

CENTRE FOR CIVIL SOCIETY

Briefing Paper on Forest Policy Community Stewardship and Management

*For the Terracotta Summit
Beyond NEP 2004: Institutions, Incentives and Communities*

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Introduction

The forest cover of India is estimated to be about 20.55% of the geographical area. However, as per last complete assessment available- FSI 1999-, the forest cover is 63.73 million ha, constituting 19.39% of the geographic area, out of which 37.74 million ha (11.48%) is dense forest, 25.50 million ha (7.76%) open forest and 0.49 million ha (0.15%) mangroves. Madhya Pradesh accounts for the largest forest cover of the country i.e. 20.68%, followed by Arunachal Pradesh (10.80%), Orissa (7.38%), Maharashtra (7.32%) and Andhra Pradesh (6.94%). The seven Northeastern states together comprise 25.70% of the total forest cover.

Background

Evolution of forestry policy in India

It may be interesting to trace how forest policy evolved through the ages (Ribbentrop, B, 1900):

- Initially, princes and local chiefs had the ownership of forests, but local communities enjoyed unhindered access to the forests for their uses. There were also clumps of forests that belonged to private individuals.
- With the growing demand of timber, the British began to take note of the potential of India's forests as a source of revenue. In 1807, the royalty rights in teak were claimed by the East India Company, leading to powers being bestowed to the conservator of forests to sanction felling of teak trees (Stebbing, 1923, p.70).
- Gradually, these powers were extended to forests that had belonged to private individuals (Stebbing, 1923, pp 118-123).
- The culmination of these steps was the Forest Act of 1878. The British evoked the rights of the conqueror, who obtained automatically all rights as the sovereign from the oriental sovereigns, the native chiefs. They set aside the law that no property could be taken from the citizens by the state.

Thus the rights of the communities were taken away, alienating them from forest management (Guha, R, 1998, p.95). The British policy led to the creation of reserve forests (complete alienation), protected forests (rights were recorded but not settled, and which were gradually converted to reserve forests) and village forests (these were to meet the needs of local communities, but largely remained only on paper). The same act, with minor modifications is still in existence today.

It is rather ironic that in the early part of the regime, when forests were considered non-revenue generating resources, expansion of agriculture land in place of forests was encouraged. People who cleared forests and tilled the land were given titles to it. But those who let the forests survive were penalized by being asked to leave. The forced alienation was due to the discovery of the revenue potential of forests.

After the Forest Act was passed in 1878, the colonial government started bringing more and more areas under reserve forests and initiated a system for systematic harvesting of forests based on working plans. The plans relied on selective cutting of mature teak trees on rotational basis with natural regeneration from coppices as well as seeds. This ensured that no part of the forest was devoid of vegetative cover.

In independent India, however, a new strategy of intensive commercial forestry was adopted from the sixties onwards. Large areas, usually the most productive areas, were brought under plantation working circles where all trees were clear felled to replace them with artificial plantations of fast growing and high yielding teak species. Thus the system of selective felling was replaced by clear cutting of all trees in selected coupes that were to be replaced by teak plantations. As a result, thousands of hectares of natural forests were clear felled during the sixties, seventies and early eighties.

It was only in the 1980s that the claim of local communities on forests was acknowledged. The National Forest Policy 1998 proposes to... associate the tribal people closely in the protection, regeneration, and development of forests as well as to provide gainful employment to people living in and around forests (MoEF, 1998). It emphasises safeguarding the customary rights and interests of these people.

JFM was introduced in 1990. MoEF also issued six circulars regarding settlements of disputed claims, *pattas*, leases, grants involving forestlands, guidelines regarding regularisation of encroachments, conversion of forest villages into revenue villages, settlement of other old habitations, payment of compensation for loss of life and property due to predation/depredation by wild animals and payment of fair wages on forestry works. But no action was taken on these fronts.

Results of current policy

It would be useful to look at the statistics on forest area once again.

- The recorded forest area of the country is 76.52 million hectares (mha)
- As per last complete assessment available, FSI 1999, the forest cover is 63.72 mha, out of which 37.74 m ha is dense.
- Thus, the degraded forest area in the country is as high as 40 per cent of the total forest cover.
- As against this, the total encroachment in forest areas in the country is 1.25 mha (MoEF, 2002), which is merely 1.9 per cent of the total forest area.
- Out of this total encroachment, the area used by the forest dwellers would be even smaller.

It is not possible to separate people from forests in India. By denying them their rights, the government has converted legitimate dwellers into squatters. By making them property of the government, the forest resource has been converted to one of open access. Since they have no stake in the forest by law, and cannot avail of any benefits, they have no incentive to take part in forest conservation.

While JFM, introduced in 1990, was definitely a step in the right direction, it is not enough to ensure that forests are preserved, due to the following reasons:

- Unequal partnership in matters of rights, power and authority between the participating communities and the forest administration, lack of legal and statutory backing to the policy and inadequate benefit-sharing.
- The lack of enthusiasm of forest officials towards implementation is glaring and is reflected in the actual forestland covered under JFM –(area under JFM in 22 states is 10.25 million ha, 16% of the total forest area in India (FSI, 1999)).

- More than 60% (7.43 mha) is found in only three states of Madhya Pradesh, Chhatisgarh, and Andhra Pradesh. The performance of rest of the states has been extremely poor.

Those who propose state control, subscribe to the tragedy of the commons argument to defend their stand (Hardin, 1968). But it is nationalisation that has created this degradation - the tragedy is nationalisation! It is not only impossible, but also inefficient to separate people from forests. Forest dwellers are the right custodians of forests and also most capable of taking care of the forests. They are able to reconcile seemingly irreconcilable aims of securing livelihood of people and conserving forests. Community ownership/ stewardship does not mean free for all access. In fact, community held resources are often controlled through intricate rules and regulations.

Local communities were actually managing in sensible and sustainable ways, through informal rules and practices, as evidenced by the existence of widespread network of sacred groves throughout India. Bringing these resources under the state control actually created the tragedy of open access rather than solving it, as local communities lost all incentives and interest in the proper management of forests. The forests no longer belonged to them and they started acting irresponsibly.

Examples of community rights

CAMPFIRE (the Communal Areas Management Program for Indigenous Resources)

- It involves rural communities in conservation and development by returning to them the stewardship of their natural resources, thus harmonising the needs of rural people with those of the ecosystem.
- Since its official inception in 1989, CAMPFIRE has engaged more than a quarter of a million people in the practice of managing wildlife and reaping the benefits of using wild lands.
- Since 1975, Zimbabwe has allowed private property holders to claim ownership of wildlife on their land and to benefit from its use. Under CAMPFIRE, people living on Zimbabwe's impoverished communal lands, which represent 42% of the country, claim the same right of proprietorship.
- Most communities sell photographic or hunting concessions to tour operators, under rules and hunting quotas established in consultation with the wildlife department. Others choose to hunt or crop animal populations themselves, and many are looking at other resources, such as forest products. The revenues from these efforts generally go directly to households, which decide how to use the money, often opting for communal efforts such as grinding mills or other development projects. The councils, however, have the right to levy these revenues.

Nature Conservancy

- It is a private environmental organisation set up in 1951, to preserve plants, animals, and natural communities that represent the diversity of life on earth by protecting the lands and waters they need to survive.
- With the help of members' contributions, Nature Conservancy purchases areas that have a high biodiversity value.

- "Conservation Design," is used to identify the highest-priority places—landscapes and seascapes that, if conserved, promise to ensure biodiversity over the long term.
- Nature Conservancy joins together with communities, businesses, governments and partner organisations to arrive at solutions that preserve these ecosystems for prosperity.
- These management techniques do not exclude people living in the area nor reject all economic development as antithetical to the goal of biodiversity preservation.
- The members themselves pay for the species they want to protect. The people whose land is acquired are given full compensation; they sell their land voluntarily to the Conservancy.

Nepal's experience with community forestry

Repeated change in status of forests

- Ownership rights over big chunks of forests were awarded to private individuals in the Rana regime, from 1850 to 1950.
- In 1957, all forests, including private ones, were nationalised through the Private Forest Nationalisation Act. This led to large-scale felling of timber (by landlords) to prevent the land being classified as forestland and, therefore, to become government-owned. Another major fall-out was that people lost their rights and control over the forests.
- The first Forest Ministry was established in 1959 and the Forest Act of 1961 was formulated on the line of the Indian Forest Act of 1927. However, the Act introduced handing over management of government forest to the newly formed *panchayats*.
- In late 1970s, forest officers got police powers on the Dehra Doon forestry model. Local people's bona fide use of government forests to meet their basic needs was deemed illegal. Afforestation programs with the international aid during 1960s and 70s did not succeed, partly because the local communities were not involved in the management.
- Massive deforestation continued throughout 1950-1980 (Parikh, Trupti and Parth J Shah 2005,pp 189-190).

Solution to Nepal's problem

The sixth five-year Plan (1981-85) and the Decentralisation Act, 1982 were the first steps towards decentralisation of powers of the Forest Department (FD). In 1989, the Master Plan for forestry sector was laid, with which community forestry was introduced.

- The Master Plan recognised users groups in place of the panchayat. It allowed both natural forests as well as degraded forests to be handed over as Community Forests (CF).
- It allowed people to have full control over the forests that they developed and to utilise forest products without too many administrative difficulties.
- The Forest Act, 1993 gives detailed provisions for community forests to be managed by user groups. Any part of national forests (looking into the distance between the forest and the village, and the wishes as well as the management capacity of local users) are to be handed over with perpetual succession rights to forest user groups (FUGs). An FUG is an autonomous and corporate body, with legal and statutory status and has perpetual succession rights to develop, conserve, use and manage the forests and sell and distribute the forest products independently by fixing their prices according to Work Plan.
- The FUGs were entitled to 100% of the revenue

- Many FUGs set rules and penalties for those who do not comply or who are caught felling trees or grazing.
- FD's role is to provide technical guidance and other co-operation, if required by the concerned FUG
- District Forest Officer (DFO) has power to cancel the registration of the group and take back the community forest, if he finds non-compliance or irregularity on the group's part after giving it reasonable time to submit clarification.

Out of total forest cover of 5.83 million hectares over 900,000 hectares has been handed over as CF to 11, 400 user groups, covering about 1.3 million households (Department of Forests, 2002). Not only has CF improved forest cover of Nepal, it has also generated employment and incomes for many.

Case of the north-eastern states in India

The northeastern states have relatively more autonomy in the disposal of their affairs. District councils are autonomous bodies that were created in order to balance the need for special protection and administrative responsiveness to local needs with the national interests (Sixth Schedule). However, the forests have suffered in spite of the autonomy given to district councils. This is because the state governments and the even the District Councils operate pretty much as extensions of the central government.

- Communities still retain control over much of the regions natural forest ecosystems: either through the District Council (as in the case of Meghalaya, Mizoram, Tripura and the Karbi – Anglong district of Assam) or within the control of the clan, village or tribe (as in the case of Nagaland or Arunachal Pradesh. The district councils head the autonomous districts.
- In reality the people do not have absolute rights over the forests. Even unclassified forests in the hands of private individuals or the community are subjected to the regulatory powers of the state in relation to the use and disposal of forest produce, though the actual pattern of regulation varies from state to state and is mediated by 'institutions of self governance.'
- A closer look at the functioning and powers of the district councils reveals that ever since colonial times, the ownership rights of locals over their resources have become more and more uncertain and insecure.
- State control and regulation has been undermining the traditional ownership pattern, via the District Council -an elected, representative, *political* body, separate from the actual forest users.
- A look at the Assam Forest Regulation reveals that it treated land not under legal ownership of a person as state property. It gives the state the power to convert any land into reserve forest simply by notification. It also empowers the state to:
 - Stop any public or private way or watercourse in a reserved forest,
 - Impose penalties for trespass or damage to the forest,
 - Prohibit any fresh clearing or breaking of land for cultivation or any other purpose,
 - Regulate or prohibit the cutting of *jhum*,
 - Impose duty on and regulate transit of forest produce,
 - Arrest without warrant suspected offenders, against whom a reasonable suspicion exists,

- Seize or impound the cattle or goods involved in the offence.
- The 1878: Indian Forest Act 2 gives powers to government to establish, create and demarcate forests for protection or for extension of railways. It also empowers the FD to regulate use of forests and grazing land, blatantly disregarding age-old customary rights and defining them as privileges, with no legal sanctity.
- When the state of Meghalaya was created in the early 1970s, the legislative power enjoyed by the Autonomous District Council was severely curtailed by the insertion of the 'repugnancy clause' under paragraph 12-A in the Sixth Schedule. This principle also applies to the laws passed by the District Councils of the states of Tripura and Mizoram, and states the following: 'If any provision of any regulation made by a District Council or a Regional Council in that state... is repugnant to any provision of a law made by the legislature of the state of Meghalaya with respect to that matter, then the law or regulation made by the District council... shall, to the extent of repugnancy, be void and the law made by the Legislature of Meghalaya shall prevail.'

Thus, whereas the Constitution makers had given the District Council the right to make laws and manage forests in the manner best suited for the tribals, the District Council have created an administrative structure which was alien to the tribals and similar to the administrative structure of the Government (Nongbri, 1999).

Community forestry in India: the way ahead

The NEP 2004 talks about giving legal recognition to traditional rights of forest dwellers. This is indeed a welcome step. The question of how to recognise traditional rights remains. The NEP 2004 plans to put into place multi-stakeholder partnerships between communities and forest department officials and argues for universalisation of Joint Forest Management.

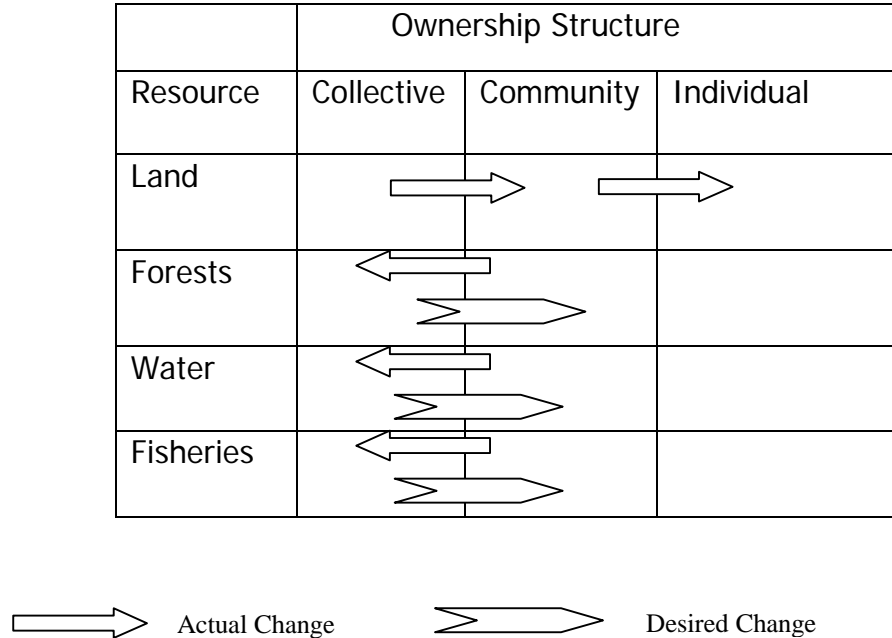
- While the present policy of JFM encourages participation of local communities in forest management, it falters badly in assuring long-term stake to communities in the improvement of forests (Ostrom 1999). Access to a little amount of minor forest produce is unlikely to elicit the kind of intensive and sustained effort necessary to nurse the forests back to good health. Besides, the promised sharing of revenues is rarely enforceable. This engenders perverse behaviour on the part of communities to grab as much as possible now since the future benefits are uncertain. The JFM, therefore, needs to move towards Community Forestry Management (CFM) in the style of Nepal and Zimbabwe (Mehta 2002; Hobe, Campbell and Bhatia 1996).
- Nepal's CFM has been successful in improving the forest cover as well as the livelihood options for forest dwellers. The forest department of Nepal has transformed itself into the role of an advisor and consultant, leaving the actual decision-making and implementation responsibilities to the communities (Master Plan 1988). The CFM approach eschews the green vision of protecting the environment by separating it from the people. It endorses the terracotta vision of coexistence of humans in the ecosystem. The CFM achieves two objectives simultaneously, which no other approach promises even in theory: protection and enhancement of the ecosystem and improvement in the livelihood and dignity of forest dwellers.
- Under community forestry, the communities are not outright owners but custodians or stewards of forests. In recognising their custodial rights, the government may specify norms related to the nature and density of forests, biodiversity, and general use of forest resources. The communities become stewards of forests. The forest department

becomes facilitator and advisor, with supervisory responsibilities to monitor and assess the stipulated 'better stewardship benchmarks' agreed upon by the communities in their stewardship contracts.

- The issue of identifying traditional rights has been very contentious. Despite the several guidelines issued by MoEF in the late 1980s, the general approach has been to rely upon the official violation or eviction notices given to forest dwellers as the basis of rights claim. Many activists however have cogently argued that the identification should be on the basis of field surveys, community interviews, and other qualitative indicators of settlement and long-term use (Kothari 2002). In order to make this enormous task of identification manageable, activists suggest that all pre-1980 cultivation and settlement by forest dwellers should be regularised immediately.
- The CFM approach provides a different solution to this identification problem. Actually, it completely bypasses the problem. It does not try to establish validity of traditional claims by separating 'genuine forest dwellers' from 'encroachers.' It takes the existing community of forest dwellers as the legitimate claimants of stewardship rights. The diversity that exists among today's forest dwellers becomes an asset instead of a liability under the CFM approach. The diverse backgrounds would allow the community to deal with the 'outside' world more effectively and to protect their stewardship rights against the policy swings of the government.
- An understanding of the historical settlement of private property rights further supports the CFM approach. The land that is privately owned today was at some point in time common property, probably a forest. Someone clear-cut it later, the mixing of labour with land led to the recognition of private property right by the government. Those who converted forests into agricultural land and then into residential or commercial land received property title to that land. But those who let the forests stand are now told that those forests belong to all people, not just to them. The society refuses to recognise any claim of forest dwellers on the forests they sustained all these centuries. Actually the current interpretation of the law views them as encroachers on the society's land. This simply is grave injustice.
- By granting limited user rights (mainly to minor forest produce) of forest dwellers, the JFM approach attempts to recognise this injustice. The CFM approach, granting broader stewardship rights, will be a major step towards providing justice to the forest saviours. Actually full justice would require the society to go further from stewardship rights and grant full property rights to forest dwellers.
- Unfortunately for forest dwellers, even their own champions and spokespersons do not support the logic of the full justice. Interestingly, they consider any claim further than user rights as against the tribal custom and tradition. It is indeed a gross misfortune that the tribal norms that sustained the forests are now used to deny tribals stewardship or property rights. Is the society worse off by recognising private property rights in non-forest land? Would we be better off if all the land was commonly owned and jointly managed, that is, if there were no private land at all? Who benefits—tribals or non-tribals—by blocking the normal evolution of property rights over forest lands?
- The CFM approach of stewardship rights is moral, just, and practicable. Moreover, the stewardship rights retain the possibility of full ownership rights if and when that becomes acceptable and viable.
- Some activists have argued that the Section 28 of the Indian Forest Act that recognises 'village forests' can be used to expand user rights of forest-dependent communities. We believe that no sleight of hand is necessary or prudent—the forest dwellers have a

moral and legal claim and the society has a moral and legal obligation to honour that claim. Let the matter be discussed openly and widely and arrive at a just resolution.

Conclusion



It is rather ironical that those who cleared forests got titles to land, which gave them legal status as owners. Those who let the forests stand got declared as squatters. It is time to undo the tragedy of nationalisation and restore the rights of forest dwellers. Community forestry aims to do precisely that, and should be taken up without delay.

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