeply political nature of the forest communities in different spatial–temporal settings. Such dynamism would create scope for the marginalized sections within these communities to exercise claim over forest land and its resources. However, the scope for dynamism requires a fundamental analytical leap, which is not evident in the current literature on forest governance/forest communities. The understanding of forest community as pre-given (Kulkarni 1983; Vandana 1988; Guha 1983, 1989; Gadgil and Guha 1992, 1995) is critiqued and argued as being constructed by the state around a specific issue. This is enabled through a ‘new moral economy of the forests’ which perpetuates state’s control over forests

(Jeffery and Sundar 1999; Sinha, Gururani, and Greenburg 1997; Baumann 1998; Agrawal and Gibson 1999; Sivaramakrishnan 2000; Sundar 2002). This work builds upon this idea by examining the shifts in the construct of community considering more recent developments, particularly with the passage of FRA 2006, and analyses the ‘crisis’ of the community in India’s forest governance.

The paper uses discourse analysis as a methodology to map the contesting narratives of the forest community within the broader forestry discourse in India. Further, content analysis of forest policies and law documents (manually and using NVivo) enable a nuanced understanding of the forest community. Policy documents were coded and analysed to result in thematic categories that helped in deconstructing the state’s imagination of the forest community. The policies and laws included the Indian Forest Act, 1927; National Forest Policy (NFP), 1952; Wildlife (Protection) Act, 1972 (including Amendment Act, 2006); Forest (Conservation) Act, 1980; NFP, 1988; Panchayat Extension to Scheduled Areas Act, 1996; Joint Forest Management Circular, 1990 (including Guidelines for Strengthening JFM, 2000 and 2002); Biological Diversity Act, 2002 (including Biodiversity Rules, 2004); Scheduled Tribes and Other Forest Dwellers (Recognition of Rights) Act, 2006 (including FR Rules, 2008 and 2012). The thematic categories that emerged from content analysis are as follows: nature of the forest community, nature of the organization, physical proximity from the forests, socio-economic groups, dependence, power dynamics, transactional relationships and expected role of conservation.

Using the thematic categories, this paper deconstructs the notion of community in the forest and related policies. It analyses these categories further to demonstrate the politics of inclusion and exclusion and the way contested imaginings of the forest 'community' emerge within the forestry discourse in India.

The first section of this paper highlights the politics of controlling forest resource by the state, which in contemporary times results in a reluctance to democratize forest governance using the politics of co-option. The second section shows the tensions between the static and dynamic understandings of the forest community. The third section brings forth an analysis of India's forest policies and law documents (since 1927) to demonstrate the colonial continuity of a static understanding of the forest community. The concluding section draws our attention to the continuity of the static understanding as a crisis of the forest community in contemporary times, where on one hand there is a move towards democratic forest governance, while on the other are structural constraints which inhibit this change.

2. State–forest community interaction: politics of controlling the forest

Forest history of India has witnessed contestations amongst various actors ranging from the state, market, civil society, political and extra-political groups and the local forest community. The colonial Forest Act of 1878, Forest Policy of 1894 and the Indian Forest Act of 1927 were outcomes of the imperial needs of timber for wars, cost-effective forest governance in a colony, interests of global capitalists in raw materials and cheap labour from the colonies, interests of Christian missionaries and American philanthropists in the civilizing mission and rural development, penetration of the colonial state in the rural areas and control over 'insurgent', 'stateless' tribal groups (Guha 1983; Sinha 2008; Sivaramakrishnan 1999; Philip 2004). These demands resulted in the statist interventions like scientific forestry; classification of land into revenue, forest and waste; forest land into reserved, protected and village forests; and expansion of moneylenders and *zamindars*, leading to the alienation of the land. These interventions put forth the colonial state as an exploitative one, which drew its legitimacy from the cultural and scientific superiority, translating into a 'civilizing mission'.

In postcolonial India, the Indian state was imagined to be largely liberal-pluralist, but upholding positive discrimination to fight caste-based oppression, and to follow the principles of distributive justice to address the class inequalities in the Indian society. But the NFP of 1952 prioritized defence and industrial needs over livelihood necessities of the forest community in the name of 'national interest'. In other words, the

imperial market needs were replaced by the national defence and industrial needs. The colonial caste–tribe separation continued leading towards 'anti-modern' construction of a tribal identity waiting to be gradually integrated into the modern mainstream (Prasad 2003).

The post-Chipko movement witnessed the rise of 'neo-traditionalists' along with the conservationists as influential actors in shaping the forestry sector. In the backdrop of the Chipko movement, if the former raised the issues of livelihoods and control over the forests by the forest communities, then the latter asserted for more state control over the forests over the issues of deforestation, wildlife protection and biodiversity maintenance (Lele and Menon 2014). The state's response to this contestation was in favour of the conservationists. For instance, instead of giving rights to livelihood, a blanket ban over felling trees above 1000 m altitude and the 30° slope was done in the Uttarakhand region. Forest was made a subject of the concurrent list from the state list. Community resentment over loss of common land was responded by bullets in Jharkhand (Corbridge and Jewitt 1997). Meanwhile, the passage of Wildlife (Protection) Act 1972, Forest (Conservation) Act 1980, followed by the Godavarman case, legitimated the forest control by the state on the grounds of protecting wildlife and biodiversity and preventing the conversion of forest land for non-forest purposes.

The NFP 1988 came in the backdrop of a global communitarian shift in the light of neo-liberal move which legitimated cost cuts made on the centralized governance. Further, the internal success stories of co-management from Orissa and West Bengal seemed to make the shift plausible (Sundar and Jeffery 1999; Kumar 2005). The policy was influenced by the 'neo-traditionalist' and led to the launch of the Joint Forest Management (JFM) 1990 (Sinha, Gururani, and Greenburg 1997), which was later critiqued as state's attempt to maintain its control (Sundar 2002; Baumann 1998). By the 1990s, several cases related to the use of forestland were brought to the court. The Supreme Court of India clubbed them together under an omnibus case called the 'Godavarman Case' (see Rosencranz and Lele 2008). Later in 2002, a Central Empowered Committee (CEC) was set up for the purpose. The committee that was dominated by the wildlife supporters saw villagers as a problem. In 2002, the CEC and the MOEF mandated evictions from the forest land which targeted *adivasis* but ignored encroachment by powerful mining actors like mining and local elites (Sundar 2011). This led to convergence of forest communities with various civil society organizations and rights-based groups under the umbrella of Campaign for Survival and Dignity.

The passage of FRA 2006 was an outcome of contestations amongst core set of actors including forest

bureaucracy and conservationists; *adivasis*, forest dwellers and rights-based activists; and the political core. The forest bureaucracy and conservationists opposed the proposition on the grounds of it being a profligate way to distribute the forestland to the 'encroachers' and 'destroyers' of the forest. The second group was the most vociferous about the rights of the forest community. The third was struggling to mediate between the political mandate to support the demands of the tribals and forest dwellers and the demand for 'moderate' law, which could co-opt the popular mobilization (Patel 2006). The attempt to co-opt was seen even after the passage of the FRA 2006 when the Forest Department continued to promote JFM through 'revamped JFM committees' under Green India Mission (Lele and Menon 2014). The Compensatory Afforestation Fund Act, 2016, also reinforced Forest Department's control over the forests by providing them huge funds for diverting forest lands for non-forest purposes.

The state–community relationship in the backdrop of forestry discourse sways on dichotomous grounds of coercion/co-optation and cooperation. The 'exploitative' nature of the relationship in the colonial and early postcolonial period gave way to the 'participatory' discourse in the 1990s and a move towards seemingly more democratic governance model with the passage of FRA 2006. How the boundaries of the forest, community and state–community relationship evolved with this shifting discourse are captured in the section below.

3. Mapping the forest community discourse: static versus dynamic

Based upon the colonial 'racial science', Indian society was divided in the watertight compartments of caste and tribe, which also coloured the forest policies and law (Guha 2006). Racial science as a scientific investigation of finding different races served the purpose of establishing the racial superiority of Europeans over the 'others'. The earlier studies conducted in the Pacific Islands, North America and Amazonia mapped and described the ethnic groups i.e. 'aborigines' as backwards in terms of social evolution having characteristics such as non-state political system (band, tribal, chiefdom), and devoid of class inequality (Beteille 1986). In India, such a separation resulted in compartmentalizing caste–village–agriculture on one hand, and tribe–forest–hunting–gathering on the other. Further legitimacy to such separation was granted by the Brahminical version of Hinduism and caste (Ibid). The characteristics of 'aborigine' were enforced over tribal (a term which has a political meaning, in terms of identity). For the colonial racial science experts, the tribal communities were based on the principle of equality as opposed to the hierarchy in

the caste communities (Mandelbaum 1970; Weiner 1988). The administrative outcome was of treating tribals as isolated, homogenous communities within the forests, and village as 'idyllic', 'static' and 'timeless little republic', where the community was structured along the lines of caste-based hierarchy, and purity and pollution (Dumont 1980; Cohn 1987; Inden, 1990).

In the postcolonial India, the question of the forest community was brushed aside in the wake of 'national interests', but with the rise of the Chipko movement in 1970s, it again sparked afresh. The colonial understanding of the forest community was given a backdoor entry by the 'neo-traditionalists' emphasizing over the traditional moral economy determining the nature of the forest community (Sinha, Gururani, and Greenburg 1997). They proposed a binary model of forest–society relationship juxtaposing pre-capitalist, subsistence-oriented forest community to the bureaucratic state and commercial industrial–urban complex (Kumar and Vasan 1997). Such pre-given and static understanding of the forest communities has been challenged to argue that the communities are dynamic (Guha 1999). Also, the assumption of traditional moral order leading to protection of the forests has been questioned (Baviskar 1997; Prasad 2003). Factors like long history of migration (Dube 1977) and interaction between the *gram* (village) and *vana* (forest) resulted in changes within the forest communities (Thapar 2012).

Other works critiquing the notion of pre-given forest community argue about the construction of a 'new moral economy of the forests' by the Indian state, which helps to maintain its legitimacy and control over the forests in the name of benefit sharing and solving the problem of deforestation (Jeffery and Sundar 1999; Baumann 1998). Rather than tradition, it is the regional networks of power and resource use, which shape the nature of the forest community (Jeffery and Sundar 1999). For Sundar (2002), forest communities should be conceptually understood as constructed around a specific purpose and not pre-given. Baviskar (1999) shows the tensions between the park authorities and forest community in terms of their imaginings of the forest community in an eco-development project in the Great Himalayan National Park. If the park authorities emphasized upon the customary conservation ethics, then for the local people, the customs were a means to assert their rights over the forests. In other words, supralocal pressures both at the national and international, regional networks of power and resource use along with local developmental aspirations infuse dynamism within the forest community (Jeffery and Sundar 1999; Sinha et.al, 1997; Menon, Lobo, and Lele 2014; Byron and Arnold 1999; Defries and Pandey 2010). Therefore, what becomes more important is the social stratification and different imaginings of the forest

S. No	THEMATIC CATEGORIES	FRA	BDA	JFM	PESA	NFP 1988	FCA	WLPA	NFP 1952	IFA
1.	NATURE OF COMMUNITY			*						
2.	NATURE OF ORGANIZATION									
	(A) TRADITIONAL									
	(i) <i>Gaon Sabha</i>			*						
	(B) MODERN									
	(i) Committee	*	*	*						
	(ii) Cooperative	*		*		*				
	(iii) <i>Gram Sabha</i>	*			*					
	(iv) <i>Panchayat</i>		*	*	*	*			*	
3.	PHYSICAL PROXIMITY FROM FOREST									
	(i) <i>Panchayat</i>		*	*		*				
	(ii) Village		*	*	*	*			*	*
	(iii) Hamlet	*			*					
4.	SOCIO-ECONOMIC GROUPS									
	(i) Tribes	*		*	*	*		*		
	(ii) Pastoralists	*								
	(iii) Scheduled Castes	*		*		*				
	(iv) Women	*	*	*		*				
	(v) OTFDs	*								
	(vi) PVTGs	*								
	(vii) PTGs	*								
	(viii) Nomads	*								
	(ix) Small and Marginal Farmers					*				
	(x) Landless Labour					*				
5.	DEPENDENCE									
	(i) Economic	*	*	*	*	*		*		*
	(ii) Cultural	*	*		*			*		*
6.	POWER DYNAMICS									
	(i) Institutional Conflict Resolution	*		*	*					
7.	TRANSACTIONAL RELATIONSHIP		*	*		*		*		
8.	EXPECTED ROLE OF CONSERVATION	*	*	*				*		

Figure 1. Aspects of Forest Community and Forest Policies and Law.

community rather than a traditionally bounded forest community operational in a moral economy. The next section of this paper analyses and deconstructs the idea of ‘forest communities’ as it appears in the forest laws and policies.

4. Static forest community in India’s forest policies: a colonial continuity?

To understand the ‘formation’ of forest communities by the state and whether there has been any change in this construction along the discursive shift, it was necessary to analyse all the forest laws, policies along with related notifications and circulars. This section presents the results of content analysis of the colonial and postcolonial Indian forest policy and law documents. The eight thematic categories, which emerged through the coding of these documents, represented the evolving understanding of the community. In

Figure 1, the occurrence of various characteristics of the community has been depicted. Horizontally, the dots in the figure show the recurrence of themes in the documents, while vertically the number of dots represents the higher references of the forest community in a policy or law document.

Based on Figure 1, it is seen that the understanding of the community is most nuanced in the FRA 2006 document, while FCA 1980 has no reference to the community. Dependence, primarily economic, is the most recurrent theme across time scale, while the nature of the forest community is least referred. This is indicative of the fact that the state’s understanding of the forest–community relationship is driven by economic parameters while the sociocultural aspects are back seated. As opposed to Indian Forest Act of 1927 that mentions the dependency aspects (both cultural and economic), the NFP of 1952 dismisses any claim of the community over forest. The WLPA

reinforces the tribe–forest/caste–village dichotomy by referring only to the tribals, who are culturally and economically dependent upon forest and apparently bound by the ‘ascriptive role’.

NFP 1988 is more evolved in its reference forest communities with respect to nature of organization and socio-economic groups (women, tribes and SCs). The JFM resolution for the first time officially delved into nature of community. But the tilt in JFM document is towards economic dependence of forest communities, bound by transactional relationship between the state and the ‘forest protecting’ communities. FRA 2006 for the first time refers explicitly to claims of various socio-economic groups including pastoralists, other traditional forest dwellers (OTFDs), Primitive Tribal Groups (PTGs), Particular Vulnerable Tribal Groups (PVTGs) and nomads. However, it does not explain the nature of community and is silent on local power differential (like all other policy documents). The nuances of these thematic categories are further explained in this section to help us in deconstructing the idea of community in dominant discourse. To further enable this deconstruction, excerpts from different forest policy and law documents have been used, though the entire documents were coded and analysed to trace the recurring pattern in the chosen themes.

4.1. Nature of the forest community

While forest communities get marked in these documents by nature of dependence or through transactional relations, use of phrases like ‘non-political identity’ and ‘guardian of forests’ fixes the identity of the forest community on ‘traditional’ terms and situates it in isolation with the local identity politics often in dialogue with the regional networks of power and resource use (Sundar and Jeffery 1999). This can be seen in the circular dated 24 December 2002 on strengthening the JFM programme that suggests ‘... the unique and separate non-political identity of the JFM Committees as guardian of forests should be maintained and ensured’ (No. 22-8/2000-JFM (FPD), MoEF).

4.2. Nature of the organization

Based on the analysis, the forest community in terms of their organization can be divided into two types i.e. traditional and modern.

4.2.1. Traditional

The circular dated 24 December 2002 proposes ‘The benefits accrued from NTFP sales should be shared with all the members of the *gaon sabha* including the JFM committees’ (No. 22-8/2000-JFM (FPD), MoEF). The *gaon sabha* here implies the traditionally bound forest community, which is recognized by the Forest Department for the specific purpose of the JFM programme.

4.2.2. Modern

The modern form can be understood as where the community is constructed by the state through a statute or other government orders for the fulfilment of a specific purpose. Four such forms i.e. committee, cooperative, *panchayat* and *gram sabha* are mentioned across the forest policies and law documents in India. Based upon the nature, the state configures the forest community into a tangible entity, which is organized around a specific issue further turning it into an instrument for achieving the specific purpose. Further it misses out the heterogeneity of purposes and power dynamics associated in the wake of stressing the commonality of the purpose and cooperation (Sundar 2002).

The NFP 1988 under the paragraph 2 on ‘basic objectives’ proposes of, ‘creating a massive people’s movement with the involvement of women ... and to minimize pressure on existing forests’. Under the paragraph 4.6 on ‘the tribal people and forests’, it proposes the formation of tribal cooperatives, labour cooperatives, government corporations etc. (No. 3A/86-FP, MoEF). The JFM circular 1990 on the subject of ‘involving of village communities and voluntary agencies for regeneration of degraded forest land’ proposes ‘access to forest land and usufructory benefits ... to the beneficiaries who get organized into a village institution’ (No. 6-21/89-P.P, MoEF). The circular in 2000 mandates the registration of the JFM or village committees under Societies Registration Act, 1860 to provide them legal backup (No. 22-8/2000-JFM (FPD), MoEF). The clause (a) under the section 4 of PESA 1996 mentions of the state legislation in consonance with the traditional management practices of community resources. Section 41 of the Biological Diversity Act 2002 mandates the constitution of the biodiversity management committee. The Forest Rights Amendment Rule 2012 under section 3 mandates the constitution of the Forest Rights Committee through Gram Sabhas. Following this, section 4 mentions constitution of committees for protecting wildlife, forests and biodiversity. The clause (d) of section 2 under the similar amendment rule mentions the formation of cooperatives, associations or federations for the disposal of minor forest produce. All these references from these documents bring forth the acceptable forms through which a community can represent itself with. Another aspect, which is common in these references, is about the recognition of the community for the fulfilment of a specific purpose.

4.3. Physical proximity from the forests

The term ‘local’ for spatially locating the forest community means *panchayat*, village or hamlet depending upon the context of the forest policy and law. The Indian Forest Act 1927 under section 28 mentions about the formation of village-forests. The paragraph

7 of the NFP 1952 mentions 'The accident of village being situated close to a forest does not prejudice the right of the country as a whole to receive the benefits of a national asset'. The paragraph 4.2.3 of the NFP 1988 proposes taking up of the village and community lands, 'not required for other productive uses, should be taken up for the development of tree crops and fodder resources....' The subject of JFM circular 1990 clearly states '...involving of village communities and voluntary agencies for regeneration of degraded forest land'. The clause (b) under the section 4 of the PESA 1996 explains 'a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs'. The clause (h) under section 2 of the Biological Diversity Act 2002 explains local bodies as *Panchayats* and Municipalities. The clause (g) of section 2 of the FRA 2006 defines *gram sabha* as '...a village assembly which shall consist of all adult members of a village and in case of States having no *Panchayats*, *Padas*, *Tolas*, and other traditional village institutions and elected village committees, with full and unrestricted participation of women'. Hence, these provisions capture the forest community in fragmented manner by confining and defining the forest community in spatial scales of village and hamlet. It fails to capture intra-village forest use, and impact of migration in changing the demographic profile and perceptions of dependence upon the forests (Kumar and Vasan 1997).

4.4. Groups with socio-economic proximity

The clause (c) of the section 8 on the duties of the Wildlife Advisory Board under the Wildlife Protection Act 1972 states '...to advise the State Government... in relation to the measures to be taken for harmonizing the needs of the tribals and other dwellers of the forest with the protection and conservation of wildlife'. Some of the basic objectives of the NFP 1988 under the paragraph 2.1 are 'meeting the requirements of fuelwood, fodder, minor forest produce and small timber of the rural and tribal populations... the involvement of women...'. The paragraph 3.5 proposes 'Minor forest produce provides sustenance to tribal population and to other communities residing in and around the forests'. The paragraph 4.2.3 mentions 'The vesting, in individuals, particularly from the weaker sections (such as landless labour, small and marginal farmers, scheduled castes, tribals, women)...'. The paragraph 4.3.4 states '...The rights and concessions from forests should primarily be for the bona-fide use of the communities living within an around forest areas, especially the tribals... Similar consideration should be given to scheduled castes and other poor living near forests'.

The paragraph 4.6 states the symbiotic relationship between tribal and forests.

The sub-rule 2 under the rule 22 on the constitution of the Biodiversity Management Committees mandates that one-third should be women and not less than 18% the Scheduled Castes/Scheduled Tribes in the Biodiversity Management Committee. The clause (c) under the section 2 of the FRA 2006 defines the forest dwelling scheduled tribes as '...the members or community of the scheduled tribes who primarily reside in and who depend on forests and forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities'. The clause (o) under the section 2 of the FRA 2006 defines OTFD as, '...any member or community who has for at least three generations prior to the 13th day of December 2005 primarily resided in and who depend on the forest and forests land for bona fide livelihood needs'. The clause (c) under the section 12 on the process of verifying claims by the forest rights committee of the FR Rules 2012 mandates to 'ensure that the claim from pastoralists and nomadic tribes for determination of their rights, which may either be through individual members, the community or traditional community institution, are verified at a time when such individuals, communities or their representatives are present'. The clause (d) under the similar section mandates to

ensure that the claim from member of a primitive tribal group or pre- agricultural community for determination of their rights to habitat, which may either be through their community or traditional community institution, and are verified when such communities or their representatives are present.

The rules 3 and 4 on Gram Sabhas and functions of Gram Sabhas, respectively, mention about the one-third reservation of women in the Gram Sabha. These provisions tend to address the challenge of power differential within the forest community. The understanding of the weaker sections is based upon economic deprivation/benefits but not the cultural and political reasons shaping the local politics and participation in the village (Mosse 1997).

4.5. Dependence

The clause (c) under the section 6 of the Indian Forest Act 1927 states 'fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5...'. Under section 12 about order on claims to rights of pasture or to forest-produce, it states 'In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part'. The subsections (1), (2) and (3) under the section 28 mention the formation of

village forests. Despite the partial recognition of the rights in the colonial Indian Forest Act, the postcolonial NFP 1952 was dismissive about it. The paragraph 14 on the village forests of the NFP 1952 states

...the management of such village forests should aim at meeting the present as well as the future needs of the local population... The cooperation of *panchayats* should be enlisted in the protection and creation of village forests, and in the distribution of forest produce assigned to meet the needs of the local population but not at the cost of economy and efficiency.

The clauses (b), (c) and (d) under section 4 of PESA state '...Gram Sabha shall be competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution;'. The section (D) on the preparation of the micro-plans under the JFM guidelines 2000 proposes 'The micro plans should ... reflect the consumption and livelihood needs of the local communities as well as provisions for meeting the same sustainably'. The section 7 of the Biological Diversity Act 2002 safeguards the access to biodiversity, 'to the local people and communities of the area, including growers and cultivators of biodiversity, and *vaid*s and *hakims*, who have been practising indigenous medicine'. The sub-rule (1) under the rule 16 restricts 'the request for access ... to result in adverse effect on the livelihoods of the local people...'

The subclause (i) under explanation for the expression 'tiger reserve' Wild Life (Protection) Amendment Act 2006 aims '...at promoting co-existence between wildlife and human activity with due recognition of the livelihood, developmental, social and cultural rights of the local people...'. The clause (f) under the rule 12 states the process of verifying claims by the forest rights committee of the Forest Rights Amendment Rule 2012. The sub-rule (2) of the similar amendment rule lists valid evidences for claiming community forest rights. The subsection (1) of section 3 of the FRA 2006 includes 'right to ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries'. The third point under the PESA Guidelines 2010 proposes

...pressure on natural resources in these Areas continued due to the large projects being set up therein and unscrupulous elements indulging in illegal mining & forest felling. Land alienation and exploitation also continued. This led to dislocation of the communities and loss of major sources of livelihood. It was, therefore, critical that customs, rights and livelihoods of these people are protected through their empowerment.

The analysis suggests that the economic and cultural dependence of the forest community on the

forest is entwined with each other, and often inseparable in an everyday life. But, the cultural rights are either simplified in economic terms or often neglected by reducing the relationship between the forest and the forest community in purely economic terms. Hence, economic dependence becomes a justification for the recognition of the forest community (Lele and Menon 2014). Even if factored in, the cultural dependence is addressed along the lines of non-changing tradition and culture from the 'antiquity', which results in enforcing the tribal as a socio-economic group, bearing the burden of cultural preservation (Kumar and Vasan 1997).

4.6. Power dynamics

The clause (d) under the section 4 of the PESA 1996 states 'every Gram Sabha shall be competent to ... the customary mode of dispute resolution'. The section (E) on the conflict resolution under the JFM Guidelines 2000 mentions

In order to resolve conflicts in the functioning of JFM committees and to maintain harmony among different groups participating in the JFM, state Governments may constitute divisional and state level representative forums or working groups. This forum/group should include representatives from all stakeholders including NGOs.

The sub-rule (3) under the Forest Rights Amendment Rule 12 on the process of verifying claims by the forest rights committee mandates

If there are conflicting claims in respect of the traditional or customary boundaries of another village or if a forest area is used by more than one Gram Sabha, the Forest Rights Committees of the respective Gram Sabhas shall meet jointly to consider the nature of enjoyment of such claims and submit the findings to the respective Gram Sabhas in writing: Provided that if the Gram Sabhas are not able to resolve the conflicting claims, it shall be referred by the Gram Sabha to the Sub-Divisional Level Committee for its resolution.

The policy and law documents address the issue of conflict resolution at the institutional level giving an impression of the neutral arbitration capacity of the bureaucracy over the Gram Sabha but do not state adequate provisions to diffuse the power differential between the Forest Department and the forest community. Further, the issues of elite capture and local power dynamics have not been sufficiently addressed in the policy and the law documents (Sundar 2002).

4.7. Transactional relationship

The NFP 1988 recognizes the role of minor forest produce in sustaining the tribal population and the

generation of employment and income for the tribal and other communities. The weaker sections of the village can be included in co-management by making them beneficiaries entitled to usufruct and in return would be responsible for its security and maintenance. The subsection (2) under the section 21 of the Biological Diversity Act on the determination of equitable benefit sharing by National Biodiversity Authority lists 'grant of joint ownership of intellectual property rights to the National Biodiversity Authority, or where benefit claimers are identified, to such benefit claimers...' The subsection (1) under the section 38X of Wildlife Protection Amendment Act 2006 mandates 'The State Government shall establish a Tiger Conservation Foundation for tiger reserves within the State to facilitate and support their management for conservation of tiger and biodiversity and, to take initiatives in eco-development by involvement of people in such development process'. The subsection (2) states the objectives of the Tiger Conservation Foundation as

to facilitate ecological, economic, social and cultural development in the tiger reserves; (b) to promote eco-tourism with the involvement of local stakeholder communities and provide support to safeguard the natural environment in the tiger reserves;... (e) To augment and mobilise financial resources including recycling of entry and such other fees received in a tiger reserve, to foster stake-holder development and eco-tourism.

The JFM circular 1990 proposes '...the beneficiaries should be given usufructs like grasses, lops and tops of branches, and minor forest produce. If they successfully protect the forests they may be given a portion of the proceeds from the sales of trees when they mature'. Such a relationship is problematic as it is expected to achieve economic maximization by the forest dwellers and constricts other imaginings of the forest within the forest community.

4.8. Expected role of conservation

On the matter of capacity building for the management of the Non-Timber forest products, the JFM guidelines 2002 propose 'The success of JFM in good forest areas would depend upon the sustainable development and harvesting of Non-Timber Forest Products.... The guiding principles should be to first ensure sustainability of the resources and then maximum benefit to the gatherers and value addition'. For the local forest community to be the 'benefit-claimers' under the Biological Diversity Act 2002, the clause (a) under section 2 of the Act defines "benefit claimers" means the conservers of biological resources, their byproducts, creators and holders of knowledge and information relating to the use of such biological resources, innovations and practices associated with such use

and application'. The FRA 2006 under section 5 empowers the rights holders by listing duties such as

- (a) protect the wildlife, forest and biodiversity; (b) ensure that adjoining catchment areas, water sources and other ecological sensitive areas are adequately protected; (c) ensure that the habitat of the forest dwelling Scheduled Tribes and other traditional forest dwellers is preserved from any form of destructive practices affecting their cultural and natural heritage....'

Section 38X of the Wildlife Protection Amendment Act mandates involvement of people in the eco-development initiatives.

In other words, the journey of the forest community from being destroyers to conservers is travelled by paying the price of an imposed identity, which, if contested, may lead to non-recognition as a forest community. Hence, conservation as a measure to solve the 'problem' of deforestation becomes a means to judge the existence of the forest community (Jeffery and Sundar 1999).

Considering the discussion on thematic categories, the dominant idea of forest community, from the state's perspective, emerges as follows:

- a. A state-forest community relationship,
- b. where the forest community is imagined and constructed in a way to become an instrument of the state (non-political, guardians of the forests),¹
- c. for fulfilling the purpose of conservation (biodiversity, wildlife, protection and creation of village forests, maintenance of ecological balance),
- d. due to its dependence (sustainable use, NTFPs, value addition, livelihood purposes, domestic and agricultural needs, social, religious, sacred, spiritual purposes, rights to habitat, *nistar*, privileges and concessions, bona fide needs),
- e. comprising of socio-economic groups (weaker sections, reservation, adequate membership),
- f. organized through modern/traditional institutions (labour and tribal cooperatives, committees, *gaon sabha*, *panchayats*),
- g. living spatially within the bounds of *panchayat*/village/hamlet (neighbourhood of the forests, living close to the forest land, customary boundaries),
- h. gaining transactional benefits on fulfilling the purpose of conservation (entitled to usufruct, stakeholder development, better living standards, venture capital fund, schools, hospitals, dispensaries, generation of employment and income).

The forest community definition emerging through this analysis is

A socio-economic group or a mix of them, organizing themselves either through traditional or modern institutions, and have a 'non-political nature', spatially living in and around the forest, and socio-economically dependent upon the forests for their cultural, bona fide livelihood needs, and other economic interests. By the virtue of this economic and cultural relationship the forest community becomes 'guardians of the forests' and conserves the biodiversity, wildlife and other forest resources.

The above-mentioned definition of the forest community outlines a state–community relationship, hinged upon the transactional (economic) relationship between the two. Here, the state recognizes/essentializes certain 'moral' attributes of the forest community to construct an instrumental forest community obligated to fulfil the purposive action of conservation. The main contradiction in this construction is of traditional moral attributes defined culturally versus fundamentally economic nature of this construct (Savyasaachi 2011). Further, this relationship seems unidirectional, where the state constructs the forest community in such a way that tends to depoliticize the relationship between the state and the forest community. In other words, such a construction imagines the forest community as static, apolitical and non-changing in nature and character.

5. Conclusion: crisis of the forest community

The first section of the paper discusses the state–forest community relationship in the Indian forestry sector to show the use of brute force and co-option by state to maintain its control over the forests. Ambiguities in the forest policy and law documents in terms of defining the forest community helped the state to shape the forest community around specific issues. The second section highlights the tensions between the static and dynamic imaginings of the forest community, and the third section brings forth the idea of a fundamentally apolitical and non-changing (demographically, culturally, economically) forest community within these documents. This is a state of crisis, when the forestry sector is perceived to be moving towards democratic forest governance. The crisis is due to a dissonance between the static model and the dynamic reality of it (Kumar and Vasan, 1997) which leads to (mis)recognition based upon essentialization, fragmentation and de-politicization of the forest community, rather than a resolution of the colonial conflict by the postcolonial Indian state. The implication of such (mis) recognition is that most of the forest community is tested through the shibboleth of the static forest community and often fails to fit within the moral economic order. Even the FRA 2006 differentiates between the 'tribe' and 'OTFDs' and emphasizes over the existence of a moral economy in understanding a forest community. Terms like 'settlement' indicate the recognition of a forest community as a one-time activity and not a process.

Further, recognition of the weaker sections (tribal, scheduled castes and women) only on economic grounds fails to capture the culturally rooted identity politics through which such economic assertion is made. Such an understanding of the forest community masks the political, economic reasons and patronage politics, which shape the state–forest community relationship, and mars the dialogue both within the forest communities and with the state, often hindering the democratic governance of the resource. But, the moot point is that this crisis is an outcome of the broader politics within the forestry sector in India. Otherwise, there is not much explanation for a selective preference of the 'neo-traditionalist' approach in informing the forest policies and law in India (Baumann 1998). To resolve the crisis, there is a need to take cognizance of deeper structural problems having colonial roots instead of conciliation through populist means (which figure as transactional benefits in our thematic categories). Otherwise, the continuation of status quo will keep on escalating the tensions between the conservationists and rights activists impeding democratic forest governance.

Note

1. The terms in brackets are the keywords picked up from the codes i.e. references on the forest community from the policy and law documents, which help us construct the definition.

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