

Forest Tenures in India and Sustainable Forest Management - An analysis

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Forest land tenures in India has remained diverse, plural with multiple legal and customary regimes and reflects a continuum of rights while manifesting state, community and individual ownership. Forest tenure arrangements and practices have undergone major changes starting from the initiation of notification as Reserve or Protected Forest under the Indian Forest Act 1927, community participation in forest conservation under JFM approach, PESA, and recently settlement of Individual/ community rights and community forest resources under the Forest Rights Act.

This paper provides an overview of forest tenure, drawing from global discourses and analyze the historical as well as recent transitions around forest governance, in the context of forest tenures in India. While doing so, it also discusses implications on sustainable forest management and make specific recommendations.

Key words: Forest land tenure, Rights, Forest Conservation Act, Forest boundary maps, Forest Rights Act, PESA.

Forests in India

With about 23% of the total geographical area under forests, India is one of the twelve mega biodiversity countries of the world, and is home of 7.7% of world's biodiversity of which 80% is in forests accounting for 10.9% of global flora and 7.3% of global fauna. It is estimated that India's forests meet roughly 40% of the rural energy needs and 30% of total fodder supply in the country. They provide livelihood support to over 275 million people living in and around forests - with 173,000 villages located inside or on forest fringe areas. Often the poorest, tribal and women, draw 10-60% of their household incomes from forests.

According to the latest biennial India State of Forest Report of the Forest Survey of India through interpretation of satellite data forest cover exists over 71.22 million ha (Mha), 21.67% of total geographic area (TGA) of the country. This includes 9.93 Mha (2.6% of TGA) being very dense forest (crown density more than 0.7), and 30.85 Mha (9.6% of TGA) as moderately dense forest (crown density between 0.4 and 0.7), with remaining forest cover as open forest (crown density below 0.4) (IFSR, 2019).

Although, the forest/tree cover is below the goal of 33% set in the National Forest Policy 1988, and the quality of forest cover and the productivity of the forests continues to be a matter of national concern, India is one of the few countries in the world which have been able to arrest/reverse the declining trend in forest area/cover during last one and a half decade.

Understanding Land and Forest Tenure

To put the discussion in right perspective, it is to be clearly understood that contrary to commonly misunderstood as "ownership" the term "tenure" is related to and means rules of 'access to' and 'use of' resources. Thus, any discussion on forest land tenure is not only about ownership but includes other norms and institutions around use of and

An overview of forest tenure, drawing from global discourses and analysis of the historical as well as recent transitions around forest governance, in the context of forest tenures in India.

ARUN K. BANSAL AND PRANAB R. CHOUDHURY¹
Former Addl. DG Forests, India
E-mail : bansalka@yahoo.in

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¹NRM Center for Land Governance, Email : pranabrc@nrmc.co

access over forests. It is a combination of legal and customary rights, and arrangements to manage and use of forest resources. Moreover, rights rarely come without restrictions and concomitant obligations. Forest tenure determines who can use what resources, for how long and under what conditions, and also prescribes responsibilities of users (generally related to conservation and sustainability). Presented below a review to contextualize forest tenure within larger land tenure discourse while trying to locate India in the global forest tenure landscape.

Land tenure is also defined through a 'continuum approach' characterized by the "bundle of rights" that defines use, control, and ownership rights to land (IFPRI, 2013; Johnson *et al.*, 2016; Meinzen-Dick *et al.*, 2017). Use rights involve the ability or to employ an asset; control rights indicate greater degrees of power, including management, exclusion, and alienation. Ownership is the state of independently having all these rights, including sale or other forms of disposal, backed by formal legal institutions. Tenure security is characterized by robustness, duration, and assurance of rights (Place *et al.*, 1994). However, benefits from land can be accessed even with partial ownership rights (Meinzen-Dick *et al.*, 2017) or even with property rights, as larger institutional, socio-economic and power structures often determine it (Ribot and Peluso, 2003; Sikor and Lund, 2009) or purely through informal means, as a result of credibility (Ho, 2014; Ho, 2018). In this context, forest tenure in India can be seen as a continuum trajectory where communities and the state evolve and adapt different tenure regimes. These regimes determine how that use, control and ownership over forests are arrived at formally through legal (*viz.* Indian Forest Act, 1927 or Forest Rights Act, 2006) and institutional (*viz.* Joint Forest Management resolutions by states) or customarily (*viz.* village authorities act in North East India) or evolved informally (*viz.* Community Forest Management in Odisha).

Forest Tenure from Chanakya to Colonial Period: Multiple Tenure yet Growing State Control

It is well known that dense forests once covered a large part of India. The changing forest composition and cover can be closely linked to the growth and change of civilizations, as has been the case all over the globe. In fact, since the dawn of human civilization, natural forest areas have undergone change due to various causes - proximate (or direct - including agriculture expansion, infrastructure development, wood extraction, climate changes, fire, invasive species) and underlying (or indirect including population pressure and poverty, policy, and institutional failures). In the process people-forest relations or the tenure rights over forest lands have also undergone changes.

Ancient Indian texts mention about forests being revered by the people and that various religious

ceremonies centered on trees and plants. Many forest areas were conserved as sacred groves. Chanakya, the astute advisor to Chandra Gupta Maurya who established a fairly large empire around 300 BC, realized the importance of the forests and a high officer was appointed to look after the forests, and classified forests on functional basis. Ashok ordered that wild animals and forests should be preserved and protected, and launched programmes to plant trees on a large scale. Similar activities were continued during Gupta period. In Mughal period, an elaborate land revenue system in India was created during the period of Akbar, also known as Todarmal's *bandobust* or settlement which is basically the system of land tenure during 1526 to 1707, under which a systematic measurement of land was made as a preliminary to settlement. However, there is not much information about forest lands except that forest areas were cleared for agriculture, and being keen hunters, the Mughals established hunting reserves in forests.

Under the British rule, initially forests were cleared for agriculture, and subsequently for ship building and steamship fuel. However, in the 19th century, first efforts for "conservation and management, and legal classification of forests" were made by the British *albeit* with the prime motive to reverse the threat of shortage of timber for ship building and railway construction and fuel which the British apprehended to be imminent. A 'Charter of Indian Forests' was issued by Lord Dalhousie in 1855 outlining the objectives and principles of forest conservation. The administration of India's forests was codified for the first time in 1865, when the Indian Forest Act (IFA; VII of 1865) was placed on the statute book.

This was the first legislative step towards the rule of property for forests in British India, which provided for only a limited degree of state intrusion and control. Local state governments were empowered to draft their own rules to enforce the Act. The main purpose of the act was to establish the claims of the state over forests required for railway supplies, subject to the proviso that existing rights would not be abridged. The Act was replaced by the IFA of 1878 which provided for removing the ambiguity about the "absolute property right of the state" because villagers had become accustomed to graze cattle and cut wood wherever they wished, even in the areas where the State retained absolute proprietorship.

IFA, 1878 provided for the constitution of Reserved Forests (RF) and Protected Forests (PF). A more absolute nature of property (as a hierarchy of user rights) was applied than in the past: Grazing, illegal tree-felling and cultivation, and forest fires were curbed to enhance reproduction of valuable species. In some areas in Punjab even access was regulated. No rights could be acquired in RFs unless explicitly ceded by the Provincial Government under the Act. In PFs rights were recorded but not settled.

It may be interesting to note that forests were initially reserved from areas which were earlier classified as 'waste lands, hunting reserves, reserve lands' under different tenure systems in princely states, and "protection and consolidation" was the primary task. During such reservation, considerable forest areas were left out for the use of people and these were placed under the Revenue Department. The Forest Act of 1878 also provided for ensuring that reservation of forests did not affect the existing rights of individuals or communities, and the reservation was a very slow process. The British were conscious of future conflicts with tribal and other villagers because of bringing forests under public administration, and the Government had been mindful of the need to reconcile the requirements of sound forest management with the traditional rights of the rural people and their changing needs.

The IFA, 1927 began the process of demarcation, measurement and mapping of forest areas and their notification as RF or PF for which the Act prescribed elaborate processes. It included looking into the individual or community rights and the same were to be duly recorded, in details about nature/extent and the right holders, wherever they were admitted/recognized. Generally speaking, in a RF everything was 'prohibited' unless 'permitted', whereas in a PF everything was 'permitted' unless 'prohibited'. Apart from these village forests and un-demarcated forests were also recognized.

In summary, at the time of Independence diverse forest tenure types existed with state, intermediaries, and community control

- a) State owned forests with recorded rights and associated traditional rights of individuals and communities
 - i. Notified as RF or PF under IFA, 1927 after settling and recording the rights of individual villagers or village communities.
 - ii. Un-demarcated and undeclared forests with associated traditional rights, village forests etc.
- b) Zamindari /Malguzari Forests which were largely un-surveyed/un-demarcated and were burdened with varying degrees of customary community rights.
- c) Forests in the Princely States: notified or otherwise for different uses and management.
- d) Forests managed under Community/Customary Tenure (in NE and Central India): Examples of forest-mosaics in shifting cultivated areas, reserves around villages in NE India, Sacred Groves in Western and Eastern Ghats, Tree Tenure systems in Central India and the Himalayas, etc.

The first five-year plan document mentions that "Accurate statistics regarding the area under forests are not available. 'Indian Forest Statistics' puts the

¹'Nistar' means the concession granted for removal from forest coupes on payment at stipulated rates, specified forest produce for bonafide domestic use, but not for barter or sale. The Nistar rates are fixed by the forest department for the specified forest produce in consultation with the District Collector.

area under forests in 1949-50 at 147.7 million acres or 59.5 Mha ~ 18.22% of the total land area. This figure includes a considerable area of un-wooded waste land, but no account was taken of tree lands, and there were gaps in coverage in respect of many States".

Post-Independence Forest tenure (1947-80): Area Accrual, Diversion and Tenure Transitions

With the independence of India in 1947, a great upheaval occurred in all walks of life including forests. The forests in princely states were managed variably with different types and extent of concessions to the local people. With the merger of these states in the Indian Union, large chunks of forests, which have been managed on ad-hoc basis either as a source of revenue or as hunting grounds, came to be vested in the Government. However, large scale tree felling and conversion of forest areas into cultivation, homesteads and other purposes also took place. With Zamindari and Malguzari abolition in the mid-fifties additional forests areas came to be vested in the Government along with *nistar* and/or other rights, concessions, or privileges. Some of these forest areas also were neither surveyed nor demarcated on ground, and in many cases temporary pattas have been given for cultivation. Both these types of areas came to be treated legally as forests by virtue of provisions of omnibus declarations, and subsequently the process of survey and demarcation was taken up in some cases along with notifications under the IFA.

Sizable forest areas were left out and were distributed among landless people settled under various schemes. Rights, concessions and privileges are recorded in the working plans and compartment history documents that are prepared and updated every ten years. The management of large part of the forest lands that got vested in the Government by virtue of various omnibus orders continues to be in a state of confusion with regards to actual boundaries, rights and concessions etc. due to the fact they have not yet been surveyed and demarcated and/or not covered by management plans and consequently have lot of tenure issues. However, as per the decision of the Apex Court all such lands are "Forests" for the purposes of the Forest Conservation Act, 1980 and their diversion for non-forest uses by the State Government necessarily requires prior approval of the Government of India, Ministry of Environment Forest and Climate Change and consent of the concerned Gram Sabhas.

Under the Constitution of India adopted in 1951, both "Land" and "Forest" were put in the State List in the seventh schedule. However, considering the uniqueness of "forest" as an important land based

natural resource a uniform public policy for the entire country was thought to be essential. The National Forest Policy (NFP) of 1952, enunciated within few months of unanimous adoption of a resolution on "Principles of Forest Policy" at the sixth FAO conference held in Rome in December 1951, identified six vital needs of the country indicating functions fulfilled by forests, and specially recognized the protective functions of the forests and aimed at maintaining one-third of India's land area under forests.

Forest administration continued with more emphasis on preparation of Management Plans, and Survey and Demarcation of remaining forest areas, and bringing more areas under legal notifications. However, the work of demarcation and preparation of boundary maps of all the notified forests is still to be completed. Several states enacted their own forest acts which generally have provision similar to the IFA, 1927. Some states continued to follow the IFA, 1927, with state specific amendments.

Wildlife Protection Act, 1972, empowers the state Governments to declare any area having adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment, as a National Park / Sanctuary with settlements of rights following the prescribed process. The act also has provisions for declaration of conservation reserves and community reserves that put encumbrances related to access to and use of such lands. Notification of Eco-Sensitive Zones around Protected area, generally comprising of individual lands, is also associated with encumbrances in the form of prohibited and restricted activities. In these areas, tenure and access are more restricted with extinguishing of many usufruct rights of the communities including instances of displacement of villagers from the core protected areas.

Distribution of land to landless had impact on forests, since forested areas close to habitations were cut and brought under the plough. Large tracts of forests were diverted by the states for non-forest uses, including extension of agriculture, and to meet requirement of industries at a rate of about 150,000 ha per annum till 1980. The union government put restrictions on diversion of forest lands by State Government through promulgation of an Ordinance called the "Forest (Conservation) Ordinance, 1980" on the 25th October, 1980, followed by an Act called "The Forest Conservation Act, 1980.

Before that, in 1976, through the 42nd constitutional amendment "Forest" was brought on to the concurrent list in the Constitution giving the Union Government power to legislate in matters relating to forests. The

National Commission on Agriculture in its report (1976) had emphasized the need for a new National Forest Policy.

Post-FCA 1980: Stemmed Diversion, yet added Tenure Complexity over diverted land

It is important to note that the legal status of diverted forest lands remains unchanged, *i.e.* it continues to be forest, and consequently are included in the recorded forest area. Forest lands diverted for mining and other similar activities are required to be reclaimed and returned to the forest department after project completion (*i.e.* closure of mining) and can be used by the people for exercising their rights and concessions. However, generally mines are not being formally closed despite mine closure plans being prepared and also forming part of approval under FCA as well as in Environmental Clearances under the Environment Protection Act given by MOEFCC. As such although legally the status of diverted areas remains unchanged, for all practical purposes the forest areas continue to be in possession of the authorities in whose favor they are diverted for non-forestry purposes. This has resulted in creation of new type of forest land tenures where the legal status of the forest land remains unchanged but possession is given to various projects, both Government and Private, almost permanently, *albeit* with some conditions to be complied with by the projects, including among others compensatory afforestation to be taken up in some other area, some facilities for project affected people, and mitigative measures for reducing environment impacts.

Analysis of the application and implications of the FCA by Bansal (2013a) revealed that till 2012 forest land of about 1.15 MHa (including 0.52 Mha towards regularization of encroachments, delisting of land under Punjab Land Preservation Act, conversion of forest villages etc.) was approved for diversion, including both final approval and in-principal approvals. Till March 2020, final diversions approved under the FCA is around 24,500 ha per annum - almost one sixth of the average annual diversion prior to FCA. It was opined that the act has been very effective in bringing down diversions of forest lands although monitoring of compliance to prescribed conditions is rather weak, and there is need for comprehensive analysis of the overall impact of diversions, including on the enjoyment of rights and concessions by the project affected people.

National Forest Policy 1988: Participation, Livelihoods and Seeding of Co-management Tenure

National Forest Policy enunciated in 1988 brought in a paradigm shift in the management of forests from "regulatory" to "participatory". It states that

¹'Nistar' means the concession granted for removal from forest coupes on payment at stipulated rates, specified forest produce for bonafide domestic use, but not for barter or sale. The Nistar rates are fixed by the forest department for the specified forest produce in consultation with the District Collector.

conservation includes preservation, maintenance, sustainable utilization, restoration, and enhancement of the natural environment. The primary objective is ecological security with a focus on meeting livelihood needs of the forest dependent communities. Other relevant objectives include preservation of natural forests, increasing substantially the forest cover, meeting the requirements of the rural and tribal populations, increasing the productivity of forests to meet essential national needs, encouraging efficient utilization of forest produce and creating a massive people's movement for achieving these objectives. The 1988 NFP emphasizes that derivation of economic benefit must be subordinated to the principal aim of ensuring environmental stability.

The policy contains several provisions that are relevant in the context of forest tenures. These include: rights and concessions, including grazing, to be primarily for bona fide use of communities living in and around forests areas and to be related to carrying capacity of forests; encouraging stall feeding of cattle; promotion of Social Forestry on non-forest lands to meet the requirements of the communities which cannot be met by the rights and concession in forests; motivating the customary right and concession holders in forest areas to identify themselves with the protection and development of forests from which they derive benefits; arresting the trend of encroachment on forest lands and no-regularization of existing encroachments. It is important to note that consecutive National Forest Policies have adopted the principles of Doctrine of Public Trust and kept the forest resource being gift of nature under the trusteeship of Government, so that they should be made freely available to everyone and the policy makers right from 1894 to 1988 have no intension to convert forest ownership into private ownership (Upadhyay, 2011).

The 1988 National Forest Policy is under review since 2013-14 and a draft revised National Forest Policy 2018, is still under discussion for approval and enunciation.

Joint Forest Management, 1990: Emergence and Expansion of Co-management Tenure

An important outcome of 1988 NFP was tenurial reform through involvement of communities in protection, conservation, and management of forests-through Joint Forest Management (JFM) approach in the adjoining forest areas of the villages. MoEF issued a circular on 1st June 1990, popularly known as JFM Resolution, for involvement of village *communities in protection and development of degraded forests, and usufructuary benefits* (Minor Forest Produces - now called NTFPs/NWFP, grasses, lops and tops etc. and share in proceeds from sale of trees at maturity). It allowed the villagers organized into JFM Committees to be involved in forest regeneration and protection. The forest areas are so selected that anyone with a

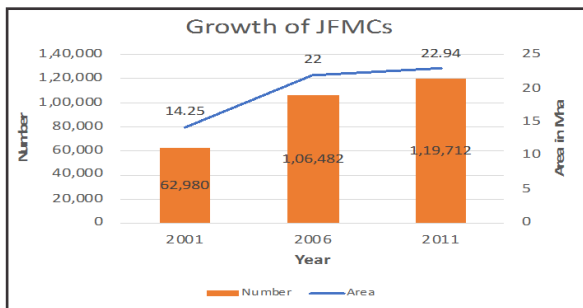
claim to any forest produce for the area (including existing rights, privileges, and concessions) is not left out without being given full opportunity of joining. Gradually JFM became a nation wide movement with State Governments issuing their own JFM resolutions.

It may be pertinent to note that many states including Odisha, Uttar Pradesh, West Bengal were already having systems of community participation in forest management. Resolution of Government of India was in recognition of these and other similar initiatives in different parts of the country. It was realized that, given the unique situation in the country relating to dependence of people on forests for sustenance, willing and active participation of forest fringe communities is necessary for the forest conservation efforts to be successful.

JFM approach followed in India is a typical example of adaptive/incremental tenurial reform process since it has gradually evolved over time. It is still evolving towards the achievement of its goal of Sustainable Forest Management as is evident from the issuance of revised/re-revised State JFM resolutions based on field experiences and capacities of the communities. Important changes in JFM resolutions include: representation of women on Executive Committees, and devolution of powers from Forest Department officials to community members, inclusion of good forest areas and representation of local Panchayati Raj Institutions. The Government of India also revised their guidelines in 2000/2002 (which among other things laid emphasis on legal support to JFMCs, promotion of women's participation, preparation of site-specific micro plans, synergy between Gram Panchayats and JFMCs etc.) for strengthening the JFM. MoEFCC has issued advisory to the States (vide letter dated 29th October 2010 from the Union minister for Environment and Forests to the State Chief Ministers) that the JFMCs are to function under overall guidance and supervision of the Gram Sabhas, they be recognized as organs of the Gram Sabha - standing committees of GP for social forestry and farm forestry, and item 7 (MFPs) listed in the 11th Schedule of the Constitution.

By 2011 there were 0.12 million JFMCs although known by different names such as Van Panchayat, Van Samrakshyan Simiti, Van Surakshya Samiti, Village Forest Protection Committee; involving about 14.5 million families (of which around 50% were SC and ST families) managing 22.94 million hectares of forest land. Graph depicts the growth of JFM in the country during last decade (Bansal, 2013b).

However, the JFMCs are in various stages of evolution with regard to their activities, performance, inclusiveness, participation of women, and participatory decision making. The JFM areas are required to be managed in accordance with Micro Plans prepared through



participatory rural appraisal involving the community along with details of rights, concessions and privileges. Gradual increase in the number of JFMCs is a good indicator of acceptance of JFM approach by the people. In most of the States, except for Uttarakhand and Karnataka, the JFMCs are constituted on the basis of government resolution and therefore lack legal strength.

Their participation in protection, conservation, and management of assigned forest areas, makes the members of JFMCs entitled to usufructs in terms of free collection of NTFPs, fuel wood, fodder, bamboos, thinning yields and a share in income from timber harvested during main felling according to the approved management/micro plans. All forest produce (MFPs, fuel wood, small timber, bamboo etc) collected from the forests managed under JFM are required to be recorded in the respective micro plans. At the National Workshop on JFM (Status of JFM in India, Proceeding of National Workshop on JFM held on 27-28 June 2011 at Forest Research Institute, ICFRE, Dehradun) it was assessed that based on the information provided by 15 states in respect of 77,262 JFMCs, benefit per JFMC in terms of fuel wood, fodder, NTFP etc. works out to ₹ 2.50 lakh per annum. (FRI, 2011). However, along with lack of legal backing and poor boundary demarcation³ the co-management have been questioned with concerns raised on state's co-opting and control. Communities' tenure benefits have been largely around non-timber usufructs, that continue to be regulated under state's NTFP policy viz. exclusion of nationalized/specified products e.g. bamboo and kendu leaves in most states or the restricted items viz. lac in Odisha. Wage labour benefits that are often substantial, about 10000 person days per 100 ha of forest remain spread over during first 3 years of regeneration, as per the calculation by authors considering average of JICA Forestry Project Nagaland, CAMPA, Odisha and MGNREGS, Jharkhand. Envisaged participation of community is ensured during microplanning in some projects/ programmes. However, most decisions on area, location, and species choice for the regeneration models (viz.

Assisted Natural regeneration or Plantation models) are generally decided based on project funding.

There is a need to dovetail various developmental programmes/schemes at the village level and develop synergy of JFMC with other village level Institutions, esp. with Gram Panchayat. This would help the forest dependent people, who continue to remain poor due to inadequate reach of various development programmes to the remote forest fringe areas, get the benefit of public funded developmental activities, through better integration of forest management, NTFP trade etc. with Gram Panchayat Development Planning, as envisaged in JFM resolutions. Efforts of bringing convergence and synergies, wherever adopted, have resulted in encouraging initial results. These aspects have been factored into in the design of the Green India Mission, one of the eight missions under the National Action Plan under Climate Change. Along with this, initiatives to ensure continued participation and contribution of the community in co-management of forest can be organized, through provisions of revisiting and aligning microplanning with working plan exercises and defining their continued role in the co-management.

Panchayats (Extension to the Scheduled Areas) Act 1996: Attempt to democratize Tenure

Seventy third amendment to the Constitution mandated that resources, responsibility and decision making be passed on from central government to the lowest unit of the governance, the Gram Sabha or the Village Assembly. A three-tier structure of local self-government was envisaged under this amendment. Since the provisions do not automatically apply to scheduled area, PESA [Panchayats (Extension to the Scheduled Areas) Act] enacted in December 1996 extended the provisions of Panchayats to the tribal areas of nine states that have Fifth Schedule areas viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, Odisha, and Rajasthan.

Amongst other provisions, PESA provides that a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with traditional rights of tribal over "community resources"—meaning land, water, and forests. While, community were bestowed with the ownership of minor forest produce, there remained less clarity on the issue of "community resource." Many states were silent about what constitutes community resource, but Madhya Pradesh defined it as land, water and forest. Powers given by PESA to exercise rights over community resources remained

³This lacuna has become more conspicuous after the enactment of FRA which legalizes provisions for recognition of Community Forest Resource rights in favour of the villagers.

⁴However, in some bilateral projects funded by JICA, viz. Odisha Forestry Sector Development projects, Uttarakhand Forest Resource Management Project, boundary demarcation of JFM areas taken up for restoration was done using DGPS survey with pillar posting and subsequent cover monitoring

non-existent in many states. The MoEFCC constituted an expert committee, recommended “ownership means revenue from sale of usufructuary rights, *i.e.* the right to net revenue after retaining the administrative expenses of the department, and not right to control.

Consequent to this the states brought out rules/regulations for its implementation and the MFPS except those which have been nationalized or restricted earlier were deregulated. Some states restricted the Panchayat's control over minor forest produce from reserve forests. While there was significant changes in terms of trade, demand, or quantum of consumption, following such deregulation in Odisha; there was an overall increase in the procurement price for several products following deregulation as per a study by Mahapatra and Shackleton (2011). Abolition of monopolistic trading, as per them, increased competition and had a pull effect on the local market prices of several NWFPs. However, there are inadequate efforts on assessment and conservation of Non-wood Forest resources, and there is lack of data about actual collection of various NWFPs raising concerns about their sustainability, and enjoyment of rights by the local communities.

During 2014-15 Ministry of Tribal Affairs, GoI, initiated an MSP scheme for 12 NWFPs, designed primarily as a social safety net for improving the livelihood of primary collectors by providing them a fair price for their produce. The scheme now covers 49 NWFP items and is being implemented by TRIFED through designated nodal agencies in each state. The states can fix MSP within the range of 10% of the MSP decided by the GoI. Some states have decided to provide incentive (bonus) in addition to MSP on some NWFPs. However, at present the MSP scheme does not take into consideration either the sustainability of resources from where the produces are collected or adherence to good field collection and primary processing practices that are necessary for ensuring long term availability of these products and a minimum guarantee for their quality - a prerequisite for enjoyment of rights by the local communities. MSP scheme is also silent on tenurial issues over forests and forest products, that determine access (use), regeneration (management) and sustainable harvesting (use) of NTFP by the target communities. In absence of that the volume marketed may either be inadequately or unsustainably procured affecting income of NTFP collectors or the sustainability of forest ecosystem, respectively.

FRA, 2006: Tenure Reform towards Community and Individual Forest Rights

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of forest rights) Acts, 2006, commonly known as the Forest Rights Act (FRA), provides for recognition of rights over forest land in

cultivation before 13th December 2005 in favour of the tribal and other traditional forest dwellers, and rights to Community Forest Resources (CFRs) following the process prescribed under FRA and Rules made there under, for deciding on the claims after due verification of the claims based on required evidence(s). The land titles given to individuals under FRA are heritable but not alienable or transferable. It also gives prime role to the collective wisdom of “Gram Sabha”. The FRA makes a major shift in ownership of forest land from government ownership to private (individual) ownership although it does not give absolute ownership since the titles given are not alienable. Till February 2021, about 1.93 million Individual titles have been distributed involving an area of 1.69 MHa (MPR for February 2021, www.forestrights.nic.in).

In addition to individual rights, FRA also recognises community rights such as *nistar*, including those used in erstwhile Princely states, Zamindari or such intermediary regimes; and right to ownership, access to collect use, and dispose of minor forest produce traditionally collected within or outside village boundaries, right to protect, regenerate or conserve or manage any community forest resource (CFR) which they have been traditionally protecting and conserving for sustainable use. The customary boundaries of the CFRs are also required to be delineated by the Gram Sabha along with preparation of a map of CFR before being claimed. Till February 2021, 77,500 community rights (including CFRs) have been recognised involving an area of 5.26 MHa. However, no national/state level maps of these area are available. In some cases only sketch maps of individual and community claims are used. According to a recent study around 1.1 MHa forest area has been recognized as Community Forest Rights (CFRs) in various states including Maharashtra, Chhattisgarh, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Odisha and Rajasthan (TERI, 2020).

The September 2012 amendment in rules under FRA provide that on completion of the process of settlement of rights under the Act the Revenue and Forest Department shall prepare a final map of forest lands so vested and they shall incorporate the forest rights in the revenue and forest records. The Act creates new land titles in forest lands - ownership and use rights, and also management right for sustainable use, but there is very little real emphasis on actual exercising of the rights by the concerned title holders. The political and social expediency to implement FRA and the provisions allowing use of oral evidence and sketch mapping process, have resulted in majority of individual and community rights recognized without detailed survey and due diligent rights recognition using modern and digital technology (GPS survey etc.). Nevertheless, many states and communities have also gone for using GPS, mobile application and satellite imageries to back up claim applications.

Supreme Court has also called for using satellite and GIS technology to check claim rejections. The ambiguous situation on ground over claim rejection rights recognition, can fuel conflicts around the newly recognized tenurial rights - ownership and uses of forest lands settled in favour of individuals, and rights and responsibilities of communities in the case of community rights including CFRs.

The rights to CFRs and implications thereof are actually differentially understood by various stakeholders, resulting in slow pace of claims, as well as settlement of the claims made. Moreover, in the absence of any facilitation provided by the Nodal Ministry/ Department to build capacities of the concerned communities and local facilitators, the forest rights recognition process has remained weak with slow progress and contested achievements.

Similarly, the "ownership right over MFPs" needs abundant clarification in view of the experience in implementation of PESA and continued confusion on its application over specific or nationalized MFP. Yet another important aspect is ensuring "sustainability" of community forest resources that are sought to be protected, regenerated, conserved, and managed by the CFR management committee through CFR management plan. In absence of clear boundary demarcation, poor coordination between community, Tribal and Forest departments, intended planning, monitoring, and harvesting have not picked up, following rights recognition, except for few instances, of sporadic activities around harvesting and trade. As a result, intended tenure and livelihoods outcomes have not been realized.

FRA also provides for diversion of forest land under FCA 1980 up to one ha. each for 13 specified facilities managed by the Government provided such development projects are recommended by the Gram Sabha. However, in spite of guidelines that states have to furnish quarterly reports to the Ministry of Tribal Affairs in respect of diversion of forest land for 13 specified categories of facilities, no information is forthcoming in this regard and as such information on resultant tenurial rights are grossly missing. It seems the area recognized under this and CFR provisions are bundled together while reporting.

From the perspective of "forests land tenures", while putting in efforts to address the above mentioned and other similar issues, important aspect that need also to be critically looked into is the efficacy in achievement of the objectives of FRA *i.e.* enjoyment of new tenurial rights by the respective right holders to augment their livelihoods while also sustaining forest management. Another important aspect is on the potential impact on remaining forest resources as a result of demand shift; honey combing the forests - and snow balling effects - impact on forests and wild life, long term sustainability etc.

Discussion

Historical legacy, socio-cultural forest connections and development contexts have influenced development of a complex, plural and overlapping forest tenure contexts in India. With coexistence of formal and informal, continuum of state, joint and community control as well as reflection of bundle of rights in terms of usufruct, management and individual and community ownership present a unique tenure mosaic. However, the way the laws are implemented, capacity

Table 1: Contemporary tenure typologies in India's forest

Forest Tenures	Examples	Type of rights (In all cases, except for northeast land type remain forests)		
		Over Land	Over Usufructs	Management
State Controlled and Managed	Reserve Forests with relatively settled tenure and boundary	With SFD	Limited grazing, NTFP for community	By SFD
	Other forests with un-settled tenure and unclear boundary	With SFD/ Revenue Dept	Usually NTFP, Small timber, grazing for community	By SFD
	Diverted forest with non-state temporary tenure, yet vested with state	With another agency (temporary)	Not allowed/ highly restricted	By another agency
	Protected areas - Sanctuary, National Parks	With SFD	Highly restricted	By SFD
Jointly managed	JFM with legal backing JFM backed by FD resolution	With SFD over RF; PF with Revenue Dept	Most NTFP, small timber, grazing; a share in final harvest Mostly by SFD harvest	Mostly by SFD
Community control and managed	Northeast Communal control	Village Chief, Clan and Community	All with community	Community; FD assists
	CFR under FRA	Community	All, except final harvest	Community; SFD oversights
Individual and Private Control	Farm and Agroforestry by individuals and corporates IFR under FRA	Private ownership with alienation rights Individual; unalienable	All; timber with FD permission	Individuals/ Private actors
Encroachment	Can be on all type of legal forests	Individuals, Businesses, institutions, other Dept.		Enjoyed by encroacher

of the actors, use of technology and nature of forest as a finite land, yet a renewable resource and ecological entity that is critical for environmental sustainability and local livelihoods, make these tenures often face contestations and contradictions affecting security of the tribal community and women, who are more dependent on forests. An attempt is made to summarize the forest tenure typologies in India prevalent now.

Given the tenure landscape, following issues are very relevant and require immediate attention of the Government of India and the State/UT Governments:

Rights and Privileges: For enjoyment of rights, concessions, and privileges by the forest tenure holders, they must be properly and unambiguously defined and recorded in terms of their nature and extent in the concerned records to avoid their harassment, eviction and rights denial and ensure sustainable forest-dependent livelihoods. It is also important that associated duties, responsibilities, and obligations are similarly recorded and acted upon to ensure sustainability of the forest resources. The right holders need also be provided with some documents for the same both with respect to the rights, concessions or privileges and their duties/obligations. Unfortunately, most the rights, privileges, and concessions in respect of forest lands are neither appropriately documented in detail (they are rather vaguely mentioned in working plans or compartment histories) nor any details are available with the right holders. Moreover, there are no specific processes for fulfilling the obligations, if any, by the right holders. There is also a need for clarity about the meaning of "ownership of MFPs", recategorization of MFPs and harmonization of various acts impacting on administration/ development/ movement of MFPs.

Boundary maps of the forest areas: For sustainable enjoyment of tenure rights over any forest area in addition to detailed description of rights, concessions, or privileges of different stakeholders, accurate maps of all areas that are legally "forests" demarcating the areas with different and overlapping tenurial rights, is critical. In fact the Apex Court in their order of 6th July 2011 (in W.P. (C) No. 202 of 1995-known as Lafarge Order) have directed for "completion of exercise undertaken by State/UT in compliance of Apex court's order dated 12th December, 1996 for identification of areas which are 'forests' irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the land of 'forests' and the areas which were earlier 'forests' but stand degraded, denuded and cleared, culminating in preparation of Geo-reference district forest-maps containing the details of the location and boundary of each plot of land that may be defined as 'forest' for the purpose of FCA, 1980." It is a matter of serious concern that in spite of the importance of forest resources being

rediscovered under the global climate change debate/discussions, and despite repeated orders of Apex court, reliable geo-referenced maps of all the 'forests' in the country are not available. These maps when prepared should necessarily include forest land parcels with different tenurial status e.g., diverted under FCA, settled as IRs/Community Rights/Community Forest Resources recognized under FRA, areas managed by JFMCs as well as areas recognized under IFR and integrated in records of rights, under forest land use.

For preparation of geo-referenced forest boundary maps Odisha has notified a SOP in July 2017 with elaborate procedure consistent with the National Map Policy 2005, and joint committees of Forest and Revenue departments at Forest Range and Division levels for joint verification and confirmation of boundary pillars followed by DGPS survey of confirmed pillar positions (Anon., 2017). The progress of preparation of DGPS map in being reviewed jointly by the State Revenue and Forest departments. As the time of writing of this paper joint verification and certification of boundaries of 1436 notified forest blocks covering an area of 8804 km². has been completed. In addition, in 86 Tehsils, 5400 km² of recorded forest lands that are not notified under IFA, have also been jointly verified and certified by Forest and Revenue Departments officials. Preparation of DGPS maps of this area was in progress.

In July 2019, MoEFCC has constituted an empowered committee headed by the DGF&SS to monitor the field identification and geo-referencing of forest lands as per the aforesaid mentioned order of 6th July 2011 of the Hon'ble Supreme Court. The FSI is still in the process of developing model SOPs based on pilot studies in few states to take into consideration different land record systems prevalent in the States/UTs.

Proper management of CFR areas: Post recognition of CFR areas under FRA, their appropriate management is necessary for their sustainability and continuity of food, NTFP and ecosystem services flows to the local communities and global ecosystem. Post recognition of CFR rights, CFR management committee can be enabled to prepare CFR management micro plans through participatory process using GIS, based on learning from JFM and earlier community forest management experiences. The State Government is required to ensure through its departments that all government schemes including those relating to land improvement, land productivity, basic amenities and other livelihood measures are provided to the communities, based on these plans, whose rights have been recognized and vested under FRA. MoTA has issued guidelines that Government shall make available through its departments, funds available under Tribal Sub Plan, MGNREGA, funds for forestry available with the Gram Panchayat, funds under

CAMPA to the committee at the Gram Sabha constituted under FRA for development of CFR. The State Governments may also send proposal to the MoTA for development of CFR area through such community management plans which can also be integrated with Gram Panchayat Development Plan while also noted in relevant working plans. However, no specific guidelines /accounting procedure for utilization of public funds that may be made available to committees constituted by the GS under FRA have been formulated and presumably the committees are to be guided by the procedure, rules, and regulations of the concerned Government programs/schemes under which funds are made available for CFR development activities. However, the actual execution of these guidelines is not being monitored to achieve intended results, and at present since at the national level there is no separate monitoring of even the number of CFR claims settled and areas involved.

Evolution of JFM: Recognizing the important and strategic role of JFM in development of forests, the Steering Committee on Environment, Forests, Wild Life and Climate Change for the 12th Five Year plan had recommended to broad-basing of JFM by making JFMCs as Standing Committees of the Gram Sabha, and for evolving them into a higher platform “JFM Plus” where the livelihood promotion of the communities, especially women Self Help Groups (SHGs) formed for such activities, gets increased importance in the conservation and development of forests. (Planning Commission, 2012). To achieve this, JFMCs are required to be adequately and strategically revitalized and empowered and their role in forest management and NTFP based microenterprises clearly spelled out. Involvements of women, who are the major gatherers of forest produce, are to be prioritized in forest management esp. nursery raising, regeneration and tending operations as well as sustainable harvestings. Along with youth, their involvement in NTFP processing and trading must be supported.

In addition to above developments, following important aspects should/need also be addressed to ensure that tenure created under JFM result in achievement of the goal of SFM:

- i. Bringing JFMCs under legal regime (from MoUs under various resolutions) and harmonizing to ensure that the rights given under JFM are not taken away or changed unilaterally and to facilitate long term involvement of communities.
- ii. Clear definition of usufruct and other rights and associated responsibilities of the JFMC members; expanding the product basket to include remunerative high value, high volume NTFPs.
- iii. Clear eligibility criteria for membership of JFMCs, and maintenance of membership lists; ensuring

gender and caste representation and linkage with Gram Panchayat.

- iv. Clear boundary demarcation and maps of the forest area, and assessment of resource to which the rights apply. Technical feasibility of using remotely sensed satellite data has been analyzed based on the experiences in the course of execution of JICA assisted Odisha Forestry Sector Development project (Bansal *et al.*, 2013).
- v. Systematic assessment of learning from across the States to facilitate further strengthening the community participation in management of forests for biodiversity and livelihoods.
- vi. Harmonizing JFM with existing legal/constitutional provisions around FRA (Forest Rights Committee and CFR area) and Biodiversity Acts and Rules (Village Biodiversity Management Committee)

Moreover, there is a dichotomous situation developing due to legal recognition of rights over CFRs side by side with continuation of JFMCs, at times even with same communities over same forest area. This ought to be reconciled for the development of forests and forest dependent communities.

Sustainability: Sustainability of such a unique natural and renewable resource is essential not only for the enjoyment of right of individual or communities but also for sustenance of mankind and other living organisms on the Earth. It needs no emphasis that adequate investment, in terms of finances, capacity building of all stakeholders, and required policy initiatives, in maintaining this natural capital is essential so that the local and national needs of various forest products can be met adequately while keeping its potential for providing ecological services including water, air, pollination and environmental amelioration. Despite greater global and national understanding about the significance of the forest resources investment in the sector continues to be abysmally low, remaining around 0.5% till the sixth five-year plan (1980-85) and around 1% in the subsequent five-year plans.

Fortunately, with launching of 'UN' (United Nations) restoration decade on June 5th this year and an increasing global consciousness around climate change and net zero emission, substantive private sector investments are expected for forest regeneration along with expanding state resourcing. Critical evidences also emerging around globe, on the potential forest and biodiversity conservation achievements in areas with clear community tenure. A tenure secured forest, with a tenure-aligned investment, can positively impact India's sustainability agenda - around forest biodiversity conservation and community livelihoods.

भारत में वन सेवा-अवधि और पोषणीय

वन प्रबंधन-एक विश्लेषण

अरुण के. बंसल और प्रनव आर. चौधरी

सारांश

भारत में वन भूमि सेवा-अवधि विविध, बहुत वैधानिक और प्रथागत अधिशासनों के साथ अनेक संख्यक रही है और अधिकारों की अविच्छिन्नता को परिलक्षित करते हैं जबकि राज्य, समुदाय एकल स्वामित्व को प्रकट करते हैं। वन सेवा-अवधि व्यवस्थाओं एवं पद्धतियों में भारतीय वन अधिनियम 1927 के तहत आरक्षित अथवा संरक्षित वन के तौर पर अधिसूचना के सूत्रपात से लेकर संयुक्त वन प्रबंध एप्रोच के तहत वन संरक्षण में समुदाय भागीदारी पीईएसए और वन अधिकार अधिनियम के अन्तर्गत सामुदायिक वन संसाधन और एकल/समुदाय अधिकारों के हाल के व्यवस्थापन तक प्रमुख परिवर्तन हुए हैं।

इस शोधपत्र में विश्व प्रबंधों से लेकर वन सेवा-अवधि का एक अवलोकन और भारत में वन सेवा-अवधि के संदर्भ में ऐतिहासिक साथ ही साथ वन अधिशासन में हाल के परिवर्तनों का विश्लेषण दिया गया है। ऐसा करते समय पोषणीय वन प्रबंधन में जटिलताओं पर भी विचार-विमर्श किया गया है और विशिष्ट संस्तुतियां की गई हैं।

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