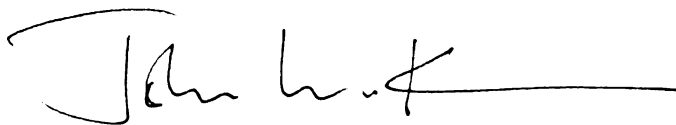This is to certify that the
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TERRITORIALISATION, RESISTANCE AND DEMOCRATIC SPACES IN
FORESTED LANDSCAPES OF ORISSA, INDIA

By

Kundan Kumar

A DISSERTATION

Submitted to
Michigan State University
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DOCTOR OF PHILSOPHY

Resource Development

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ABSTRACT

TERRITORIALISATION, RESISTANCE AND DEMOCRATIC SPACES IN FOREST LANDSCAPES OF ORISSA, INDIA

By

Kundan Kumar

I present three papers based on my dissertation research on internal territorialisation and the politics of democracy and decentralization in forested landscapes of Orissa, India. The research links the areas of rights, development, social movements, democracy and decentralization in the context of forested landscapes. In my first paper *"Rights regimes, exclusion and development in forested landscapes of Orissa, India"*, I use archival research and case studies to examine how formalization of rights regimes led to non-recognition of the customary land rights systems of local people and the effects of this non-recognition on land-based programs for development and poverty alleviation. The second paper *"Democratic Assertions: the Making of India's Recognition of Forest Rights Act"* examines how marginalized forest dwellers and their mobilizations were able to use democratic spaces and movement politics to demand and obtain a new forest law which recognizes their rights over forests and forest land. The third paper *"India's Joint Forest Management and the Recognition of Forest Rights Act, 2006: Top-Down Decentralization vs. Bottom-Up Democracy"* discusses the implication of the new forest law on forest governance by comparing its provisions with the existing state initiated program for decentralization of forest governance.

This dissertation is dedicated to

Late Dr.Ashok Baboo

And

Late Shri Rajendra Sarangi.

Teachers, mentors and friends

ACKNOWLEDGEMENTS

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KEY TO ABBREVIATIONS

BOR   Board of Revenue

BJP   Bharatiya Janata Party

CSD   Campaign for Survival and Dignity

CPI (M)   Communist Party of India (Marxist)

FCA   The Forest Conservation Act of 1980

FD   Forest Department

RFRA   The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

GOI   Government of India

JPC   Joint Parliamentary Committee

MOEF   Ministry of Environment and Forest

MOTA   Ministry of Tribal Affairs

MPs   Members of Parliament

NAC   National Advisory Council

NFTSR   National Front for Tribal Self-rule

NGO   Non Government Organization

NREGA   National Rural Employment Guarantee Act (NREGA)

PESA 1996   Panchayats (Extension to the Scheduled Areas) Act, 1996

PMO   Prime Minister's Office

RTI   Right to Information (RTI) Act

SC   Scheduled Castes

ST   Scheduled Tribes

TSG   Technical Support Group

CHAPTER I

RIGHTS REGIMES, EXCLUSION AND DEVELOPMENT IN FORESTED LANDSCAPES OF ORISSA, INDIA

Abstract

Land and forest tenure are critical issues for marginalized forest dwellers' livelihoods. In many countries, formalization of rights regimes in forested areas has led to increased state ownership of land and forests, often ignoring traditional or customary tenure and land use. Non-recognition of traditional rights and land use often leads to disjuncture between official formal rights and the land use practices of local people. Development and poverty alleviation programs that do not take this disjuncture into account risk unanticipated outcomes. In this paper, I examine the history of the formalization of rights in forested landscapes in Orissa, India, its implications on local inhabitants' access to land and for development interventions.

INTRODUCTION

Forested landscapes in the global South are home to hundreds of millions of people and overlap significantly with concentrations of poverty and marginalisation (Sunderlin et al., 2005; McNeely and Scherr, 2003; World Bank, 2003). This has attracted significant donor and governmental attention and efforts for development, poverty alleviation and environmental conservation (Schmidt et al., 1999; Dubois, 2002; World Bank, 2004). A challenge that confronts these interventions relates to limited recognition of local rights. Forests in most countries are predominantly state-owned. States have come to own these forests through processes of exclusion and non-recognition of customary tenure and rights of local people (Sunderlin et al., 2008). In many situations,

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tenure systems that enjoy local legitimacy have no legal sanction from governments, and formal legal rights regimes enjoy little legitimacy amongst local populations (Deininger, 2003). The implications of this mismatch have received inadequate attention in the literature on land-based development programs in forested landscapes.

India, with its long history of land and forest administration, the large number of poor people living in forested areas, and the many initiatives for poverty alleviation and development, provides an instructive setting to study the intersections of rights regimes and development efforts in forested areas. Officially, India's landscapes have been legally rationalized with every parcel of land legally owned either by a private entity or by the state. At the policy level, construction of these legal rights regimes is assumed to be unproblematic as they have been created through detailed and legitimate processes of mapping and surveying.

In this paper, I use empirical evidence from the state of Orissa to show that this assumption is deeply flawed and that in the processes of legal formalisation of rights and access regimes, there has been large-scale legal dispossession of the inhabitants of forested landscapes. I examine how application of complex technical processes of survey and settlement and forest notifications has led to non-recognition of rights of marginal people, and present two micro-level case studies that illustrate the problems relating to land rights regimes.

The ambiguity in land rights regimes in forested areas is only partially acknowledged by policy makers. State interventions in these areas have often led to conflicts and contestations. Even land-based development programs specifically designed for poverty

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alleviation can intersect with unclear rights regimes to negatively affect the very people who are supposed to gain from these programs. I illustrate this through examples.

The paper is based on archival research and field case studies in the forested areas of the state of Orissa in India. Archival research included study of survey and settlement records, forest reservation proceedings, correspondence, forest working plans, census data, program documents and reports. The archival research was supplemented with discussions and interviews with officials and other knowledgeable people to understand the processes leading to formalization of rights regimes in forested landscapes in Orissa. In the case studies, legal rights data were compiled using the official "Record of Rights" and cadastral maps. Since no data were available about the actual land use and informal land tenure situation in the case study areas, plot level data collection filled this gap. All plots under cultivation were mapped and measured, their land use recorded and the customary ownership including changes in ownership documented through interviews. These were overlaid onto the official cadastral data for comparison of formal and customary rights. This analysis was combined with interviews and focus group discussions to understand the implications of the mismatch between customary and formal rights in the case study areas.

RIGHTS REGIMES AND DEVELOPMENT

Emergence of property rights regimes in forested areas reflect complex historical and political processes that have been widely discussed in the literature (Grove, 1995, Rangarajan, 1996, Sunderlin et al., 2008). Increased penetration and control of forested areas by states has been accompanied with state-initiated mapping, surveys, rights settlement, recording of rights, and legal notifications to recognize pre-existing rights or

create new rights. Vandergeest and Peluso (1995) use the term internal territorialisation for these processes, defining it as "resource control" strategies of the modern state wherein it divides the territories under its control into economic and political zones, rearranges people and resources within such units and regulates who can and cannot use the resources. Internal territorialisation has been an integral part of the extension of modern states to forested landscapes and opening these areas to processes of resource extraction and control (Sivaramakrishnan, 1999). Techno-legal systems such as cadastral mapping and surveys have been used to reorganise pre-existing rights regimes into formal rights regimes in order to generate revenue, facilitate penetration of capital and increase state control and regulation of landscapes. In this process, most governments have tended to overlook customary local systems of rights and access, which are often deeply embedded in social, cultural and religious beliefs and norms (RRI, 2009). Local, multilayered, complex systems of rights and access have been replaced by what states see as legible, simplified and universal systems primarily based on individual and state property rights (RRI, 2009).

Territorialisation processes are political in that they reconfigure rights and access relationships, privileging state and private ownership while delegitimizing communal tenures and customary land use. This reconfiguration of forested areas has often led to resistance and conflicts, especially when longstanding uses and access are sought to be curtailed and regulated (Peluso, 1992, Gadgil and Guha, 1993). Efforts to enforce formal rights regimes come up against resistance by local actors and the limitations in state capacities (Sivaramakrishnan, 1999). In the absence of effective enforcement of formal rights, multiple rights regimes and modes of access, formal and customary, may operate

in the same landscape, often in contradiction to each other (Scott, 1998; Sunderlin et al., 2008).

India's long history of legal disciplining of forested landscapes and relatively high population of forest dependent people provide unique insights into the processes of internal territorialisation and the tensions therein. The instruments of cadastral mapping[1], surveys and forest notifications have been used to formalize rights regimes in forested areas in India since the 19th century, converting erstwhile agroforestry landscapes into discrete legal categories of legal forests and non-forest lands (Sivaramakrishnan, 2000). Extension of state regulation over land and forests to these areas was driven both by need for increased state incomes from land revenue and forest exploitation, as well as strategic need to bring these areas within the control of central authorities (Sivaramakrishnan, 1999). Vast areas of forested landscapes were enclosed as state forests, while pockets of cultivation demarcated as villages. A common feature of these processes was the non-recognition of certain customary land use and the delegitimization of many activities critical to the livelihoods and subsistence of forest dwelling people (Gadgil and Guha, 1993). Limited state capacity to enforce the formal rights regimes and resistance by local actors has led to persistence of elements of customary rights regimes alongside formal rights regimes. These regimes intersect and overlap with formal rights regimes in complex dynamics. However, for the policy makers and the judicial system, formal records and maps represent the normalized landscape, and deviations from this normality are seen as transgressions against the law to be regulated. Customary use not in

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[1] Though cadastral surveys and creation of records of rights were in use during the pre-British period, specially by the Mughals and Marathas, in order to systematise land revenue (see Habib, 1953) these were limited mainly to plains areas and were not extended to the forested areas. The British borrowed some elements from the older systems and also introduced much more detailed and extensive survey and mapping of the land in the 19th century.

conformity with law becomes illegal. This sets the stage for conflicts and instability in the livelihoods of forest dwellers, and creates social and tenurial uncertainty. Thus, understanding the way in which internal territorialisation has led to non-recognition of pre-existing rights and its implications becomes essential to addressing the problems linked to livelihoods and tenure security of forest dwellers.

The forested areas of India are also major pockets of poverty and deprivation, and forest dwellers and scheduled tribes[2] remain some of the most marginalised sections of Indian society (Mehta and Shah, 2003). Since Independence, the Indian state has carried out both protective and affirmative action for scheduled tribes and other poor sections, including development programs focussed on improving livelihoods, incomes and assets. People living in forested areas, especially communities categorised as scheduled tribes, have received special attention due to their marginalisation and poverty[3]. The development and poverty alleviation interventions have included land based programs such as watershed development, agricultural improvement, forestry plantations and horticulture, with annual budgets of billions of rupees. The extreme poverty in forested areas has also attracted the attention of international donors such as the World Bank, DFID, IFAD, who provide financial and technical support to the government to implement these programs[4]. Since the 1990s, many of the welfare-oriented development programs have moved toward more participatory approaches. However, there is little

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[2] The Indian Constitution provides special protection for communities listed as "Scheduled tribes", who are primarily concentrated in the forested areas of India.

[3] Areas where scheduled tribes are a near majority have been constituted into special areas, and separate development plans called the tribal sub-plans are developed for these areas. Most of these areas overlap with forested areas. Both at the Central level and in many states, special ministries for development of scheduled tribes and other marginalised communities have been created.

[4] The trend of external support for directed poverty alleviation and sustainable development programs in forested areas have accelerated in the 1990s, and a large number of such programs including forestry and watershed development programs, explicitly aimed at poverty alleviation have been implemented.

attention to how these development interventions are affected by the unstable rights regimes in the forested areas.

FORMALISATION OF RIGHTS REGIMES IN FORESTED LANDSCAPES OF ORISSA

Orissa is located on the eastern coast of India with an area of 155,000 sq. km. and a population of 32 million. 62 scheduled tribes, residing mainly in the forested part of the state, form 22 percent of its population. Orissa is also one of India's poorest states, with an estimated 47 percent of its population living on less than a dollar a day (Haans and Dubey, 2003). Poverty and marginalization are concentrated in forested areas and within certain social groups. In 1999-2000, 73 percent of the scheduled tribes in Orissa were below the poverty line as compared to 33 percent for general castes (Haans and Dubey, 2003). Nearly half of Orissa consists of hilly, forested terrain and almost 40 percent of its area has been categorized as legal forests.

Two broad categories of instrumentalities, survey and settlements and forest notifications, were used by the colonial and post colonial governments to formalise land rights in forested landscapes. A broad description of the major categories of legal classification of landscapes that resulted from these two instrumentalities, are provided below in figure 1. As discussed in the next two sections, this was a complex process spanning more than hundred years.

Figure 1: Territorialisation processes and the resulting legal land categories in Orissa

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                    ┌─────────────────┐
                    │    Forested     │
                    │  Landscapes of  │
                    └─────────────────┘
              ┌────────────┴───────────────┐
     ┌────────────────┐          ┌─────────────────────┐
     │     Survey      │          │  Forest Notifications│
     │      and        │          │        using         │
     │   Settlements   │          │     Forest Laws      │
     └────────────────┘          └─────────────────────┘

     ┌────────────────┐                              Land settled with households
     │  Private land  │
     └────────────────┘

     ┌────────────────┐                              Non-Forest State land
     │   Government    │
     │  Revenue Land   │
     └────────────────┘
                          ┌──────────────────┐
                          │ Reserved Forests │       Forest Land      State
                          └──────────────────┘       (FCA, 1980      Owned
     ┌────────────────┐   ┌──────────────────┐        applies)
     │ Revenue Forests│   │ Protected Forests│
     └────────────────┘   └──────────────────┘
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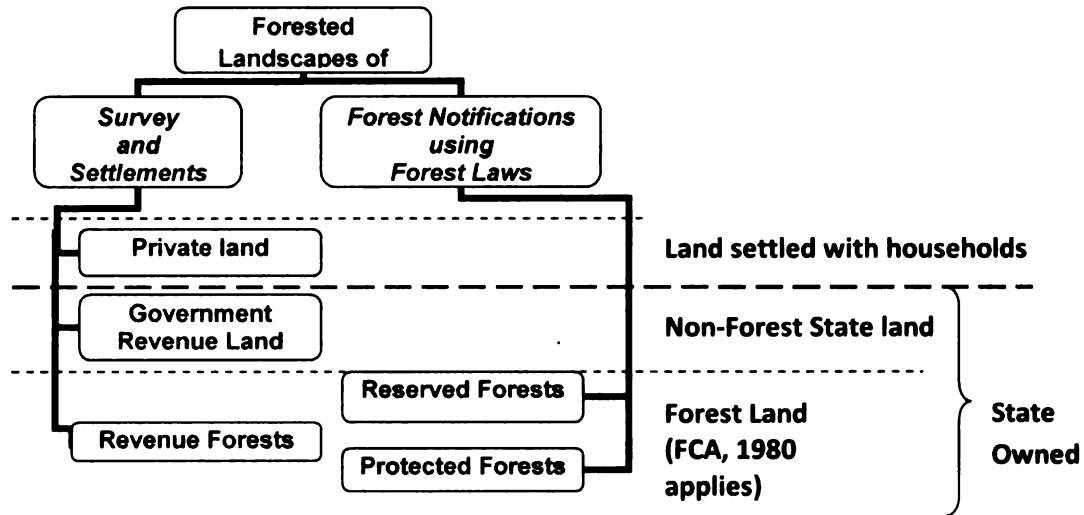
We discuss the contours of these processes, and highlight the major events and policies that have led to the current rights regime. We examine the processes of internal territorialisation first in the colonial period, and then after independence.

Internal Territorialisation before Independence

The present day state of Orissa was created from three separate British ruled provinces and 24 nominally sovereign princely states (GOO, 1958). As a result, forested landscapes in Orissa inherited different land and forest administration systems from these separate units. The mostly tribal communities living in these landscapes practiced shifting cultivation on hillsides in combination with paddy cultivation in valleys. They also gathered forest products and hunted. The clan or lineage based systems of different tribes tend to be territorial, with communal or kinship linked customary rights regimes over land (Mahapatra, 1997; Bailey, 1960).

Historically, tribal dominated areas in Orissa were comparatively autonomous because of the extreme remoteness of the hilly terrain (Padel, 1995). In the pre-British

period most tribal communities did not pay any kind of land tax (GOO, 1958). British attempts to expand their control over these areas during the 19th century were met with fierce resistance. To contain tribal unrest, the British created special administrative arrangements called "agencies" for the forested areas under their direct rule.

Like elsewhere in India, cadastral surveys and forest notifications were used to legally rationalize the forested areas of Orissa and create formalized rights regimes. The British rulers took up large scale cadastral mapping and creation of records of rights from the 19th century as part of revenue survey and settlements of inhabited lands. Land was mapped and categorized, and rights in land were codified into cadastral maps and records of rights, forming the legal basis for property rights claims. Those who paid land revenue (land tax) were proclaimed the holders of heritable, alienable property (Kain and Baigent, 1992).

Survey and settlement procedures first marked the external boundaries of "villages"[5]. Inside the village, individual agricultural land parcels were measured and mapped on cadastral maps and records of ownership prepared. The primary aim was to assess the productive capacity of each piece of land and link it to a proprietor, who then became liable to pay land taxes. All land where direct individual proprietorship could not be established was classified as state owned. This process of survey and settlement was first initiated in the populated plains and slowly extended into the forested hinterlands.

The forested areas of Orissa, with relatively low land revenue potential and threats of resistance by tribal communities, were not a high priority for revenue survey and

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[5] The administrative category called "village" was created through survey and settlements, and could contain many physically separate settlements or hamlets. Villages became the basic unit of land and civil administration.

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settlement by the British and the princely states. In many areas, tribal cultivators were not assessed for land revenue. In other forested areas, instead of land revenue based on acreage and land category, taxation was based simply on the number of ploughs or hoes owned or on a visual estimation by the assessor (Ramdhyani, 1949). By the end of colonial rule, only a few parts of Orissa's forested zones had undergone detailed cadastral survey and settlement.

Forest notifications in these areas during colonial rule were relatively more advanced. Forest laws such as Indian Forest Act, 1927 and the Madras Forest Act, 1882, allowed the colonial government to notify any land as legal forest. The laws regulated local people's access to legal forests and banned their conversion of these lands to agriculture. They also allowed for a process of rights determination before declaring an area as forest. The forest laws provided for creation of different categories of legal forests, classified mainly on the extent of rights and access they provided to the local populations. The princely states often had their own laws or rules somewhat similar to the British laws. More forest areas were notified in the princely states of Orissa than in the British ruled areas, with cursory or non-existent rights settlement processes. Large tracts of land were declared as forest reserves, without taking into account existing settlements and cultivation inside the area (Ramdhyani, 1949). For example, in 1943, the King of the princely state of Kalahandi included 14 revenue villages along with a belt of surrounding forested lands within Leliguma Reserve Forest, without settling the rights of the villagers (Sundarajan, 1963). In a number of princely states, all wastelands not already declared as

Reserved forests or protected forests were declared as khesara forests[6] on a blanket basis, whether they were covered by forests or not (Ramdhyani, 1949). However, the princely states often had little capacity to regulate the use of these remote forests; creation of legal forests often had a minimal effect on land and forest access in remote, interior forested areas.

The British were comparatively more cautious in creating and regulating legal forests in the interior tribal-dominated areas as they anticipated resistance. One effort to create reserved forests and enforce regulations in the customary lands of the Saora tribes led to an agitation which forced the British to de-reserve 26 sq. miles in Ganjam agency area (GOO, 1977). Faced with similar possibilities of resistance, there was little serious effort to restrict shifting cultivation in major British controlled tribal tracts of Orissa such as Kandhmals and Baliguda, where no legal forests were created until after independence. In zemindari[7] areas such as Jeypore or Khariar, no reserved forests were created; only legal forests with much weaker restrictions were notified[8].

To sum up, by the time of independence, in most forested areas of Orissa the survey and settlements had not been carried out. Legal forests had been created in many areas, especially the princely states, but regulations restricting their use were not enforced strictly. Many of these legal forests contained settlements and cultivation where no rights

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[6] Khesara forests were a category of legal forests where local people had access to small timber and other forest products. The blanket declaration meant that all lands that had not already been declared as forests or were not already settled as private land were automatically converted to this category of forest.

[7] In the zemindari system, the British or the sovereign princely states allocated large areas to zemindars who were responsible for administering the area (including the forests) and collection of rents. They effectively ruled the area, but the sovereign powers were with the British or the princely states. Some zemindaries such as Jeypore were huge, covering tens of thousands of villages, where as some covered only a few villages.

[8] In Jeypore Zemindari, an area of 1615 sq. miles was declared as Reserved Land and Protected Land under section 26 of Madras Act, 1882, which did not require the zemindari to carry out detailed settlement of rights (Behuria, 1964)

settlements had been carried out. The land administration systems and tenure systems in forested areas were diverse, varying from one princely state and province to another, each with their peculiar features. Given the remoteness of these areas, their mostly tribal populations remained semi-autonomous. Customary land tenures based on kinships and clans persisted in most tribal areas, often overlaid or integrated into tax or revenue generation systems imposed by the sovereign powers[9]. Shifting cultivation was widely prevalent.

Internal Territorialisation after Independence

Post-independence, the state of Orissa inherited a complex patchwork of land and forest administration systems from three British provinces and 24 princely states, with the major task of unifying and rationalising these diverse systems. Land reforms, which had been a major demand during the independence struggle, was a major priority. The land laws were changed to incorporate the principles of land to the tiller, abolition of intermediaries, land ownership ceilings as well as protection of tenants (Appu, 1996). Land reforms were focussed on private land and land under tenancy, and no efforts were made to reform the governance of public land held by the state. There were no changes in the legal framework for forest governance, primarily because forests were seen as a national resource for development and there was little political pressure to reform the forest governance systems. The post independence territorialisation processes in Orissa reflected these changes and continuities in state policy. A number of new legal instruments including land reform laws and survey and settlement laws were enacted, and efforts were made to create a unified system of internal territorialisation. We discuss

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[9] See Kumar et al. (2005) for an overview of pre-independence systems of land administration in forested areas.

these processes in the context of the forested landscapes of Orissa. The two main instrumentalities of territorialisation i.e. survey and settlement and forest notification are addressed in separate sections.

Survey and Settlements

In the post-independence period, the Government of Orissa tried to rationalise land administration systems and to carry out land[10] and tenancy reforms[11]. The government sought to follow the basic principle of "land to the tiller" and initiated survey and settlement in forested areas in earnest. One of the dilemmas it faced was whether to recognize occupancy rights over the widespread shifting cultivation on hill slopes. Like the British, the policy makers in Orissa had a strong bias against shifting cultivation, which they saw as destroying forests, causing soil erosion and disturbing hydrologic cycles[12].

In an important post-independence decision on shifting cultivation during the survey and settlement in the Dongarla[13] areas in Kalahandi where shifting cultivation was common, the government decided to provide occupancy rights only to areas under plough cultivation and to deny legal occupancy rights over shifting cultivation lands. In 1953, the Board of Revenue asked the survey and settlement officers to deny tribals' occupancy

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[10] Orissa Land Reforms Act, 1960 instituted a ceiling on individual land ownership and provided for distribution of land to landless peasantry. As in other parts of India, these land reforms laws were never implemented effectively.

[11] Tenancy reforms were carried out to ensure that cultivators who cultivated land held by others were protected and provided rights over that land.

[12] The usual term used was "pernicious, evil practice" (GOO, 1940; GOO, 1958; GOO, 1959). Or as the Koraput survey and settlement report says, "Shifting cultivation commonly known as podu cultivation is causing incalculable damage to forest growth and soil conservation" (Behuria, 1964). This view of shifting cultivation has been contested strongly in recent years and shifting cultivation has been shown to be ecologically sustainable in many circumstances. See Conklin (1957), Brookfield and Padoch (1994), Kunstader et. al (1978), Ramakrishnan (1992), Darlong (2004).

[13] Dongarlas were hilly region in South East area of the erstwhile Kalahandi princely state, inhabited mainly by Kondh tribals.

rights over shifting cultivation lands while preparing a special category of records for these lands called the Dongar Khasras[14]. As per Sunderrajan, the Officer-in-charge of the survey and settlement:

> "The Dongar Khasra[15] "*contains the name of the cultivator with parentage, caste, name of the Dongar, cultivated crops grown, seed capacity of the slopes under cultivation, number of Kodkis (spades) possessed by the cultivator and rent settled for cultivation. A stereotyped note to the effect that no occupancy right accrues over the slopes is attached*" (Sunderrajan, 1963).

25,000 Dongara Khasras covering 125,000 acres in 850 villages were prepared in the two blocks of Thuamulrampur and Kashipur, though without any occupancy rights (Sunderrajan, 1963). The legal basis of denial of occupancy rights over the hill slopes was never made explicit by the Government.

The next major decision affecting the formalisation of tribal land rights was taken during the survey and settlement of undivided Koraput district[16]. The undivided Koraput district was formed out of the Jeypore Zemindari and the first land survey and settlement was completed in this area in 1964. The survey and settlement was carried out using the Madras Estates Land Act, 1908[17] which conferred heritable and transferable occupancy rights on people who held land for the purpose of agriculture and paid land rent to the superior tenure holder. Before independence, the cultivator was a tenant of the Jeypore

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[14] Dongar means hills. "Khasra" means "land parcel record".

[15] Dongar Khasras were special official documents which indicated who was doing shifting cultivation on which piece of land, but did not provide any occupancy rights to the cultivators.

[16] Undivided Koraput district has now been subdivided into four districts including a new and smaller Koraput district. Thus the term Undivided Koraput district is used to signify the original larger administrative entity.

[17] The Jeypore Zemindari came under the Madras Presidency, and the Madras Estates Land Act, 1908, was legislated by the Madras Government to regulate land tenure and relationships in zemindari estates.

zemindar and after the abolition of the zemindari system; he became the tenant of the State of Orissa.

During the Koraput survey and settlement process, an initial position was taken that even though shifting cultivation was believed to be extremely harmful to forest growth and soil conservation, it should be recognised but regulated because of people's livelihood dependence on shifting cultivation (Behuria, 1964). It was decided that shifting cultivation land on hill slopes up ten percent would be settled with cultivators but the area on higher slopes would be treated as encroachment liable for eviction in due course. The legal and procedural basis for this decision, especially the proposed evictions, was not made explicit but the process of demarcation of areas for shifting cultivation began in 1954-55.

In 1960, the Board of Revenue (BOR) took a decision not to recognize in the Koraput survey and settlement any rights to land used for shifting cultivation on hill slopes. The BOR used the Madras Estate Land Act's Section 15, subsection 3, which says that a person who has occupied land for cultivation for continuous period of 12 years shall automatically be considered a cultivator with occupancy rights over that land. The BOR decided that *"shifting cultivation couldn't be construed as continuous possession for a period of twelve years"* and therefore should not be recorded as land with occupancy rights. Such land would be classified as Government land[18].

The basis for this view, given that the same family or community possessed these lands for generations as per the tribal customary law, was not made clear. The BOR did not seem to be very confident about the legal validity of its decision and referred the

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[18] BOR Letter no 434-XXI-57/58-L-LRS dated 12th March, 1959

matter to the state government once again in 1962 for clarification. This clarification apparently was never issued and the matter remained pending. Unfortunately, the tribals made no legal challenge against these decisions as they were not aware of the significance of the legal status of their shifting cultivation land. The state government's interpretation of the law ensured that tribal rights over shifting cultivation lands were not recognized during the Koraput survey and settlement.

With a precedent set in the Koraput survey and settlement, it became easier for the Government of Orissa to follow the same principle in all other forested areas. Within the village cadastral maps, hill slopes with shifting cultivation were categorized as state owned revenue wastelands or as revenue forests. The tribal claims to territorially defined boundaries were not entertained during survey and settlements, and large parts of tribal habitats were converted to government land.

Only land occupied for permanent cultivation, located in the valleys, was settled with the cultivators. Even this tended to be problematic due to the lack of awareness of the complex settlement procedures amongst the illiterate villagers, especially the tribals. Mortgaging valley land to moneylenders has been a common practice in tribal areas and often during the survey and settlements, the moneylenders and non-tribals managed to get such land settled in their names. This problem has been endemic in certain pockets of Koraput and Kandhmal districts, with the fertile valley lands passing to the hands of moneylenders, and has been a major cause of conflict between tribals and non-tribals.

A Planning Commission report (GOI, 1986) describes how the survey and settlement process in the tribal villages of Koraput district recorded less than 10 percent of the land

that tribals occupied as belonging to them. Regarding survey and settlement in the

Niyamgiri hills, home to the Dongaria Kondhs, a primitive tribal group, the report says,

"*In one village of Bissamcuttack block, while only 2.50 acres of land below 10*

percent slope out of the total 936.13 acres in the village was recorded in favor of

tribals, several thousand jackfruit trees (owned by individual households) and at

least two thousand mango trees (communally owned) located on higher slopes

were found to be on land recorded as state land" (GOI, 1986).

This was a common pattern across the forested areas of Orissa. Figure 2 shows the

categorization of land inside village boundaries, i.e. land that has been covered by

cadastral mapping in four tribal districts of Orissa.

Figure 2. Legal land categories as per cadastral surveys in four forested districts of Orissa
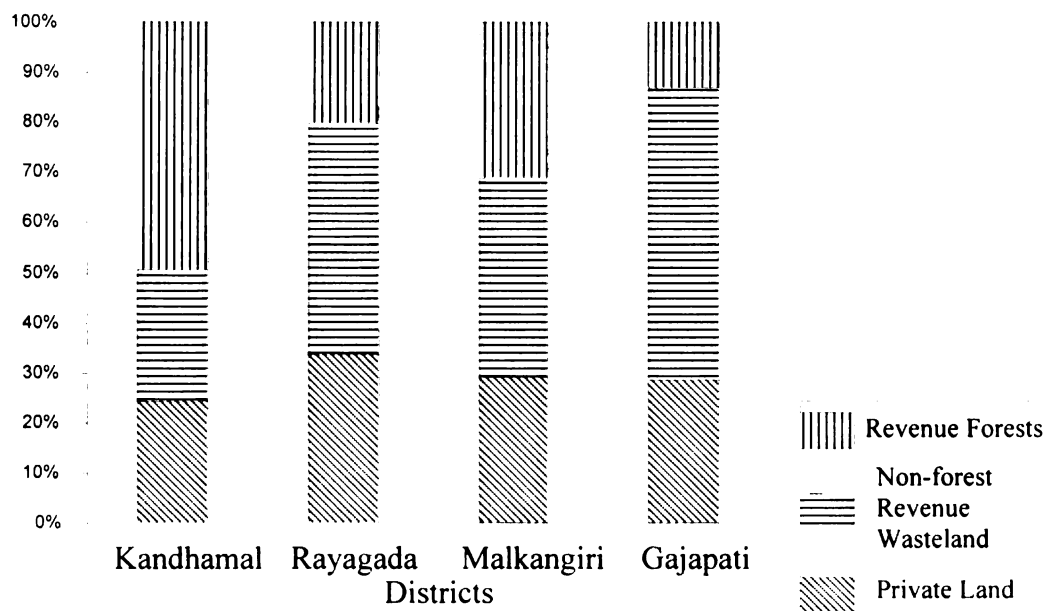
Areas covered by cadastral mapping do not include forests notified under forest laws[19]. As can be seen, the extent of state-owned land in the areas covered by survey and settlements in these districts ranges from 66 to 76 percent. In certain blocks[20] within these districts, the extent of government owned lands within village boundaries ranges from 83 to 87 percent. In other words, most of the land brought under survey and settlements was categorised as state owned land on which local people had no rights. Much of this land was under customary occupation for cultivation by local tribals.

Forest Notifications

Almost 40 percent of Orissa's land area is currently categorized as state-owned legal forest. After independence, in order to obtain quick legal control over forest areas notified by princely states and zemindaries, the Government of Orissa amended the forest laws to deem these forests as "reserved forests" or "protected forests" under the Indian Forest Act, 1927[21]. Since no proper rights settlements were carried out originally for these forest tracts, they contained populations and cultivation, including large areas of shifting cultivation. A forest enquiry committee set up by the Government of Orissa pointed out that that almost 40 percent of the lands categorized as legal forests in Orissa were barren lands and hills without forest vegetation, subject to shifting cultivation or "unauthorized" dry cultivation (GOI, 1958).

New legal forests under the forest laws were also created after independence, especially in the major shifting cultivation zones. Ostensibly this was carried out in

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[19] Cadastral mapping generally excludes areas which have already been notified as forest land under forest laws (Madras Forest Act, Indian Forest Act and Orissa Forest Act). However survey and settlements in Orissa also create land categories termed as "forests" inside village boundaries. All these lands categorized as forests by Survey and Settlements are considered as "legal forests" under Forest Conservation Act, 1980.

[20] Blocks are smaller subunits of districts and consist of a few hundred villages each.

[21] Section 20-A, Indian Forest Act, 1927

accordance with the procedures of rights settlements under the Indian Forest Act, 1927.
Case studies show that these procedures, especially settlement of rights, were not taken
up properly in many cases[22]. As in earlier forest notifications, settlements and cultivated
tracts were included within the legal forests. Large areas under shifting cultivation, which
had not been recognized as a valid land use practice, were also classified as legal forests
(GOO 1989a; GOO, 1989b; Kumar et al., 2005).

Due to these processes, hundreds of thousands of cultivators, especially from
tribal communities, were stranded on land categorized as state forests. In 1972, the
Government of Orissa acknowledged the problem of widespread settlement and
cultivation on legal forest lands. It initiated a process of identifying occupied forest lands
in order to settle them with eligible cultivators[23]. Shifting cultivation lands on hill slopes
were not considered eligible for such rights settlements and little progress was made in
this effort.

These efforts came to an end with the enactment of the Forest Conservation Act,
1980 (FCA) by the Government of India. This Act took away the power of the state
government to transfer forest land to any other land use, including settling it for
agriculture. It became extremely difficult for the state government to recognize the rights
of cultivators on forest lands, because to divert legal forests for any purpose requires
sanction of both the central government and the Supreme Court of India (see Rosencranz

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[22] Examples of poor rights settlements during forest creations are common. For instance, 30 villages were
included within the Baghnadi Reserved Forest of Kandhamal district by mistake, even though a thorough
survey was supposed to be carried out before creating the Reserved Forest (Kumar et al., 2008).

[23] The state government in a Policy Resolution dated 10th June, 1972, pronounced that encroached forest
areas by tribals, harijans and other landless persons would be released for settlement. The Government
issued executive orders for constituting Sub-Divisional Committees for undertaking comprehensive survey
of all forestlands to identify areas which would be set apart for agricultural use and areas which would be
managed as forests. This process was never completed.

and Lele, 2008). At the micro level, this means that cultivated lands wrongly categorized as legal forests, including those where no rights settlements have ever taken place, can no longer be settled with the cultivators. The impact of this law can be gauged by the fact that from the period 1980 to 2005, only 30 hectares of forest land in all of Orissa were settled with people occupying these lands.

IMPLICATIONS OF INTERNAL TERRITORIALISATION

The process of formalisation of land and forest tenure through state-led territorialisation had a major impact on the local land access and rights regimes in tribal Orissa. Most of the lands in these areas were converted to state ownership through survey and settlements and forest notifications. Small parts of the landscape were settled as private land with individual households, but often much of the land claimed by the inhabitants was classified as state land. We illustrate this through two village case studies where we compare the actual land use and claims on land with the formal rights created through survey and settlements and forest notifications. One case study of four villages is located in Kalahandi district and another case study of one village is located in Kondhmal district. Both cases are located in forested hilly tracts inhabited by tribals.

Kirkicha Microwatershed

Kirkicha watershed, located in the Thuamulrampur block of Kalahandi district, consists of four villages and large patches of legal forest. It consists of a long and narrow valley with a total area of 2652 acres, of which 1275 acres lie within the boundaries of the four villages. The rest of the area is categorized as reserved forest. The four villages have 129 households, mainly Kandh tribals. The majority of the families live below the poverty line and depend primarily on subsistence agriculture. The valley bottoms are

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used for terraced paddy cultivation and the hill slopes for shifting cultivation. Most households cultivate both valley lands and hill slopes. Paddy is the main crop from the valley lands whereas hill slopes are used to raise pulses, beans, minor millets and dryland rice.

Before independence, the area was under the jurisdiction of the Karlapat zemindari of the Kalahandi princely state. No survey and settlement had been carried out in the area before independence. In two of the four villages, Mohangiri and Khandala, the first survey and settlement was carried out in 1963 and a revisional survey and settlement in 1988-89. During the 1963 settlement, the lowlands were settled with the cultivators in the two villages and special records (Dongar Khasras) were prepared for hill slopes under the occupation of shifting cultivators. The Dongar Khasras were not treated as ownership rights (Sundarajan, 1963). In 1988-89, the government withdrew the Dongar Khasras for shifting cultivation and these lands became government land. Meanwhile the upper slopes of the hills were notified as Reserve Forests under the Orissa Forest Act, 1972. The other two villages, Ushamaska and Kirkicha, were surveyed for the first time in the 1990s and the final record of rights was published in 2002. Thus by 2002, the whole watershed had undergone land and forest settlement and formalization of rights over land and forest was completed. Each parcel of land was listed in the record of rights. As per the legal records, out of 2652 acres within the watershed area, only 158 acres of land, all of it in the valley, has been settled with the individual families living in the watershed. Another 56 acres of fertile paddy land in the valley has been settled in the name of the village deity and is effectively controlled by the powerful ex-zemindar of Karlapat watershed who doesn't live in the watershed. The rest of the land has been categorised as state land. As per the

official land records, 42 out of 129 households (32 percent) do not legally own any agricultural land.

However, the actual land use in the watershed does not match the formal records of ownership. A plot-by-plot analysis revealed that villagers living within the watershed actually cultivate as much as 707 acres of land, even though they legally own only 158 acres. The inhabitants of the watershed cultivate as much as 568.6 acres of government land (See Table 1 below).

Table 1.1 Kirkicha watershed legal land tenure and actual land use (acres)[1]

Official tenure status		Actual land use				
Legal Land Categories	Legal[2] Area	Permanent cultivation		Current shifting cultivation	Total Area under cultivation	Uncultivated (including SC fallows[3])
		Paddy land	Dryland			
Government land subtotal	**2438.0**	**26.7**	**240.8**	**301.2**	**568.6**	**1882.3**
Reserve Forest	1376.0	0.0	0.00	141.0	141.0	1235.1
Forests within cadastral Boundary	290.0	9.6	69.5	46.00	125.1	164.9
Non-forest	772.0	17.1	171.3	101.3	289.7	482.3
Unknown				12.9	12.9	
Private subtotal	**214.0**	**86.9**	**107.2**	**0.0**	**194.0**	**20.0**
Owned by Watershed families	158.2	31.1	107.2	0.0	138.3	20.0
Owned by local deity[5]	55.8	55.8	0.00	0.0	55.8	0.00
Total private and government	**2652.0**	**113.6**	**348.0**	**301.3**	**762.7**	**1902.2**

[1]Numbers may not sum accurately due to rounding.

[2]The legal area of private land, forest land inside village boundary, and non-forest government land was obtained from the Record of Rights for the four villages in the watershed. The area of forest land outside the village boundaries was obtained by subtracting the total area of the four villages from the total area of the Kirkicha Watershed as determined by Orissa Remote Sensing Agency (ORSAC). All the land outside the village boundaries are categorized as reserved or proposed reserved forests.

[3]The uncultivated area is mainly on the hill slopes. A part of this is under shifting cultivation fallows. The area of shifting cultivation fallows was not measured during the plot-to-plot survey.

[4]The ex-zemindar of the area lives in Karlapat, a nearby village and leases out these areas for cultivation to the villagers from the watershed villages on a sharecropping basis.

The plot-wise analysis reveals the disjuncture between the legal and de facto status of land use. This disjuncture exists even though the survey and settlement took place in two villages in the watershed in 1982 and the other two villages in 2002, just five years before the data were collected. A major reason for the discrepancy between the actual area cultivated and the area officially settled as private land with cultivators is that during the survey and settlement, occupancy rights over shifting cultivation were not recognized. Almost all families in the watershed are involved in cultivating land categorised as state land. However, the villagers point out that these are their customary lands, cultivated by their forefathers. Their claims over land are accepted by the other community members and neighbouring communities as valid and sacrosanct, yet in the eyes of the law, they are illegal.

Gaurigaon Village

Gaurigaon village is located in the western part of Kandhmal district and is inhabited by 29 families, all of whom belong to the Kandha tribe. Before independence, Gaurigaon came under the Baliguda Agency area, which was a part of the Madras Presidency and was transferred to the newly formed state of Orissa in 1936. No survey and settlement was taken up in Baliguda's remote hilly tracts before independence. The British also did not undertake any forest reservation in the Baliguda area.

The first regular survey and settlement operation in the sub-division was initiated in 1965 and completed by 1983. Under the survey and settlement all land that tribals were cultivating before 1969 was to be settled with the occupants as Raiyati (private) land (GOO, 1985). Land on the hill slopes under shifting cultivation was not taken into

consideration and was categorized as government land. The final record of rights for Gaurigaon was published in 1982.

As per the official records, the total area of the Gaurigaon village is 676 acres and of these 575 acres is government land and 101 acres of land is settled in the name of the cultivators. Most of these cultivators live in neighboring villages and only 44 acres is settled with the residents of Gaurigaon. As per official records, three households in the village are totally landless and another 22 own very little land. 87 percent (501.4 acres) of the government land is categorized as forest land.

The residents of Gaurigaon say that many of the villagers did not take the measurements and mapping under the survey and settlement seriously. In the words of a villager:

"It was our land, our forefathers' land; we have made the bunds and created the fields. Who can take it? We have been cultivating since the times of the British, these people have come and measuring the land, where will they take this land? We didn't know the importance of this measurement. Those who didn't bother to go and move around showing their lands to the measurement people didn't get legal rights over their land. Even then they gave rights over only the lowlands, and no pattas (titles) were given for uplands".

The villagers complain that the survey and settlement staff settled land cultivated by their ancestors with the neighbouring villagers, who are non-tribals, creating conflicts that continue to date. The settlement of tribal lands with non-tribals during the 1965-83 survey and settlement is common in Kandhmal district and has led to continuous strife between tribals and non-tribals.

Plot based analysis showed that apart from cultivating the 44.4 acres that they owned legally, the residents of the village were cultivating an additional 151.7 acres of government land (Table 2). Out of these, 60.6 acres were current shifting cultivation area[24]. All households in the village are involved in cultivating government lands on the hill slopes.

Table 1.2 Gaurigaon village legal land tenure and actual land use (acres) [1]

Official tenure status			Actual land use (acres)			
		Permanent cultivation		Current shifting cultivation	Total Area under cultivation	Uncultivated (including SC fallows[1])
Legal Land Categories	Legal Area	Paddy land	Dryland			
Government land subtotal	574.8	14.2	76.8	60.6	151.7[2]	423.1
Forest	501.4	6.1	64.0	60.6	130.8	370.6
Non-forest	73.4	8.1	12.7	0.0	20.8	52.5
Private subtotal	101.2	86.9	14.3	0.0	101.2	0.0
Owned by local residents	44.4	30.1	14.3	0.0	44.4	44.4
Owned by people in neighboring villages	56.9	56.9	0.0	0.0	56.9	56.9
Total private and government	676.0	101.2	91.1	60.6	252.9	423.1

[1] Numbers may not sum accurately due to rounding.
[2] The uncultivated area is on the hill slopes. A major part of this is secondary forests under a shifting cultivation fallows cycle. The area of fallows was not measured during the survey.

There has been no new immigration into the village since 1982 (when the survey and settlement was finalised), and therefore the discrepancy between the formal land records and actual land use reflects the claim of the villagers that most of their shifting cultivation land as well as land under permanent cultivation was not formally settled with them.

Although detailed plot-to-plot analysis for examining the discrepancies between the legal rights and the de facto actual rights was carried out in only these two case studies,

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[24] Areas which are currently being used for cropping and doesn't include the shifting cultivation fallows

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field visits and secondary information show that they exemplify the situation in much of the forested part of Orissa (Kumar et al., 2005). Almost 80 percent of the land in the forested districts of Orissa has been categorized as government land (forest and non-forests). In Kandhmal and Gajapati districts, this figure goes up to 85 percent. Satellite pictures show clearly that much of the government land in these areas, including legal forests, continues to be under shifting cultivation, short fallows or permanent cultivation (Kumar et al., 2005, Kumar et al., 2008). Landscapes including hill slopes continue to be under agricultural use, with the valley bottoms used for terraced rice cultivation, the lower slopes for various vegetables and dry land crops and the hill slopes for shifting cultivation (Kumar et al., 2005). However, the inhabitants have legal rights over land only on valley bottoms and parts of the lower slopes. Thus over a period of five decades after independence, the forested landscapes of Orissa, which were a complex mix of forests, shifting cultivation fallows and valley bottom agriculture, have been formalised into legal terrains of discrete forests, other government lands and privately owned agricultural lands. This transformation took place through the survey and settlements and forest notifications.

In the eyes of the state, these forested landscapes have been legally rationalized, with each parcel of land linked to clear rights and responsibilities codified formally in the Record of Rights and forest notifications. By law, cultivation on government land is illegal, and large numbers of people whose rights were not recognized have now become lawbreakers for living on and cultivating their ancestral lands. The criminalisation of the basic subsistence livelihood of vast number of people has inevitably led to constant conflict and contestations on the ground.

The most critical problems relate to the status of lands declared as legal forests under the forest laws or through the survey and settlement processes. The forest bureaucracy has been aggressive in asserting its control over legal forests and in trying to remove the people living on forest lands. It uses the stringent legal provisions in the forest laws, including court cases and fines for this purpose. The legal power to file cases against anyone caught felling a tree on any land gives local forest officials extraordinary capacity to harass shifting cultivators and extract rents. Plantations under various forestry programs are also commonly used to evict cultivators from legal forests. The conflict and tensions relating to forest encroachments and use and the resulting anger has been a major contributory factor for increasing left wing insurgency in these forested areas (GOI, 2006).

The Revenue Department manages all state-owned lands not transferred to the Forest Department. Land laws enable the Revenue Department to file cases against cultivators on government land and to evict them. It has the power to transfer or lease out any government land located in any village without the consent of the villagers. Thus the legal control of all the land except for the small area under private title has passed into the hands of state. One consequence is the state's ability not only to exclude the forest dwellers from these lands, but also to divert these lands to corporations and other private parties. This has been a major cause of conflict.

The lack of legal rights over land has also implied that the cultivators have little incentive to improve these lands. They cannot access either state support or bank loans for investing in these lands. Paradoxically, in this uncertainty over land rights, even development projects specifically designed for poverty alleviation and welfare of

marginal sections, including land development and ecological regeneration, often end up harming the poorest. We illustrate this below.

DEVELOPMENT INTERVENTIONS AND RIGHTS REGIMES

The non-recognition of customary rights regimes of indigenous people is a common feature across the world. The uniqueness of the Indian situation stems from the fact that the Indian Constitution provides strong protection to tribal rights over land and tribal development has been one of the stated priorities of the Indian state since independence. A separate Ministry of Tribal Development exists at the central government level and most states with large tribal populations have similar state-level ministries. Tribal development is an integral and privileged part of the Indian development discourse. Billions of rupees have been spent on poverty alleviation in the forested areas with a large number of development programs being launched and implemented. Special bureaucratic offices such as Integrated Tribal Development Agencies have been created for development of tribal dominated areas and special development projects have been launched for the "primitive tribal groups". However, almost none of these programs and initiatives, including programs focused primarily on land development and forestry, take into account the contested nature of the land rights regime.

In Orissa, land based development programs include watershed development programs, social forestry, and Joint Forest Management (JFM), among others. Six watershed development programs with an estimated budget of more than five billion rupees (about $100 million) covering almost a million hectares are being implemented in the state, with the explicit objectives poverty alleviation and sustainable development through a participatory approach. Joint Forest Management has been taken up as a

participatory program for forest conservation in which the state supports development

activities in villages and provides access to forest products in exchange for villagers'

protection of state owned forests. JFM in Orissa also has a budget running into billions of

rupees. Land based development activities are also taken up through programs such as

National Rural Employment Guarantee Scheme (NREGA).

Most of these programs are implemented on the basis of the formal land rights

regime, which as shown above, often diverges greatly from the actual land use existing

on the ground. Attempts to carry out program activities such as plantations on cultivated

land formally categorised as state land but actually in the possession of individuals or

communities often lead to conflicts. In many cases such conflicts have led to

dispossession of cultivators, clashes, forced migration and even arrests. There has been

no systematic study of extent of such cases, but documented examples from different

parts of Orissa are listed in Table 3.

Table 1.3 Examples where development program interventions have led to dispossession and conflict

Location	Prog. Intervention	Program	Impact
Dekapar, Koraput district	Forestry plantations (142 acres)	Soil conservation, JFM	Loss of customary shifting cultivation land; 23 families migrated out of village as these lands were only source of livelihood ((Kumar et al., 2005)
Podagarha, Koraput district	Cashew plantation (150 acres)	Soil conservation	Loss of land access; cashew plantation leased out to a corporation; villagers can't access the land or plantation ((Kumar et al., 2005)
Kirkicha, Kalahandi district	Forest plantation	JFM	Loss of cultivated land; conflict (Kirkicha case study)
Kadalibadi, Keonjhar district	Afforestation	Compensatory afforesation	Loss of prime cultivation land for Juang tribals (classified by state as a Primitive Tribal Group or PTG). Starvation and malnourishment (Rath, 2005)
Benyamaliguda, Koraput district	Effort to carry out forestry plantations	Regional Long Term Action Plan (RLTAP)	Village opposing plantation physically attacked by Forest Department personnel; houses burnt down, one minor girl seriously injured; two villagers arrested (*The Pioneer*, 2008)

Anecdotal accounts of similar cases are common across Orissa's forested areas.

Similar conflicts have been reported from across the country (Sarin, 2005; Dreze, 2005;

Ghosh, 2006). For instance, in neighboring Andhra Pradesh, the Forest Department has

used the JFM program to evict vulnerable tribal shifting cultivators from 37,000 ha. of

forest land (Sarin et al., 2003; Blaikie and Springate-Baginski, 2007).

Even where program implementers may try to take into account the issue of

ambiguous land rights, they are stymied by diverse legal barriers embedded in the formal

tenure system. For instance, in both Kirkicha and Gaurigaon, the case studies discussed

above, efforts to address the land tenure issue are blocked because of the provisions in

national and provincial laws. Table 4 illustrates this:

Table 1.4 Conditions and procedures for assigning title to farmers cultivating government land in study villages

Government land Category		Cultivated area (acres)		Total	Legal requirements for settling in the name of cultivator
		Kirkicha	Gourigaon		
Forest		266.1	133.0	399.1	Requires permission from both Government of India and the Supreme Court of India[1]
Non-Forest	Objectionable[2]	244.2	19.5	263.7	Cannot normally be settled with cultivators according to Revenue procedures
	Non-objectionable[3]	45.5	3.4	48.9	Can be settled with cultivators who meet eligibility requirements
Total		**555.7**	**155.9**	**711.6**	

[1]Forest Conservation Act, 1980 is applicable to these areas. Any non-forestry (legally valid) use of these areas for requires the permission of MOEF, GOI, which is very difficult to obtain.

[2]Objectionable: These are government lands categorized either as uncultivable wastelands or as Reserved lands which as legally can't be settled with a person cultivating these lands in normal course. To settle these lands with cultivators need special and difficult procedures.

[3]Non-objectionable: These are lands which can be settled with a person occupying such land provided the person meets the eligibility criteria provided in the laws.

As per our reading of the legal situation, out of the 711 acres of government land under cultivation, only 49 acres of land (non-objectionable, non forest) can be settled with cultivators under the current laws in normal circumstances. Thus even though government funded watershed development projects have been functioning in both case study areas since 2005, no progress has been made in taking up any substantial land based initiative for poverty alleviation. The territorialisation processes undertaken in these study areas over the last four decades created a complex tangle of legal barriers which make it almost impossible for the inhabitants to obtain legal recognition of their rights over the land they occupy.

CONCLUSIONS

In this paper we demonstrate how internal territorialisation for formalization of land and forest rights led to non-recognition of customary land use of inhabitants of the forested landscapes of Orissa, and created a disjuncture between formal rights regimes and the de facto land use. Non-recognition of customary rights in forested areas is common across the world (RRI, 2009). However, most prominent examples of such non-recognition have mostly been the result of blanket declaration of vast areas as state property, often under the principle of "terra nullius (nobody's land)" applied on "deserted or uncultivated land" as in Australia (Ritter, 1996) or through coercive treaties with indigenous people as in North America and parts of Africa (Langton et al., 2004). These were territorialisation processes on a large scale, with none of the minute attention to detail as in the case of the Indian processes of territorialisation.

In contrast, Indian forested landscapes have been measured and surveyed thoroughly with elaborate processes of rights recognition completed through massive exertions of

administrative efforts. The laws and policies which frame the territorialisation process have no explicit agenda of dispossessing the forest dwellers of their lands. The post-colonial laws laid down elaborate procedures to ensure that rights over land are settled. Yet, the evidence in this paper shows that rights over much of the land in the forested landscapes remained unrecognised through a complex conjuncture of laws, policies, procedures and local contexts. The formalisation of rights carried out through detailed process became instrumental in de-recognising certain forms of rights and claims of the forest dwellers.

At the same time, precisely because the territorialisation exercises have been carried out so minutely, the non-recognition of rights becomes invisible to the administration and policy makers, and the illegality of forest dwellers becomes normalised. The discursive power of legal landscapes, wherein maps, records and data represent the landscapes to the administration, further add to the invisibility of the non-recognition of rights.

The non-recognition of rights can be partly attributed to the political marginalisation of the forest dwellers and their inability to influence policy. Large-scale collectively organized resistance to the imposition of formal rights and the resultant dispossession has not occurred except in a few cases. Normally, the government's assertion of its control on state land and exclusion of local people is fragmented and creeping. Local people's existing land uses, even though deemed illegal, are allowed to continue, mostly without much interference. Often, the cultivator is not even informed of the change in legal status of land. Evictions, as illustrated in the examples, are small in scale and sporadic. Mass evictions only occur for major projects such as dams or industrial development. These mass evictions, which affect both private and state land, lead to resistance which is often

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quelled by the state through police force and coercion[25]. The use of coercion in such

situation illustrates the de facto power relationship between the state and its marginalised

citizens when structural issues of land are involved. Welfare-oriented development

processes, including land based programs, operate in this larger environment. Many

scholars have commented on development being apolitical or even anti-political

(Ferguson, 1994, Mosse, 2005) wherein programs focus on techno-managerial solutions

instead of engaging with issues of power or reasons of inequality and resource

deprivation. A broad set of incentives and drivers lead development planners and policy

makers to focus on interventions that require large funding outlays and focus on

enhancement of resource productivity without questioning who controls that production.

Rent seeking opportunities create strong vested interests in fund-intensive activities, with

little incentive to address structural problems such as land rights. Given this broader

context, it is not surprising that issues of land rights and access are overlooked and

government-mandated physical targets for development programs often result in

evictions and exclusions.

Struggles over land rights are perceived as radical politics to be kept at arm's

length[26]. The civil society organizations including NGOs, except for a few, have also kept

their distance from these issues. In many of India's forested areas including Orissa, the

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[25]Almost all efforts to acquire large areas of land for projects in forested areas throughout India have faced mass resistance. In Orissa there are many examples. For instance, almost half the land area acquired for the Kalinganagar industrial estate in Orissa was state land cultivated by local tribals. The attempt to evict the tribals led to killing of thirteen people in police firing (Padhi and Adve, 2006). Similarly efforts to acquire land for a factory and a bauxite mine in Kashipur, Rayagada district, led to resistance which resulted in killing of three people in police firing (Padel and Das, 2007).

[26] The issues of Kalinganagar, Kashipur and similar movements of resistance over land and displacement find no mentions in the development discourse of donors and funding agencies. The political economy of funding and state control over funded NGOs also means that most of them do not get involved in these movements.

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vacated political space has been slowly appropriated by the radical left formations believing in armed revolution.

The issue of tenure and rights over forests and land becomes even more crucial with the increasing emphasis on forests and plantations as sinks for carbon, as evidenced by the negotiations on carbon sequestration and various carbon offset schemes based on plantations. As carbon sequestration through trees and forests becomes more valuable, demand for creating plantations for carbon sequestration will increase and this will further aggravate the unstable situation in forested landscapes and lead to further marginalisation of forest dwellers.

To address these critical issues in forested landscapes, several approaches need to be combined. These include creating alternative narratives that problematise the legal construction of forested landscapes, coalition building across locations and scales, and political mobilizations to demand reforms. Grounded research can help develop coherent alternate narratives by investigation of internal territorialisation processes and providing verifiable evidence and arguments to illustrate their contradictions. A complementary strategy would be to take the findings from such deconstructions to those actors who can use this information to seek policy changes. These include sympathetic policy makers, others in the political leadership, civil society actors, and grassroots organizations working on land issues. For example, the findings discussed in this paper have been shared extensively with policy makers (including a parliamentary committee), media, civil society actors and grassroots organisations. Along with similar research from other

parts of the country, the sharing helped create alternate narratives which in turn played an important role in the enactment of India's Recognition of Forest Rights Act, 2006[27].

Issues of land and forests rights and access need to be central in development interventions in forested areas, including action oriented research which can help identify the complex genealogies of rights regimes and their implications on access to productive resources for the poor. The inclusion of pro-poor tenurial issues within the ambit of development interventions may be the most useful means to address poverty as well as ecological degradation in the forested landscapes.

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[27] Please see Sarin, 2005, Sarin (Forthcoming), Kumar and Kerr (Forthcoming) for overviews of the enactment of this law, and the manner in which grounded research was used to change the dominant discourse about the construction of legal forests.

REFERENCES

Bailey, F. (1960) <u>Tribe, Caste and Nation. A Study of Political Activity and Political Change in Highland Orissa</u> Manchester, UK: Manchester University Press.

Behuria, N. C. (1964) <u>Final report on the major settlement operation in Ganjam ex-estate areas, 1938-1962</u> Cuttack: Board of Revenue Orissa.

Blaikie, P., Springate-Baginski, O. (2007) <u>Forests, People and Power: The Political Ecology of Reform in South Asia</u> Earthscan: London and Sterling, VA.

Brookfield, H., Padoch, C. (1994) Appreciating agrodiversity: A look at the dynamism and diversity of indigenous farming practices. <u>Environment (Washington DC), 36(5), 6-11.</u>

Conklin, H. (1957) Hanunoo Agriculture. <u>FAO Forestry Development Paper, 12.</u>

Dar, S., Cooke, B. (2008) <u>The New Development Management</u> London and New York, Zed Books

Darlong, V. (2004) <u>To Jhum or not to Jhum: Policy Perspectives on Shifting Cultivation.</u> Guwahati: The Missing Link (TML).

De Haan, A., Dubey, A. (2003) <u>Extreme deprivation in remote areas in India: Social exclusion as explanatory concept.</u> Paper presented at the Conference 'Staying Poor: Chronic Poverty and Development Policy', University of Manchester.

Deininger, K. (2003) <u>Land policies for growth and poverty reduction</u> Washington DC: World Bank Publications.

Dreze, J. (2005) <u>Tribal Evictions from Forest Lands</u> New Delhi: National Advisory Council, GOI.

Dubois, O. (2002) <u>Forest-based poverty reduction: A brief review of facts, figures, challenges and possible ways forward.</u> Paper presented at the International Workshop on Forests in poverty reduction strategies: Capturing the potential, 2001-2002.

Ferguson, J. (1994) <u>The anti-politics machine:" development," depoliticization, and bureaucratic power in Lesotho.</u> Cambridge: Cambridge University Press

Gadgil, M., Guha R. (1997) <u>This Fissured Land: An Ecological History of India</u> Berkeley: University of California Press.

Ghosh, S. (2007) Commons Lost and 'Gained'? Forest Tenures in the Jungle Mahals of South West Bengal Norwich: Overseas Development Group, University of East Anglia.

GOI. (1986) Report of the Study Group on Land Holding Systems in Tribal Areas New Delhi: Planning Commission of India.

GOI. (2006) Development Challenges in Extremist Affected Areas- Report of An Exxpert Committee to Planning Commission New Delhi: Planning Commission of India.

GOO. (1940) The Partially Excluded Area Enquiry Report. Cuttack: Government of Orissa Press.

GOO. (1958) Report of the Administration Enquiry Committee. Bhubaneswar: Revenue Department, Government of Orissa.

GOO. (1959) Forest Enquiry Report. Cuttack: Government of Orissa Press.

GOO. (1977) Consolidated Working Scheme for Parlakhemundi Division (1977-78 to 1996-97) Cuttack: Working Plans Circle, Forest Department, Orissa.

GOO. (1985) Draft Report of First Major Survey and Settlement in Kandhamal district (1965-1982), (Unpublished) Cuttack: Dept of Revenue, Orissa Government Press.

GOO. (1989a) Working Plan for Baliguda Division. Cuttack: Working Plans Circle, Forest Department, Orissa.

GOO. (1989b) First Working Plan for The Reserved Forests of Rayagada Forest Division 1990-91 to 1999-2000. Cuttack: Working Plans Circle, Forest Department, Orissa.

Grove, R. (1995) Green imperialism: colonial expansion, tropical island Edens and the origins of environmentalism. Cambridge: Cambridge University Press

Habib, I. (1999) The Agrarian System of Mughal India 1556-1707 New Delhi: Oxford University Press.

Harriss-White, B. (2003) India Working: Essays on Society and Economy Cambridge: Cambridge University Press.

IFAD. (1998) India: Completion evaluation of Orissa development project: seven lessons learned. International Fund for Agricultural Development. (Accessed July 10, 2009, from the World Wide Web: http://www.ifad.org/evaluation/public_html/eksyst/doc/agreement/pi/orissa.htm)

Kain, R., Baigent, E. (1992) The cadastral map in the service of the state: a history of property mapping Chicago:University of Chicago Press.

Kidd, C., Pimentel, D. (1992) Integrated resource management: agroforestry for development San Diego: Academic Press.

Kumar, K., Behera, S., Sarangi, S., Springate-Baginski, O. (2008) 'Historical Injustice' The Creation of Poverty through Forest Tenure Deprivation in Orissa (UEA DEV Working Paper) Norwich: University of East Anglia.

Kumar, K., Choudhary, P., Sarangi, S., Mishra, P., Behera, S. (2005) A Socio-Economic and Legal Study of Scheduled Tribes' Land in Orissa. Unpublished Study Commissioned by World Bank Washington.

Kumar, K., Giri Rao, Y., Sarangi, S. (2004) Orissa (India) Case Study Report: IUCN's Sustainable Livelihoods, Environmental Security and Conflict Mitigation Project. Bhubaneswar: Vasundhara.

Kumar, K., Choudhary, P.R., Kerr, J. (2004) Tenure and Access Rights as Constraints to Community Watershed Development in Orissa, India in "The Commons in an Age of Global Transition: Challenges, Risks and Opportunities," the Tenth Conference of the International Association for the Study of Common Property, August 9-13., Oaxaca, Mexico.

Kumar, K., (Forthcoming) Democratic Assertions:Historical Injustices and the Making of India's Forest Rights Act.

Kunstadter, P., Chapman, E., Sabhasri, S., Mai, M. (1978) Farmers in the Forest: Economic Development and Marginal Agriculture in Northern Thailand Honolulu: University Press of Hawaii.

Langton, M, Tehan M, Palmer L, Shain, K. (2004) Honor Amongst Nations:Treaties and Agreements with Indigenous People. Victoria, Melbourne University Press

Mahapatra, L. (1997) Tribal Rights to Land and the State in Orissa. In P. M. Mohapatra & P. C. Mohapatro (Eds.), Forest Management in Tribal Areas: Forest Policy and Peoples Participation. Proccedings of the Seminar "Forest Policy and Tribal Development, 15-16th February, 1994, Koraput. New Delhi: Concept Pub. Co.

McNeely, J., Scherr, S. (2003) Ecoagriculture: strategies to feed the world and save wild biodiversity: Island press.

MOEF, GOI. (2004) Lok Sabha Starred Question No 284 by Sri. Tathagat Satapathy to be answered on 16-08-2004. New Delhi: Lok Sabha, New Delhi.

Mosse. David (2005) Cultivating Development: An Ethnography of Aid Policy and
Practice. London: Ann Arbor, MI.: Pluto Press.

Padel, F. (1995) The sacrifice of human being : British rule and the Konds of Orissa.
Delhi ; New York: Oxford University Press.

Padel, F., Das, S. (2007) Adivasis Shining: Standing up to the Face of an Invasion of
Aluminium Companies in Orissa in Nationalizing Crises: The Political Economy of
Public Policy in Contemporary India, New Delhi: Atlantic Publications.

Padhi, R., Adve, N. (2006) Endemic to Development: Police Killings in Kalinga Nagar.
Economic and Political Weekly, 41(3), 186.

Ramakrishnan, P. (1992) Shifting Agriculture and Sustainable Development: An
Interdisciplinary Study from North-Eastern India Paris:UNESCO.

Ramdhyani, R. K. (1949) Report on Land Tenures and Revenue Systems or Orissa and
Chattisgarh State. Berhampur: ILP Press.

Rangarajan, M. (1996) Fencing the forest : conservation and ecological change in India's
Central Provinces, 1860-1914. Delhi : New York: Oxford University Press.

Rath, B. (2005) Vulnerable Tribal Livelihoods and Shifting Cultivation: The Situation in
Orissa. Bhubaneswar: Vasundhara.

Rosencranz, A., Lele, S. (2008) Supreme Court and India's Forests. Economic and
Political Weekly, 43(5), 11.

RRI. (2009) Tropical Forest Tenure Assessment: Trends, Challenges and Opportunities.
Presented in The International Conference on Forest Tenure, Governance and
Enterprise: New Opportunities for Central & West Africa May 25 - 29 2009, Hôtel
Mont Fébé, Yaoundé, Cameroon. Washington DC: Rights and Resources
Initiatives.

Sarin, M. (2005) Laws, lore and logjams: critical issues in Indian forest conservation:
London:International Institute for Environment and Development.

Sarin, M. (Forthcoming) Undoing Historical Injustice - Reclaiming Citizenship Rights
and Democratic Forest Governance through the FRA. In S. Lele (Ed.), Beyond
Joint Forest Management: Rethinking the Forests Question in India. Delhi: Sage
Publications.

Sarin, M., Singh, N., Sundar, N., Bhogal, R. (2003) Devolution as a Threat to
Democratic Decision-making in Forestry?: Findings from Three States in India
London: Overseas Development Institute.

Schmidt, R., Berry, J., Gordon, J. (1999) Forests to fight poverty: creating national strategies New Haven: Yale University Press.

Scott, J.(1999) Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed New Haven: Yale Univ Press.

Sivaramakrishnan, K. (1999) Modern Forests: Statemaking and Environmental Change in Colonial Eastern India: Stanford University Press.

Sivaramakrishnan, K. (2000) Crafting the Public Sphere in the Forests of West Bengal: Democracy, Development, and Political Action. American Ethnologist, 27(2), 431-461.

Skaria, A. (1999) Hybrid histories: forests, frontiers and wildness in western India: Delhi: Oxford University Press.

Sundarajan, S. (1963) Final report on the Survey and Settlement of the Kashipur, Karlapat, Mahulpatna and Madanpur-Rampur Ex-Zemindaries in the District of Kalahandi. Cuttack: Orissa Government Press.

Sunderlin, W., Hatcher, J., Liddle, M. (2008) From Exclusion to Ownership?: Challenges and Opportunities in Advancing Forest Tenure Reform Washington DC: Rights and Resources Initiative.

Sunderlin, W. D., Angelsen, A., Belcher, B., Burgers, P., Nasi, R., Santoso, L., Wunder, S. (2005) Livelihoods, forests, and conservation in developing countries: An Overview World Development, 33(9), 1383-1402.

Vandergeest, P., Peluso, N. L. (1995) Territorialization and State Power in Thailand Theory and Society, 24(3), 385-426.

The Pioneer (2008)Villagers 'abducted' by forest officials, booked in false case August 27.

White, A., Martin, A. (2002) Who owns the world's forests? Forest tenure and public forests in transition. Washington DC: Forest Trends.

World Bank (2003) World development report 2003: Sustainable development in a dynamic world: transforming institutions, growth, and quality of life. Washington, DC: The World Bank; New York: Oxford University Press.

World Bank (2004) Sustaining forests: A Development Strategy. Washington, DC: The World Bank.

CHAPTER 2

DEMOCRATIC ASSERTIONS: THE MAKING OF INDIA'S RECOGNITION OF FOREST RIGHTS ACT

Abstract

Inclusion of marginalised sections and minorities one of the most vexing problem faced by democratic polities. In this paper, I discuss the enactment of a recent Indian law, "The Scheduled Tribes and Other Forest Dwellers (Recognition of Rights) Act, 2006," as an example of inclusion of marginalized groups in democratic processes. This law was enacted in response to a nationwide mobilization of marginalized forest dwellers and their advocates demanding rights over forests. Grassroots level formations representing forest dwellers came together across scales and spaces to form a network that successfully negotiated the democratic politics of India to obtain this law. The case illustrates the role of grassroots mobilizations in creating alternate discourses of legitimacy, networking across scales and spaces and using spaces provided by representative democracy to include the voices and demands of the marginalised in democracies.

INTRODUCTION

An Act to recognize and vest the forest rights and occupation in forest lands in forest dwelling scheduled tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded.... And Whereas the forest rights on their ancestral lands and habitats were not adequately recognized in the consolidation of state forests in the colonial as well as in independent India resulting in historical injustices to the forest dwelling scheduled

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tribes and other forest dwellers who are integral to the very sustainability and survival of the forest ecosystem [Preamble of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006].

In 2002, the Ministry of Environment and Forest (MOEF), Government of India (GOI) issued an order to the state governments asking that all illegal encroachers from state forest lands be evicted within six months. The effort to implement this circular was a tipping point in the longstanding politics of forest governance and exclusion in India that eventually led to the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, hereafter referred to as RFRA. This law was enacted in response to a nationwide mobilization of marginalized forest dwellers, and represents a rare occasion in Indian democracy when an important national legislation reflects the demands of the marginalized.

In this paper, I analyze the processes that led to this law and show how coalitions of grassroots organizations used spaces provided by representative democracy to enhance voice and inclusion of the marginalized. Networks of place-based social movements and civil society actors were able to weave together discourses of injustice, exclusion and claim-making with astute advocacy and politics to pull off an important concession for the most marginalized and voiceless sections of Indian society.

The paper briefly discusses the background to the campaign for enactment of the RFRA and the coalescing of the coalitions pushing for the law's enactment. I show how the Campaign for Survival and Dignity (CSD), a coalition of more than 200 grassroots and activist organizations from across the country, exemplifies social movement networks, and I discuss its role in clawing a progressive legislation in the face of

considerable opposition. The paper draws on three main sources of data: analysis of the listserv *Forestrights*, interviews with key protagonists, and my own participation and observation of the mobilization leading to the enactment of the forest law. I was a member of the CSD both at national level and in the state chapter of Orissa, and participated in many of their meetings and mobilizations during 2005-2006.

INCLUSION OF THE MARGINALIZED: POLITICS FROM THE GRASSROOTS UP

Inclusion of marginalized sections of society remains a paradox for democratic politics, both in theory and in political practice (Young, 2000). Inclusion also becomes a critical question for the marginalized whose lives and wellbeing are linked to their ability to have substantive say in public decisions that affect their lives. The high modernist developmental state with its tendency for top-down reconstruction of societies through the instrumentality of the bureaucracy sees poor people as passive subjects of development instead of active citizens participating in government (Scott, 1999). In most developing countries, elite capture of the state, low literacy rate, absence of substantive land reforms and other structural factors have led to relative marginalization of the greater part of the population, while small sections have prospered (Bardhan, 1999). The material and cultural resources, institutional access and the dense networks and connections across locations and scales that the elites can draw on (Moore, 1979; Knoke, 1994) to obtain favourable policies and changes are not available to the poor. This implies that collective mobilization is often the most important means that marginal sections can use for getting changes in their favor.

Ordinary people use contentious politics through collective mobilization or struggles in attempts to make governments account for their voices and aspirations (Tarrow, 1994).

Contentious politics become movements when they are backed by social networks and alternate discourses and symbolism, and enter into sustained interaction against perceived opponents (Tarrow, 1994). Yet, the politically marginalized face difficulties in entering and sustaining the politics of contention and ensuring substantive changes at higher political scales due to lack of literacy and resource constraints that make transaction costs of collective action prohibitive. Their marginalization and lack of access to capabilities and resources becomes a major hindrance in their ability to carry out effective collective mobilization. This is especially true of struggles of people such as the forest dwellers and tribals in India, whose lifescapes[28] are marginal to the dominant sections, except as sites of extraction.

Many issues confronted by the poor and marginalized are entangled in institutions and processes of governance at different scales and locations, including at the national and international levels. The complex and multi-scale nature of governance structures creates obstacles for place based social struggles trying to bring change in state policy through the politics of collective action. To address this problem, grassroots mobilizations of marginalized people have increasingly tied up with other similar struggles and civil society organizations to be able to reach across scales and spaces. This has been facilitated through proliferation of communication and knowledge domains, aided by rapid communication through the Internet.

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[28] Lifescape is a term from social anthropology used to frame the complex interrelationship between the people, places and production systems (Some and McSweeney, 1996).

New forms of mobilization of the marginalized are coming into being that are as embedded in place[29] based politics as they are in national and global politics. The increasing ability of locally-based grassroots organizations representing poor and marginalized sections to link with each other and other actors in open-ended and spatially dispersed networks allows such formations to draw both on the strengths of local, mass-based political organizing and on the flexibility and reach of networks over scale and space (Escobar, 2008). Increased ability to communicate and deliberate across scales and locations has allowed collaboration of such struggles with other actors who share similar commitments and worldviews (Keck and Sikkink, 1998). This provides novel modes for the politics and struggles of marginalized people to traverse political decision making across scales and to cut across the traditional, hierarchical networks of information, power and authority. It also makes it possible for such formations to access expertise and knowledge to comprehend and negotiate the complex dynamics of governments and policy making. In India, the cross-scale coalitional network that was instrumental for the passage of the RFRA managed to combine traditional grassroots organizing with flexible, open-ended network across space and scale to create a formidable instrument of change on behalf of the marginalized forest dwellers.

The literature on social movements provides theoretical concepts to help understand these networks. These include concepts of shared discourses, ideologies, and identities which outline and define collective action frames (Snow et al., 1986); mobilizing structures of networks and face-to-face groups; forms of mobilization, issues of

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[29] The notion of place here is drawn from Escobar, for whom place means the "the engagement with and experience of a particular location with some measure of groundedness (however unstable), boundaries (however permeable) and connections to everyday life, even if its identity is constructed and never fixed" (Escobar, 2008).

representation and internal democracy, communications across space and scales, processes of decision-making (Tarrow, 1994). The concept of "campaign" used by Keck and Sikkink (1998) becomes especially useful in this context. A number of actors, including grassroots mobilizations and advocacy networks with shared ideologies often come together in networks in "campaign modes" on certain issues. Keck and Sikkink (1998) describe campaigns as sets of strategically linked activities in which members of diffused networks develop explicit, visible ties and mutually recognized roles in pursuit of a common goal. New linkages and networks may emerge through such processes around common and shared understanding. In turn, campaigns may lead to emergence of shared subjectivities which then feed back into the process of change and collective action (ibid.).

I use the example of the Campaign for Survival and Dignity (CSD), which led to the enactment of the RFRA, 2006, as an illustration of a networked movement created through combining grassroots place based struggles of marginalized with flexible, open-ended networking across space and scale. Along with the well-recognized importance of framing and construction of alternate discourses, the chapter also brings to the fore the ability of such networks to transcend scales of governance, reach diverse audiences and pull together resources and knowledge to achieve substantial change in favor of the marginalized.

I discuss the dynamics leading to the enactment of the RFRA and then analyze three key aspects of the campaign leading to it: 1) the nature of the emergent network of the marginalized forest dwellers and their allies, 2) the firming up of a frame of legitimacy

and justice and its circulation, and 3) the critical role of the politics of mass mobilizations at different locations and scales in obtaining legitimacy.

THE SETTING AND THE CASE

Locating the Marginalization of the Forest Dwellers in India

Forest dwellers and populations living adjacent to forests are amongst the poorest of the poor in India (Kapur et al., 2003). These include communities designated as tribal[30] by the Indian Government, as well as many other communities and groups including dalits[31]. They are subsistence cultivators and forest product gatherers, deeply dependent on land and forest resources for their livelihoods. Their rights and usage of forests has been expropriated and negated by both the colonial and the postcolonial state through the exercise of exclusionary colonial forest laws. The practice of forest governance on the ground was characterized by conflicts, contestations, and exclusion of the forest dependent communities (Pathak, 1994; Bijoy, 2008).

By 1950-51, about 71.8 million ha (approximately a quarter of India's land area) was claimed to be legal forest as per the data of the Ministry of Environment and Forests, GOI (FSI, 2003). One consequence of the manner in which legal forests were created was that millions of people still live on and cultivate forest lands. Recent scholarship shows that various factors, including blanket declaration of legal forests[32], non-recognition of

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[30] A large part of forest dwellers and dependent populations are tribals. More than half the tribal population of India is below the official poverty line, compared to less than one-third of the rural population as a whole (Kapur Mehta and Shah, 2003). In Orissa, three out of four tribal households are below poverty line (De Haans and Dubey, 2004).

[31] Dalit (literal translation oppressed) is a term used for castes which are at the bottom of the caste hierarchy. The Indian Constitution provides special protection and affirmative action for both the dalits (officially called scheduled castes) and tribals (official listed as scheduled tribes).

[32] Please see Sarin (2005) as well and Kumar et al (2005) for descriptions of such blanket declarations in Himachal Pradesh, Uttarakhand and Orissa.

customary land use such as shifting cultivation[33] and hunting-gathering, poor settlement

of forest rights[34] and administrative confusions over the status of land[35] are responsible

for this situation. The existing forest laws have criminalized livelihoods and contributed

to the marginalization of millions of forest dwellers.

The increasing emphasis on conservation by both the Government of India[36] and the

Supreme Court after the 1980s expanded the legal definition of forests and made it very

difficult to provide rights to people living on or cultivating forest lands (Rosencranz and

Lele, 2008). The Supreme Court, influenced by powerful conservationist lobbies, has

struck down efforts by the executive branch to try to address this problem, ignoring the

highly complex and problematic forest tenure and rights issues on the ground (Sarin,

2005). The strong pro-conservation stance of the Supreme Court led to a more powerful

forest bureaucracy, which treated the people living on forest lands as illegal encroachers

and made their evictions a priority.

The forest laws and policies have intersected with local power dynamics to affect the

forest dwellers in diverse ways. The criminalization of their livelihood and survival

activities makes it easy for petty government officials to exploit them (Kumar et al.,

2005, Sharma, 1990, Fernandes et al., 1988). Illiteracy aggravates their inability to

negotiate formal legal systems and accentuates their vulnerability. Local elites

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[33] See Kumar et al. (2005) for recent conversion of customary shifting cultivation to state owned forests in Orissa. See Darlong (2004) for shifting cultivation tenure in North-East India. See Rangarajan (1996), Sravanan (1998), Pratap (2000) and Skaria (1999) for a discussion of how the British dealt shifting cultivation.

[34] See Kumar et al. (2008) for examples of faulty description of forest reservation in Orissa.

[35] See Garg (2005) for description of disputed lands (orange areas) in MP and Chattisgarh, Kumar et al. (2005) for Orissa, Ghosh (2007) for West Bengal, Sarin 2005 for an Indian overview.

[36] The GOI passed the exclusionary Wildlife protection Act in 1972 (see Sabharwal et al., 2001 as well as the Tiger Task Force Report (GOI, 2005) for the exclusions and conflicts caused therein). In 1980, it passed the Forest Conservation Act, 1980 which further enhanced the powers of forest bureaucracy (see Sarin et al., 2003).

collaborate with the state apparatus to control and exploit them. Often they are displaced or evicted from their lands without compensation. The efforts to evict them from legal forests accelerated in the late 1990s and culminated in an order to evict all "illegal" forest dwellers from forest land in 2002.

Localized organized resistance and mobilization against exclusions in forested areas has existed since colonial periods. In recent years, as the levels of exclusion and dispossession have increased, local resistance and mobilization have intensified in different parts of the country. The grassroots organizations and movements[37] struggling for the rights of the forest dependent poor aimed to come together at the national level to ensure that the issue of forest land rights would be addressed. Pushed by these efforts and the interest taken by the then Scheduled Tribe Commissioner, GOI (a constitutional authority), a series of circulars was issued in 1990 which provided guidelines to the state governments to regularize eligible forest land in occupation of forest dwellers and to provide rights on these lands. Unfortunately, these were implemented in a limited manner and had little impact in many parts of India.

State Overreach Creates a Campaign Issue

The matter came to a head in 2002 with the Ministry of Environment and Forest (MOEF)'s order for evictions of all forest encroachers within a period of six months. Immediately after the eviction order, there were efforts to forcefully evict people living on or cultivating forest lands. The Forest Department set houses of forest dwellers on fire and razed crops in the states of Assam, Rajasthan, Madhya Pradesh and Gujarat. In 2004,

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[37]Some of the movements and organizations working at grassroots included Kashtkari Sangathana, Maharastra; Adibasi Mukti Sangathan, MP; Jan Sangharh Morcha, MP; Bharat Jan Andolan and a number of other small and large formations.

the MOEF admitted that people occupying 150,000 hectares of land had been evicted from forest lands after the 2002 circular. It is estimated that almost three hundred thousand families of tribals and non-tribal forest dwellers were forcefully evicted (Dreze, 2005). Estimates appeared in the media that evictions would eventually affect almost 10 million tribals and non-tribal forest dwellers (Frontline, 2002a).

The evictions and the human rights violations led to massive outcry by grassroots level organizations and political formations all over the country (DTE, 2003). Protesters framed the issue primarily in terms of injustice to vulnerable forest dwellers (CSD, 2003). They portrayed the presence of forest dwellers on legal forests as an outcome of historical processes of dispossession and non-recognition of rights. They countered the MOEF's conservation and environmental justification with the discourse of the tribal and forest dwellers as living in harmony with forests and protecting nature from the ravages of modern development. These frames had already existed in discourses of grassroots mobilizations (Brahmane and Panda, 2000) as well as in writings of certain anthropologists and academics (Elwin, 1963; GOI, 1986) and were now drawn into the larger media and political discourse.

Attempts by grassroots organizations to create a national level forum to address forest rights and evictions led to the formation of the Campaign for Survival and Dignity (CSD), a coalition of grassroots organizations working for tribal rights. CSD became a key player and interlocutor for the forest rights issue at the national level. An initial effort by the coalition was a *Jan Sunwai* (public hearing) organized in Delhi in July 2003, where over a thousand tribals, men and women, from all across the country came and presented their accounts of evictions and human rights violations (CSD, 2003). It fast

became clear to CSD that the situation could be resolved only through new legislation passed by the Indian Parliament.

The evictions also became an issue in the 2004 national elections. Tribal votes had become more contested in the recent years between the major political parties, and the spatial concentration of tribals in certain parliamentary constituencies also meant that if mobilised, they could affect the electoral results. In a time of coalition governments, when even a small number of parliamentary seats could play a crucial role, no national party wanted to alienate tribal votes on the issue of evictions. Realizing that the attempt to evict millions of forest dwellers and tribals from forest land was a political miscalculation, the then Prime Minister promised that tribal encroachments on forest lands would be regularized and evictions would be halted. However efforts to do so were stayed by the Supreme Court for violating the Forest laws (Venkatesan, 2003).

In the 2004 national elections the opposition United Progressive Alliance (UPA) coalition led by Congress (I) came to power. The Congress (I) had also made a pre-election commitment to discontinue eviction of tribal communities from forest lands. The CSD and other organizations working for forest rights took up the matter with the newly elected government in a series of high level meetings in the latter part of 2004 and organized a two-day convention in Delhi, where it clearly put forth the demand for a law to recognize the rights of tribals and forest dwellers on forests (The Hindu, 2004).

The National Advisory Council (NAC)[38] formed by the incoming Central Government became the CSD's initial locus of engagement. Various parties including the

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[38] The NAC was a new institutional mechanism created by the incoming government to advise it on development issues. By including eminent members of the civil society, it opened spaces for non-governmental actors to influence state agenda. Apart from the RFRA, the NAC is also credited with facilitating the enactment of Right to Information (RTI) Act as well as the National Rural Employment

CSD made representations to the NAC. After considerable debate, the NAC

recommended that the Central Government pass a law to provide occupancy and user

rights over forests to forest dwellers. This led the Prime Minister to direct the Ministry of

Tribal Affairs to frame a law for restoring and recognizing forest rights. However, the

mandate covered only scheduled tribes (excluding non-tribal forest dwellers) and only for

forest land occupied before 1980 (The Hindu, 2005).

Prelude to the Creation of RFRA

The Ministry of Tribal Affairs (MOTA) was tasked to frame a new law. It created a

Technical Support Group (TSG) to work out a draft. The TSG included officials,

representatives from CSD and other civil society organizations. This enabled the CSD to

draw upon participatory consultations with its constituents at different scales and to

provide inputs for a progressive draft for the law. The CSD drew up a draft of the law for

this purpose, and much of CSD's draft was incorporated in the TSG's draft. An important

intervention of the CSD and its allied organizations was to include poor non-tribal forest

dwellers along with the scheduled tribe communities within the ambit of the draft law.

CSD also took up a nationwide campaign to ensure that the draft Bill was introduced

in the Parliament as soon as possible. Tens of thousands of postcards from villages were

sent to the Prime Minister. Over ten thousand tribals and forest dwellers from all over the

country gathered in Delhi in March 2005 to demand the law's enactment (Ghosh, 2005;

CSD, 2005). The two-week public demonstration in the heart of Delhi attracted the

support of large numbers of parliamentarians, with more than fifty Members of

Parliament (MPs) from all parties attending (CSD, 2005). Simultaneously rallies and

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Guarantee Act (NREGA). The NAC was headed by Sonia Gandhi, the President of the Congress (I) and the Chairperson of the governing coalition; this gave it critical leverage.

demonstrations were organized in state capitals, district headquarters and local towns across the country. Approximately a quarter of million forest dwellers and tribals, including a large number of women, participated (ibid.).

By the end of April 2005, the draft bill was to be put up to the Council of Senior Ministers for approval. Thus a new forest rights law started becoming a distinct possibility. This evoked strong opposition from powerful conservation organizations and the forest bureaucracy[39]. The conservationists unleashed a major media campaign[40]. A group of young MPs, including Rahul Gandhi, son of the Congress (I) President and one of major power centers in the Congress party, formed a group called "Tiger and Wilderness Watch". This group, influenced by hard-line conservationists, appeared to strongly oppose the RFRA. As a result of this lobbying the cabinet decided to go slow with the bill (Bindra, 2005b). In turn, a section of the media sympathetic to the proposed law branded the MPs in the "Tiger and Wilderness Watch" as "blue blooded royals"[41]. Advocacy by both CSD and the anti-bill groups resulted in continuous coverage of the proposed law in the media.

A copy of the draft bill was posted on the MOTA website in June 2005. This draft was substantially different from the draft prepared by the Technical Support Group (TSG) in that it excluded non-tribal forest dwellers and limited the application of the

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[39] The MOEF strongly resisted the proposed bill. Its letter to the Ministry of Tribal Affairs, GOI, said, "*The approach adopted in the proposed bill requiring denotification of vast tracts of forest lands and elimination of legal protection for the forest cover, will lead to irreparable ecological damage of immense proportion*" (Ganapathy, 2005).

[40] The powerful conservation groups used both media and behind the scenes lobbying to ensure that the bill was not tabled. For instance see the story in The Pioneer titled "UPA's Tribal Bill: Tiger's Death Warrant" (Bindra, 2005) or see "Jungle Law, Land for Votes" (Singh, 2005).

[41] As illustrated by the headings in the Economic Times "*Big Cats are More Adorable than Adivasis. Rahul Gandhi Save Tiger Brigade, Tribal Bill in trouble*"(The Economic Times, 2005).

proposed law to land occupied before 1980. CSD opposed the 1980 cut-off date as most

people had no means to show that they were in occupation of land before 1980.

CSD and other grassroots organizations perceived the exclusion of marginalized

groups claiming rights over forests yet not scheduled as tribes by the Indian government

as unjust and liable to create conflicts. The inclusion of non-tribal forest dwellers was

discussed and debated at length within CSD and amongst other supporters of the

proposed law. The main problem was that inclusion of non-forest dwellers would not

only help the poor non-tribal forest dwellers, but would also open the doors for powerful

non-tribal interests to grab forest land. However, given that a large number of poor forest

dependent people, especially in areas like North West Bengal, Uttarakhand and Orissa

were non-tribals, their exclusion would have been unjust. The CSD decided to strongly

support the inclusion of non-tribal forest dwellers, with strong measures within the law to

prevent forest grabbing by powerful non-tribals.

Given the uncertainty about the proposed law and the dilutions in the draft bill

prepared by the MOTA, the CSD went into campaign mode again. It demanded coverage

of non-tribal forest dwellers and bringing forward the cut-off date to 2005. The major

campaign initiatives included mass demonstrations across the country on 15th August

2005 (Independence Day) with the slogan *"Nyaya Chahiye ya Jail Chahiye"* ("We want

justice or we want prison"). Approximately 150,000 forest dwellers participated in these

events. Simultaneously, Members of Parliament were contacted for support on the bill.

CSD members also managed to build bridges with some of the moderate conservation

groups who were willing to dialogue with the grassroots organizations working for the

law.

By October, there was strong disquiet on the ongoing delays in presenting the Bill in Parliament. The CSD launched a *Jail Bharo Andolan* (fill the prisons movement) starting from 15th November 2005, to demand that the bill be presented in Parliament with appropriate changes. Over 75,000 forest dwellers courted arrest across the country during this campaign. Following this pressure from government coalition partners and the CSD, the government presented the Bill in Parliament on the 13th of December 2005. The final Bill as presented excluded non-tribal forest dwellers kept the cut-off date as 1980 and provided for only truncated rights inside Protected Areas and thereby ignored some of the major demands of the grassroots campaign.

The parliament formed a Joint Parliamentary Committee (JPC) of MPs to look into the proposed law and submit their recommendations. The JPC invited oral and documentary submissions. Along with the formal submissions, grassroots organizations supporting the RFRA met almost all the members of the JPC and held lengthy discussions. This helped the MPs to become familiar with key issues related to forest dwellers and tribals' rights on forests. The JPC submitted its unanimous recommendation report in May 2006. Reflecting the CSD position, it recommended the inclusion of non-tribal forest dwellers, extending the cut-off date to 2005, and application of the law to protected areas among other things. Thus the JPC brought in almost all the provisions the CSD had demanded.

The JPC recommendation again ignited strong protests from conservationists (Bindra, 2006) and elements of the government bureaucracy[42], who renewed their efforts to dilute the recommendations. In response, CSD and other groups supporting the law stepped up

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[42] Even the bureaucrats within the Ministry of Tribal Affairs opposed the major changes recommended by the JPC, i.e. the cut off dates and the inclusion of non-tribal forest dwellers.

their campaign to ensure that the JPC recommendations were accepted. The unanimous and strong JPC recommendation provided legitimacy to the proposed law and most of the JPC members became deeply committed to its enactment. Meanwhile pressures to enact the law increased. On July 18, 2006, more than 80,000 tribals in Maharashtra demonstrated in front of various government offices in Maharashtra in demonstrations organized by CPI (M) (People's Democracy, 2006). Just at the beginning of the Monsoon session of Parliament in 2006 a *dharna* (sit-in demonstration) was organized in Delhi by the CSD and other organizations in support of the JPC recommendations and for the passing of the law (CSD 2006). All this created pressure on the government and reduced its flexibility to change the contours of the Bill before its final placement in the parliament.

CSD organized a month long *dharna* of tribal and forest dweller representatives in Delhi in November, and on 29 November 2006 a big rally of over 10,000 tribals and forest dwellers was held in Delhi (Reuters 2006). On the same day, over 35,000 people held rallies in the capital cities of Bhubaneswar, Mumbai, Bangalore and Ranchi (CSD, 2006), and other large rallies and demonstrations took place at district and state levels throughout the country e.g. in Gujarat, Delhi, Orissa (The Hindu, 2006). The main demand was speedy enactment of the law and acceptance of the JPC recommendations. On 7th December 2006, the government officially approved presenting of the Bill in Parliament while accepting most of the JPC's recommendations. The Bill as finally accepted by the Government was presented in the Lok Sabha (lower house of Parliament) on 16th December 2006 and in the Rajya Sabha (upper house) on 18th December 2006 and was passed by the two houses of Parliament almost unanimously.

The RFRA 2006 Enacted

The law finally passed by the Parliament of India is radical in many respects. In its preamble it accepted that historical injustices had been done to forest dwellers and tribal in the creation of India's forest lands, mainly through lack of recognition of rights. It tries to redress these injustices by providing forest dwelling scheduled tribes and other traditional forest dwellers twelve types of rights. Among other things these include rights over occupied private land, rights over forest products (except hunting), rights to protect and manage community forest reserves, and community tenures for habitat for primitive tribal groups and other pre-agricultural communities[43]. The law tries to address gender concerns by making it clear that the rights shall be recorded in the names of both the spouses and not only in the name of the male head of household. It also tried to ensure that powerful interests don't benefit from the law by restricting the category of forest dwellers to only those who depend on forests and forest land for bona fide livelihood needs.

The law empowers and holds responsible the holders of these rights to protect wildlife, forests and diversity[44] as well as adjoining catchments, water sources and other sensitive ecological resources[45], providing statutory backing for community based forest governance in India for the first time. The rights determination process is to be initiated at the community level by the Gram Sabha[46] (village assembly) and final rights determination and preparation of a record of rights is to be done by higher-level

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[43] Section 3(1), RFRA, 2006
[44] Section 5(d) and 5(d), RFRA, 2006
[45] Section 5(b), RFRA, 2006
[46] Section 6(1), RFRA, 2006

committees including both government officials and members of elected local self-governance institutions[47].

The rules for operationalising the RFRA (The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Rules, 2007) were passed in January 2008 and the law is currently under implementation. The initiative for implementing the law rests with the central and state governments. By the time of this writing, millions of individual claims for forest land have been filed under the law in different states and are being processed[48]. There has been little evaluation on how effective these claim-filing processes are, but at least in the areas where grassroots organizations are active, CSD is trying to ensure that the right procedures are followed[49].

On the other hand, the primary focus of the state governments is on settling individual rights on occupied lands, with little attention being paid to more radical provisions to facilitate community control of state-owned forest areas. Conservation organizations and forces representing the forest bureaucracies have also filed court cases in various state-level High Courts as well as the Supreme Court of India[50], asking that the RFRA be struck down as unconstitutional.

To what extent the law will translate into practice and into effective rights of forest dwellers over forests is yet to be seen. Post-enactment, the arena of political struggle has shifted back to the state and grassroots levels, as various state governments are being

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[47] Section 6(3) to section 6(9), RFRA, 2006

[48] See http://www.tribal.nic.in/index1.html. By March 2010, 2.744 million claims had been filed and 0.782 million land titles had been distributed.

[49] The CSD has a website where information and feedback about the implementation of the Act is being maintained. See http://forestrightsact.com/.

[50] Court cases were filed against the RFRA in high courts of Orissa, Andhra Pradesh, Madras, Karnataka, Bombay and Jabalpur as well as in Supreme Court. The petitioners are either retired forest bureaucrats or conservation organizations. Please see http://forestrightsact.com/index.php/Court-Cases/Court-Cases/Court-Cases-Against-the-Forest-Rights-Act.html for details about these cases.

pressed to implement the law. The legislation creates legal spaces for local democratic participation in establishing property rights and governing forests. This means that an arena that was the exclusive preserve of bureaucracy and experts has become open to democratic participation by forest dwellers and their advocates. Their success in using these spaces for progressive change will depend on local political struggles and collective actions. In a number of cases, proposed displacement through wildlife protection laws has been challenged using the law[51]. In other areas, the forest bureaucracy's efforts to harvest or cut forests have been challenged[52]. Whether these represent a major nationwide empowerment of forest dwellers is an open question requiring empirical investigation. CSD continues as a coalition of organizations, even though the intensity of its activities has diminished. The organizations constituting CSD continue to coordinate and meet on the issues related to the RFRA and its implementation.

ANALYSIS: THE POLITICS OF MARGINALITY, SCALES AND NETWORKS

The enactment of RFRA is an interesting example of the practice of substantive democracy and the politics of marginality. Marginalization is almost always linked to structural conditions in society. Laws, state policies and linked governmental procedures form critical ingredients of the assemblage that constitute the structural conditions which create marginalization (Williams et al., 2003). The criminalization of forest dwellers' main avenues of livelihood is a critical part of what Chatterjee (2004) calls "transgressing the strict lines of legality in struggling to live and work". At the same time, a vicious

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[51] In Tamilnadu, local communities have strongly protested against declaration of Mudumalai Sanctuary as a "critical tiger habitat", claiming such a declaration is illegal under the RFRA (Masingudi Panchayat, 2008).

[52] In the West Bengal hills, forest dwellers organized a blockade of Forest Department timber shipments out of the area, arguing that under the RFRA the Forest Department no longer has the right to harvest and export timber without their consent (Sinha, 2008).

nexus of local elite, petty officials, legal professionals and touts constitute themselves into "the shadow state", which interdicts all benefits flowing down from the welfare state for the poor, and at the same time seeks to suppress local demands and struggles for livelihoods and justice (Harriss-White, 2003; Corbridge et al., 2005). Efforts to challenge conditions leading to marginalization are resisted by these powerful interests.

The brutal evictions of forest dwellers that followed the eviction orders continue even after the passing of the RFRA[53], illustrating the harsh face of the Indian state as experienced by forest dwellers and tribals. The experience of grassroots movements challenging marginalization also reflects these power asymmetries and repression. The struggles for rights at local levels are often brutal and violent as powerful interests are challenged. The experiences of Adibasi Mukti Sangathan in Dewas district of Madhya Pradesh illustrate the serious risks faced in such struggles (The Hindu, 2001). Many of the leaders of various grassroots movements who participated in the campaign for forest rights have done prison time due to false cases filed against them and most movements have seen activists killed or incarcerated[54]. At the same time, the multi-scale nature of the state apparatus i.e. the spatially nested jurisdictions from the national level to the village level, and the complex intersections of policies and procedures at different scales ensure that local mobilizations of the marginalized forest dwellers are confounded by policies and processes at higher policy making levels. For instance, the legal framework for governance of forests at the local level are framed by a complex, multi-jurisdictional

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[53] For instance, two tribals were killed in police firing over issue of claiming forest land in Gujarat in February, 2008. In January, 2008, more than a hundred houses of forest dwellers were burned down or demolished in Burhanpur district of Madhya Pradesh by the Forest Department. Six persons were injured in firing by FD personnel.

[54] For examples of recent killings of tribals and forest dwellers trying to protect their lands and resisting displacement see Padhi and Adve, 2006 (for Kalinganagar), Padel and Das, 2007 (for Kashipur), Bijoy and Raman, 2003 (for Muthanga).

matrix, including national level forest laws (Forest Conservation Act, 1980, Wildlife Protection Act, 1972), provincial level forest laws, provincial land laws and their subordinate rules; the various interpretations of these laws by judicial bodies and procedures at different scales developed for governance framed by this legal infrastructure. Thus any major change in this complex, dynamic system requires deep understanding of how this system works, an expertise which is often not available to those who are at the receiving end of the system.

The ability of the network of the grassroots organizations to ensure the enactment of RFRA needs to be seen in this context of power asymmetries. The issue of non-settlement of rights on forest land and exclusion from forests has long been one of the issues of struggle for many grassroots organizations. The increasing emphasis on conservation and exclusion after the Forest Conservation Act (FCA) 1980[55] increased the tensions on the ground, which came to a boil with the 2002 eviction orders. One immediate result of the evictions and the resultant violations of human and livelihood rights was that forest rights came to be a central issue for all formations and movements working in forested areas.

The extreme inequity and poverty in India has led to emergence of numerous local mobilizations, movements and organizations struggling for the rights of the poor. Many such as Kashtakari Sangathan (Maharastra), Adibasi Mukti Sangathan (Madhya Pradesh) and National Forum of Forest Peoples and Forest Workers (NFFPFW) have been struggling with the issues of forest and land rights and empowerment of the poor for

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[55] The Forest Conservation Act, 1980, proscribed diversion of any land categorized as legal forests to non-forestry purpose without the permission of the Central Government's Ministry of Environment and Forest (MOEF).

decades. Others such as Narmada Bachao Andolan (NBA) emerged in response to the large-scale displacement and dispossession by development projects. Some of these grassroots organisations had collaborated in the 1990s to push for the enactment of the Panchayats (Extension to Scheduled Areas) Act, 1996[56], and were part of overlapping networks. It was through the efforts of these organizations that the CSD was formed as a national level forum in 2002-2003.

CSD is a loose coalition of national federations and state level organizations or federations of tribals and forest dwellers. Some of the initial members[57] of CSD had been working together and were part of the National Front for Tribal Self Rule (NFTSR). During a public hearing on forest land and evictions in Delhi in 2003, it was decided to create a broader coalition on forest evictions and rights issues (Asher and Agarwal, 2005). State level federations of organizations working for rights of tribals and forest dwellers from Madhya Pradesh[58], Gujarat[59], Andhra Pradesh[60], Maharashtra and Rajasthan[62] became a part of the initial group. In June 2003, an email-listserv called *Forestrights* was initiated to co-ordinate and share information.

The CSD network expanded as more and more grassroots groups and activists working in Orissa, Northeast India, Chhattisgarh and other areas were drawn into the issue. For instance, in 2004, 64 organizations in Orissa assembled and decided to create a state-level committee to struggle for forest rights in coordination with CSD (Personal

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[56] This law provided for autonomy for local self-governance in Schedule V areas. It recognizes the traditional practices and customary laws and tries to empower people in the tribal areas (Pal, 2000).

[57] These included organizations like the Bharat Jan Andolan, Kashtakari Sangathan (Maharastra), Adibasi Mukti Sangathan (Madhya Pradesh) etc. that have a long history of fighting for tribal rights on land and forests. The NFTSR was formed in 1993 to push for tribal self-rule.

[58] Jan Sangarsh Morcha (Translated as People's Struggle Front)

[59] Adibasi Mahasabha (Tribal Assembly)

[60] Adivasi Aikya Vedikam (Tribal Assembly)

[62] Jangal Jameen Jan Andolan (Forest Land and People's Movement)

Communication, Jagadish Pradhan, 2004). The *Forestrights* listserv, through word of

mouth and forwarded emails, also attracted a number of intellectuals and scholar activists

interested in the issue. The open-ended nature of the coalition ensured that it expanded

over time with new members joining all the time. Unlike many funded NGO-led

mobilizations on issues of rights, the CSD primarily depended on internal resources,

often generated directly from forest dwellers and tribals[63]. People provided their labor or

expertise to CSD on a voluntary basis. By 2005, the CSD had stabilized as a national

network. The structure of the CSD remained loose and flexible (Figure 1).

Figure 2: Networked structure of the Campaign for Survival and Dignity[64]

Networked structure of NCSD

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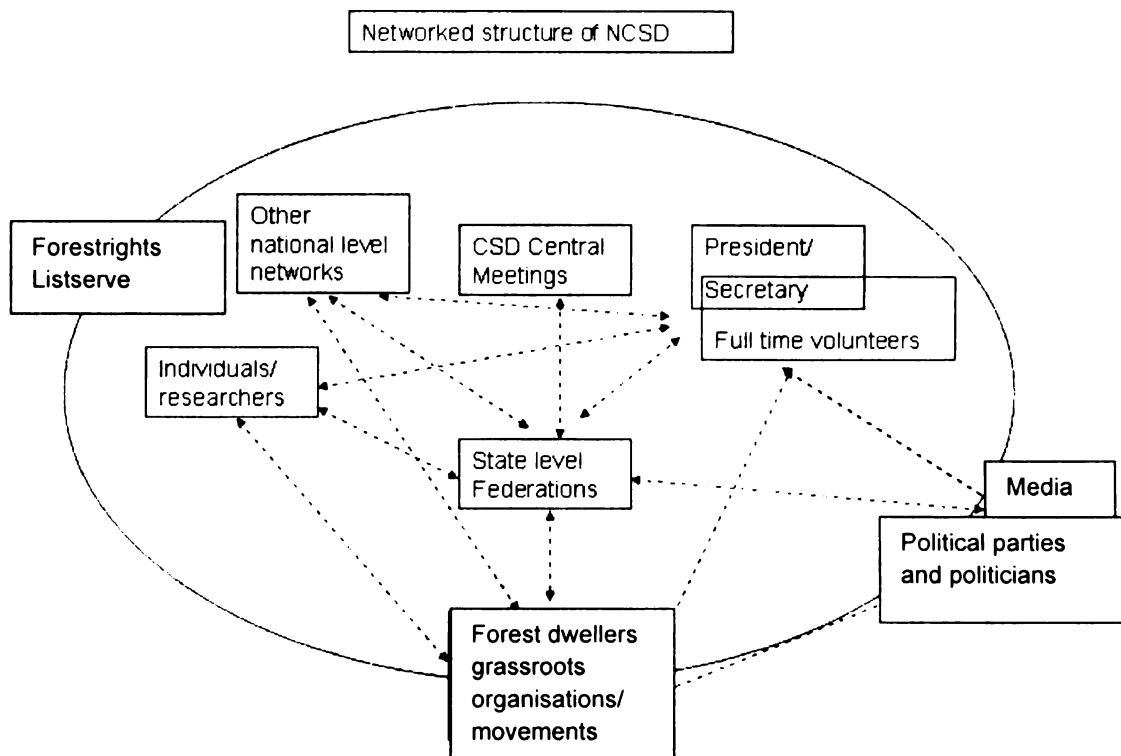
[63] The grassroots organizations raised money through contributions by forest dwellers. This also helped in increasing grassroots support and a feeling of ownership over the campaign.

[64] The Secretary of CSD was a full time volunteer. Other full time volunteers worked at both national and state levels. The forestrights list serve membership (shown by the ellipse) included almost all the key actors in CSD, though some of the important constituents/actors such as grassroots workers, sympathetic media members and political activists were not linked to the list serve. We have shown these categories partly outside the ellipse of the forestrights list serve.

Over time, a loose core of activists who were providing much of their time to CSD activities emerged at different scales. CSD has only two full-time volunteer workers at the national level, both on loan from one of the founding organizations. The various state-level and local constituents had their own part time volunteers who were often part of the various grassroots organizations and federations constituting CSD. CSD also attracted sympathetic intellectuals, academics, and lawyers to develop a strong capacity for deliberation and analysis.

Larger decision making in this coalition was carried out through processes of collective deliberation. National level strategies were decided in meetings held once every few months where representatives from various states would come together. The meetings were deliberative and democratic. National level strategies and stances on major issues were decided in these meetings. Given the diversity of interests and priorities of various formations and organizations represented in CSD, extensive debates took place. A major concern within the CSD was the fear of elite capture of rights over forests, especially by powerful non-tribals, and the need to provide safeguards in the law.

At the state level, situations differed from state to state. In Orissa, a local chapter of CSD was formed which used deliberation to determine local strategies and to take forward the strategies decided at the national level. In other states, already existing federations and networks of local organizations took up the issues. These state-level groups deliberated over issues emerging from their states, and served to share and validate the stance and strategies being developed by CSD at the national level. Feedback from states would go to the national level during the national meetings or through correspondence or phone conversations. Similar deliberative platforms developed in

some of the districts within states, primarily in areas where grassroots mobilizations were active.

Communications at the national level were maintained primarily through the Internet and phone. The *Forestrights* listserv acted as an instant conduit which shared the major news and happenings and allowed information to move fast from the national scale to the states and vice versa. State-level activists would ensure that important messages moved out through phone calls, letters and meetings to the grassroots through the existing networks and linkages of the various organizations. In meetings at local levels, large numbers of forest dwellers would turn up. Given its core constituency of grassroots organizations that expanded over time, CSD had a strong capacity to mobilize support at the grassroots level in different locations.

The tendency at all scales was to be inclusive and open ended, allowing actors to come in and drop out, while maintaining core continuity through certain organizations and individuals. The strength of this loose model came from unstated assumptions of democratic deliberation and inclusion, which provided space at various scales for different voices and opinions and allowed strategies to emerge. The embeddedness of the grassroots organizations at local levels allowed the CSD to validate its deliberations and decisions through feedback from local levels. At the same time it allowed diverse ground level concerns to be accounted for at higher scales. Thus CSD became a powerful mode for the forest dwellers to express their agencies at higher scales.

Discourses of Legitimacy and Justice

Many strands of discourse came together to form a powerful and evocative master frame of historical injustices and exclusions in the construction of India's legal forests.

The environmental history literature, exemplified by Guha's famous work on the Kumaon forests (Guha, 1989) had provided detailed historiographies of the colonial construction of legal forests and resultant exclusion of forest dwellers. This supplemented the narrative of tribal dispossession that emerged through work of scholars such as Verrier Elwin (1963), BK RoyBurman (GOI, 1986)[65], Walter Fernandes (1987, 1988), and scholar-activists such as Mahasweta Devi and BD Sharma (GOI, 1990). The grassroots movements with forest dwellers were another source of narratives providing actual examples and experiences of exclusion often articulated as undemocratic denial of justice to vulnerable people. First hand narratives by forest dwellers themselves provided the most touching and powerful stories. At the same time, specific local level research, carried out in cooperation with the forest dwellers' organizations, contextualized these narratives in data and analysis of forest construction in the post-independence period and the unfinished business of forest land reforms (Sarin, 2003; Garg, 2005; Kumar et al., 2005).

The 2002 eviction orders and the resultant protests served to bring all these narratives into a single frame through the CSD. The Jan Sunwai (public hearing) in July 2003 brought together forest dwellers from across the country and led to sharing of experiences of exclusion. These were collected in a book called "Endangered Symbiosis" (CSD, 2003). Scholar-activists associated with CSD analyzed the government's own data to how the legal status of large areas of forest was disputed (Sarin, 2003; Sarin, 2005a; Kumar, 2004). Data and analysis were put together and shared with the media and key political

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[65] RoyBurman specifically examined the issues of land tenure related to tribals, and also chaired the committee that wrote the important Planning Commission Report on "Land tenure in Tribal Areas" (GOI, 1986).

protagonists. Discourses ranging from "tribals living in harmony with nature" to "constitutional protection for tribal lands" and "tribal heritage" were drawn upon to highlight the injustice caused by exclusion of tribals and forest dwellers. To counter the narrative of powerful interests being able to co-opt the proposed law to obtain access and control forests, the coalition discussed and proposed a number of safeguards to ensure that elite capture could be forestalled.

This emergent frame was added to and elaborated as new grassroots organizations and movements joined in from various parts of the country. In 2003 this was primarily a frame which demanded rights for forest dwellers on forest land that they occupied for permanent cultivation (see CSD, 2003), arising mainly from the experiences of forest dwellers in Maharashtra and Madhya Pradesh. It morphed into a larger frame inclusive of claims of over ancestral shifting cultivation lands[66], community tenure and rights over forests[67], rights to habitat and habitation[68] , in other words a reconfiguration of Indian forest governance itself. Not only was a coherent and powerful narrative created through this framing, but it was also disseminated effectively through the media and through discussions and presentations (Sarin, 2003; Sarin, 2005; Prabhu, 2005; Gopalakrishnan, 2005). The ability to reach across scales and spaces was used to bring together a large number of stories and real life incidents from around the country to create powerful narratives of exclusion and injustice.

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[66] Inputs for shifting cultivation came from North East India as well as from Orissa, both areas where non-recognition of shifting cultivation in legal forests has led to exclusion (See Kumar, 2005).

[67] The demand for community tenure was brought to the fore by the experience of Orissa's and Jharkhand's forest dwellers, where large areas of state forests are being protected by local communities. These community conservation efforts were held up as examples of the positive linkages between livelihoods and forest conservation, and the ability of forest dweller communities to protect forests.

[68] Rights to habitat and habitation were a result of input from states and grassroots movements from areas where vulnerable hunter gather groups and shifting cultivators are present.

Politics of Mass Mobilization

A mass base amongst forest dwellers has been the central strength of the grassroots

mobilizations and it was evoked frequently to highlight the authenticity of the campaign

and its grassroots base across the country. The networked structure of CSD allowed it to

give calls for mass demonstration and rallies of forest dwellers and tribals at different

scales including in the national capital, state capitals, district seats and local towns. This

was used to get the messages of the campaign across to the political representatives,

government and the media. A number of mass mobilization programs at strategic

moments pushed along the process of enactment and tabling of the bill. Some of the

major programs are listed in Table 2.

Table 2.1 A sample of CSD demonstrations

Dates	Program	Remarks
8-9th August 2004	Public Rallies in five districts of Gujarat. Over 10,000 people, mostly tribals attended (*Forestrights* listserv, 2004)	To pressurize for resolving the forest rights situation
7th -21st March 2005	*Dharna* (sit-in) in N. Delhi by tribals and forest dwellers 41 member of Parliament visited the *dharna* site to express solidarity (CSD, 2005)	To press for the introduction of the Bill on RFRA
15th August 2005	Protests held at different places across the country on independence day. Approximately 150,000 tribals and forest dwellers in coordinated protests with the slogan "Justice or Imprisonment" ("Forest Dwellers", 2005, CSD 2005)	During the Monsoon Session to press for introduction of Bill
15th Nov-30th Dec 2005	Nationwide Jail Bharo Andolan (Fill the prisons movement). 75,000 people courted arrest in 10 states (CSD 2005)	During the winter session of parliament to press for introduction of Bill
21st- 25th Aug., 2006	*Dharna* in Delhi to press for acceptance of JPC recommendations and passing the RFRA. Unprecedented cross party support. (CSD, 2006 August)	Beginning of Monsoon session of Parliament. The issue of RFRA raised by MPs cutting across party lines in Parliament
21st Nov 2006	Continuous *dharna* in Delhi for enactment of RFRA and acceptance of JPC recommendations. During this period large demonstrations were carried out in various capital cities (CSD, 2006 Nov)	Winter session of Parliament. The RFRA finally passed

These events created solidarity and shared identity amongst forest dwellers and tribals on the issue of forest rights. In most local mass events, forest dwellers raised resources locally to meet the costs of the events – with contributions in cash and kind. These events thus demonstrated to the politicians and the government that CSD was backed by large-scale grassroots mobilization, and was therefore a suitable partner for engagement.

CSD constituents also used the local grassroots mobilizations to pressure the members of Parliament representing tribal and forested constituencies. Pressures were also created at the state-level legislative assemblies. For instance, the Orissa Legislative Assembly passed a unanimous resolution demanding passage of the RFRA and sent it to the central government[69]. The CSD and its constituents strategically combined mass mobilization with constant contact and discussion with Members of Parliament, familiarizing them with the complex issues related to forest rights. MPs were also invited to the mass *dharnas* in Delhi and many of them turned up and made public their commitments for passing the law.

The show of strength through the politics of mass mobilization generated acceptance of CSD among political formations and parties. All political parties across the spectrum were supportive of the demands for forest rights, primarily because none of them wanted to be seen as anti-tribal and anti-poor. The left parties that were a part of the ruling coalition strongly supported the law's passage and CPI(M), a major partner in the ruling coalition, took up RFRA as a core agenda with the government. CSD interacted constantly with these parties at different levels and their support was vital in pushing the

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[69] This was made possible through the pressure created by the Orissa chapter of the CSD, which pressed the state legislature to pass a resolution on these lines.

government to pass the law. These political formations adopted d the frames and narratives of CSD to a large extent.

CONCLUSION

The enactment of RFRA illustrates practice of substantive democracy in India and provides insight into how Indian democracy could possibly become more inclusive of marginalized people. It provides an instance where marginalized "subjects" and their organizations, through non-electoral mobilization and strategic moves, could set the frame for creating a new law favoring the marginalized forest dwellers. The campaign for the RFRA served to temporarily short circuit the State's power dynamics and led to an outcome favorable to marginalized forest dwellers and tribals, thus providing an illustration of how the paradox of inclusion of the marginalised in democracies (Young, 2002) can be addressed.

A favourable opportunity for the enactment of the law was provided by the larger mathematics of coalition based electoral democracy, wherein tribal votes had become significant in certain critical swing areas. The increasing powerful left insurgency in forested areas of India was another consideration for the government in agreeing to enact the law. The larger political situation provided opportunitiy structures (Tarrow, 1994) which framed the the mobilisation of the marginalised sections and its relative success in obtaining concessions from the state.

In this politically favourable terrain, it was CSD that largely set the agenda for the law's enactment and mobilisation of resources. The emergence of CSD exemplifies the Keck and Sikkink's (1998) concept of campaign, where diverse actors come together through a common agenda and shared systems of beliefs to work towards a common

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goal.The campaign for the RFRA was an emergent, networked coalition of diverse actors and entities, held together by a common and evolving agenda of social justice. It operated at different spatial scales, was flexible in its strategies and was successful in challenging the prevailing hegemonic discourse and replacing it in the political imagination by alternate discourse of justice and rights. It was also able to leverage the ability to communicate through Internet for a flexible, consultative yet rapid decision making, allowing it to be proactive in a fast-moving and changing situation.

That this could be done in a situation where forest dwellers and their struggles are marginalized and face strong repression indicates the possibilities of the politics of networked social movements of the marginalized and their ability to move across scales and create favourable outcomes. Even though the conditions and mobilizations that led to the enactment of the RFRA remain unique and context specific, the process offers certain lessons for struggles of the marginalized. The key ingredients in this achievement are the capabilities of mass mobilization at the grassroots, open and flexible networks with certain core constituents, and ability to generate and circulate discourses of justice and rights of the poor. These allowed struggles of marginalized sections to have an agency and a voice in creation of a national law, in the face of opposition from a section of the elites and bureaucracy. Thus the struggle for RFRA illustrates the empowerment possibilities of such networked movements and campaigns.

REFERENCES

Asher, M., Nidhi, A. (2005) Recognising the Historical Injustice: Campaign for Forest Rights Act Pune: National Centre for Advocacy Studies,

Bardhan, P. (1999) Democracy and Development: A Complex Relationship in I Shapiro and C Hacker-Cordon (ed.) Democracy's Value . Cambridge; Cambridge University Press.Bijoy, CR (2008) Forest Rights Struggle: The Adivasis Now Await a Settlement. American Behavioral Scientist 51, no. 12: 1755.

Bijoy, CR., Raman, K. (2003) The Real Story: Adivasi Movement to Recover Land. Economic and Political Weekly 38(20).

Bindra, P. (2006). Bill of Wrongs. The Pioneer, June 11

Bindra, P. (2005b) UPA Decides to Go Slow on Tribal Land Rights Bill. The Pioneer, May 5.

Bindra, P. (2005a). UPA's Tribal Bill: Tiger's Death Warrant. The Pioneer, April 23.

Bramhane, G., Panda, BK. (2000). The Adivasis and the World Bank-Aided Madhya Pradesh Forestry Project-a Case Study of Indigenous Experience. Paper presented at the Workshop on Indigenous Peoples, Forests and the World Bank: Policies and Practice, Washington DC 2000.

Buch, MN.(2005) Killing the Inheritors of the Earth. The Indian Express, May 27

Business Line (2002) Karnataka: Protests against Bid to Evict Forest Dwellers (2002)., December, 23

Chandra, K. (2006). Why Ethnic Parties Succeed: Patronage and Ethnic Head Counts in India: Cambridge:Cambridge University Press.

Chandran, MDS. (1998). Shifting Cultivation, Sacred Groves and Conflicts in the Colonial Forest Policy in the Western Ghats in R Grove, V Damodaran and S Sangawan (ed.) Nature and the Orient: The Environmental History of South and Southeast Asia 674–707.

CSD (2005) Adivasi Withdraw Dharana at Jantar Mantar, Delhi with Warning to Return. New Delhi: Campaign For Survival and Dignity, March 21.

CSD (2006) Forest Rights Dharna Concludes New Delhi: Campaign For Survival and Dignity, August 26th.

CSD (2005) Forest Rights Update: Forest Protests and Forest Wars. New Delhi: Campaign for Survival and Dignity, Dec 12.

CSD (2006) <u>National Demonstrations a Huge Success: Tens of Thousands of People on Streets Demanding Recognition of Forest Rights. Simultaneous Protests across Country.</u> New Delhi: Campaign For Survival and Dignity,

CSD (2003) <u>Endangered Symbiosis: Evictions and India's Forest Communities. Report of the Jan Sunwai (Public Hearing)</u> New Delhi: Campaign for Survival and Dignity.

Dang, H.(2005). Cutting Down Forests for Votes. <u>The Indian Express</u>, May 6

Darlong, VT. (2004). <u>To Jhum or Not to Jhum: Policy Perspectives on Shifting Cultivation.</u> Guwahati: The Missing Link (TML)

Dasgupta, P.(1995) <u>An Inquiry into Well-Being and Destitution</u> USA: Oxford University Press.

De Haan, A., Dubey, A. (2003) <u>Extreme Deprivation in Remote Areas in India: Social Exclusion as Explanatory Concept.</u> Paper presented at the Conference 'Staying Poor: Chronic Poverty and Development Policy', University of Manchester 2003.

Dhar, A. (2005) Tribal Rights Bill Could Lead to Societal Division. <u>The Hindu</u>, May 2.

Dreze, J. (2005) <u>Tribal Evictions from Forest Lands</u>. New Delhi: National Advisory Committee.

DTE (2003). Deep in the Woods. *Down to Earth*.

Elwin, V. (1963) <u>A New Deal for Tribal India</u> New Delhi: Ministry of Home Affairs, GOI.

Fernandes, W., Menon G. (1987) <u>Tribal Women and Forest Economy: Deforestation, Exploitation, and Status Change</u>. New Delhi: Indian Social Institute, 1987.

Fernandes, W., Menon, G., Viegas, P. (1988) <u>Forests, Environment, and Tribal Economy: Deforestation, Impoverishment, and Marginalisation in Orissa.</u> New Delhi: Indian Social Institute.

FPP (2002). <u>Indigenous Forest Communities Suffering Widespread and Brutal Forced Evictions from Their Traditional Lands, Assam State, India</u> Forest People Programme, Accessed on June 15th, 2009 from http://www.forestpeoples.org/documents/asia_pacific/assam_india_indig_forest_co mmunities_dec02.shtml#Recent_atrocities ()

FSI (2003) <u>State of Forest Report</u>. Dehradun: Forest survey of India.

Gadgil, M., Guha, R. (1993). <u>This Fissured Land: An Ecological History of India</u> Berkeley: University of California Press.

Ganapathy, N. (2005). Environment Ministry Strikes at Root of Tribal Land Rights Bill. *The Indian Express*, April 14th.

Garg, A.(2005) Orange Areas: Examining the Origins and Status. Pune: National Center for Advocacy Studies

Ghosh, J (2005). Saving Forests and People. Frontline 22(13)

Ghosh, S. (2007) Commons Lost and 'Gained'? Forest Tenures in the Jungle Mahals of South West Bengal. Norwich: Overseas Development Group, University of East Anglia, 2007.

GOI (1986) Report of the Study Group on Land Holding Systems in Tribal Areas New Delhi: Planning Commission of India, 1986.

Gopalakrishnan, S. (2005). Missing the Woods for Trees. Combat Law, 4(4)

Guha, R. (1990) The Unquiet Woods : Ecological Change and Peasant Resistance in the Himalaya Berkeley: University of California Press.

Harris–White, B. (2003) India Working: Essays on Society and Economy Cambridge: Cambridge University Press

Heller, P. (2005) Reinventing Public Power in the Age of Globalization in Social Movements in India: Poverty, Power, and Politics (2005): 79.

KapurMehta, A., Shah, A. (2003). Chronic Poverty in India: Incidence, Causes and Policies. World Development 31, (3)

Kaur, N. (2002) Targeting Tribal People:The Union Ministry of Environment and Forests Seeks to Clear 12.5 Lakh Hectares of Forest Land by Evicting Its 10-Million Strong Tribal Population. *Frontline*.

Keck, ME., Sikkink, K. (1998) Activists Beyond Borders: Advocacy Networks in International Politics, Ithaca:Cornell Univ Pr, 1998.

Khosa, A. (2005) Tribal Mps Claim Sonia to Protect Forest Rights Bill. The Indian Express, May 6.

Knoke, D. (1994). Networks of elite structure and decision making in S. Wasserman and J. Galaskiwicz (ed.). Advances in social network analysis: Research in the social and behavioral sciences, Thousand Oaks, Sage Publications 274–294.

Kohli, A., Mullen, RD. (2003). Democracy, Growth, and Poverty in India. in A Kohli, C Moon, G Sørensen (ed.) States, Markets, and Just Growth: Development in the Twenty-First Century Tokyo: The UNU Press

Kumar, K., Choudhary,PR., Sarangi,S., Mishra,P., Behera,S. (2005). A Socio-Economic and Legal Study of Scheduled Tribes' Land in Orissa. Unpublished Study Commissioned by World Bank Washington (2005).

Kumar, K., Giri Rao, Y. (2004) Perpetuating Injustices: Tribal Rights and Forestland Cultivation in Orissa. Bhubaneswar: Vasundhara, 2004.

Kumar, K., Behera, S., Sarangi, S., Springate-Baginski, O. (2008) 'Historical Injustice' the Creation of Poverty through Forest Tenure Deprivation in Orissa (UEA Dev Working Paper). Norwich: University of East Anglia, 2008.

Masingudi Panchayat (2008) Letter written by President, Masingudi Panchayat, Mudumalai, to the Collector, Nilgiri District dated 19th March, 2008. Retrieved from Forestrights listserve, July 5, 2008.

McGuire, JW. (2001) Social Policy and Mortality Decline in East Asia and Latin America. World Development 29 (10) 1673-97.

MOEF, GOI (2004) Ownership Rights to Be Extended to All Tribals Living on Forest Land Prior to 1993. New Delhi: Ministry of Forest and Environment, Feb 26.

Moore, M, White, H. (2003) Meeting the Challenge of Poverty and Inequality in A Kohli, C Moon, G Sørensen (ed.) States, Markets, and Just Growth: Development in the Twenty-First Century Tokyo: The UNU Press

Moore, G. (1979). The structure of a national elite network American Sociological Review, 673-692.

Mukul, A., Mago,C. (2005) Crouching MPs, Hidden Tribals, Fading Bill The Times of India, May 5

Narain, S. (2005). Four Legs Good Two Legs Good: Tigers Versus Tribals, or Is It Tigers and Tribals? The Times of India, June 17th.

Padhi, R., Adve, N. (2006) Endemic to Development: Police Killings in Kalinga Nagar. Economic and Political Weekly 41(3): 186.

Pathak, A.(1994) Contested Domains: The State, Peasants and Forests in Contemporary India New Delhi: Sage Publications.

People's Democracy (2006) 80,000 Tribals Demonstrate for Forest Rights Bill August 13th 2006.

Prabhu, P.(2003) Public Hearing on the Threats to Habitats and Livelihoods: New Delhi 19-20th July, 2003. New Delhi: Campaign for Survival and Dignity.

Prabhu, P. (2005) The Right to Live with Dignity. Seminar 552: 14.

Prabhu, P. (2004). Report of Gujarat Adivasi Mahasabha on the Struggle against Eviction (Accessed on June 15 2009 from http://groups.yahoo.com/group/forestrights/message/916)

Prasad, A. (2005) Will Land Rights to Tribals Hurt Ecology. The Economic Times, April 13th.

Pratap, A. (2000) The Hoe and the Axe : An Ethnohistory of Shifting Cultivation in Eastern India. New Delhi: Oxford University Press, 2000.

Rangarajan, M. (1996) Fencing the Forest : Conservation and Ecological Change in India's Central Provinces, 1860-1914, Studies in Social Ecology and Environmental History. Delhi ; New York: Oxford University Press, 1996.

Reuters (2006). Thousands Protest for Rights over India's Forests. Nov .

Rosencranz, A., Lele, S. (2008) Supreme Court and India's Forests Economic and Political Weekly 43(5): 11.

Ross, M. (2006) Is Democracy Good for the Poor? American Journal of Political Science 860-74.

Saberwal, VK., Rangarajan, M., Kothari A. (2001) People, Parks, and Wildlife: Towards Coexistence New Delhi: Orient Blackswan.

Saravanan, V.(1998) Commercialisation of Forests, Environmental Negligence and Alienation of Tribal Rights in Madras Presidency: 1792-1882. Indian Economic & Social History Review 35, 2: 125.

Sarin, M.(2005) Laws, Lore and Logjams: Critical Issues in Indian Forest Conservation London: International Institute for Environment and Development,

Sarin, M. (2003) Bad in Law. Down To Earth (2003).

Sarin, M. (2005) Why the ST (Recognition of Forest Rights) Bill 2005? Economic and Political Weekly 21

Scott, JC. (1999) Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed Yale Univ Press.

Sen, A.(1999) Development as Freedom: London: Oxford University Press, 1999.

Sharma, BD. (1989) Report of the Commissioner of Scheduled Castes and Scheduled Tribes: 29th Report. New Delhi: Government of India.

Sharma, BD. (1995) Whither Tribal Areas?: Constitutional Amendments and After Sahyog Pustak Kutir.

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Singh, M. (2005) May I Dwell in the Forest : The Proposed Tribal Bill Will Lead to Immense Division and Strife. The Indian Express, May 7

Singh, T. (2005). Jungle Law: Land for Votes? The Indian Express, May 15.

Sinha, A. (2008). Crores Lost in Timber Protests - yet to Shut Down. The Telegraph, May 14.

Sivaramakrishnan, K. (2000) Crafting the Public Sphere in the Forests of West Bengal: Democracy, Development, and Political Action. American Ethnologist 27, no. 2 431-61.

Skaria, A. (1999) Hybrid Histories: Forests, Frontiers and Wildness in Western India Delhi: Oxford University Press.

Some, S., McSweeney, K. (1996) Assessing sustainability in Burkina Faso, *ILEIA Newsletter*, The Netherlands: ETC Leiden.

Snow, DA., Rochford, EB., Worden, SK., Benford, RD. (1986) Frame alignment processes, micromobilization, and movement participation. American Sociological Review, 51.

Sundar, N. (2005) Jungle Book: Tribal Forest Rights Recognized for First Time. The Times of India, May 5.

Sundar, N. (2004) Forests of the Night: BJP's Sop to Tribals a Poll Ploy. The Times of India, March 24.

Tarrow, S.(1994) Power in Movement: Social Movements, Collective Action and Politics New York: Cambridge University Press.

Project Tiger (2005). Joining the Dots: The Report of the Tiger Task Force. New Delhi: Government of India, Union Ministry of Environment and Forests

The Economic Times (2005) Rahul Gandhi Joins Save Tiger Brigade- Tribal Bill in Trouble. May 3.

The Economic Times (2005) Big Cats Are More Adorable Than Adivasis. Rahul Gandhi Save Tiger Brigade, Tribal Bill in Trouble.

The Hindu (2001) Loggerhead over Resources. May 21.

The Hindu (2002)Naidu Rules out Eviction of Forest Encroachers 27th October.

The Hindu (2004) Tribals Demand Law Recognising Their Rights. Dec 11.

The Hindu (2005)Tribals Seek Regularisation of Land. March 07.

The Hindu (2005)Table Tribal Rights Bill in Winter Session. October 6th.

The Hindu (2005) Forest-Dwellers Take to the Streets: Nationwide Protests Seek Recognition of Tribal People as Equal Citizens August 16th

The Hindu (2006) Tribals Gearing for Next Phase of Struggle: Protests Order of the Day in Gujarat, Delhi October 18th.

Venkatesan, J.(2004) Order on Encroachments on Forest Lands Stayed. The Hindu, February 23.

Viegas, P. (1991) Encroached and Enslaved : Alienation of Tribal Lands and Its Dynamics. New Delhi: Indian Social Institute.

Young, IM. (2002). Inclusion and Democracy New York: Oxford University Press.

Williams, L., Kjonstad, A., Robson ed.(2003) Law and poverty: The legal system and poverty reduction London: Zed Books.

Zee News (2005) BJP's Charge against Rahul on Tribals Bill False: Cong. May 11

CHAPTER III

INDIA'S JOINT FOREST MANAGEMENT AND THE RECOGNITION OF FOREST RIGHTS ACT, 2006: TOP-DOWN DECENTRALIZATION VS. BOTTOM-UP DEMOCRACY

Abstract

There is consensus in the literature and widespread policymaker support on the desirability of democratic decentralization of forest governance. However, the many decentralisation initiatives in developing countries rarely have led to more democratic forest governance. We discuss India's recently enacted Recognition of Forest Rights Act (RFRA), 2006, as a case of demand driven democratization, drawing a sharp contrast to the existing, top-down, Joint Forest Management (JFM) program. Using the criteria of delegation of power and authority, downward accountability, and impact on forest dependent poor, we show that JFM Management cannot be characterized as democratic decentralization. In contrast, the framework of the RFRA, enacted as a result of democratic grassroots mobilisation, provides greater space for meaningful democratic participation in forest governance. We conclude that RFRA has the potential to make Indian forest governance more democratic, participatory and pro-poor.

INTRODUCTION

Decentralisation and citizens' participation have emerged as core strategies to achieve sustainable and just natural resources governance. More than 80 percent of countries have adopted some form of decentralization (Manor,1999). However, the results are mixed, with little evidence that the objectives of sustainable and just resource governance are being met. Most decentralization efforts have been top-down processes limited to transferring some authority to upwardly accountable local governance

institutions. In forestry, such decentralization efforts have taken the form of co-management and several studies indicate limited democratization of forest governance (Colfer and Capistrano, 2005; Ribot et al., 2006, Edmunds and Wollenberg, 2003).

In contrast to top-down decentralization, sometimes governments are forced to devolve authority and rights to resource dependent citizens in the face of political demands and mobilizations. In this paper, we contrast top-down decentralisation to a case of demand-driven forest reforms and show how the latter can lead to more democratic forest governance. We do this by examining forest governance in India, which offers an opportunity to contrast the state-initiated Joint Forest Management (JFM) program to forest reforms won through political mobilization by citizens in the recent Recognition of Forest Rights Act, 2006 (RFRA).

Using criteria of devolution of power and authority, downward accountability to citizens and inclusion of marginalized forest dependent poor, we compare JFM and RFRA from the perspective of democratization. We find that demand-driven political mobilization can usher in more democratic decentralization and reforms that can overcome the shortcomings associated with current forms of decentralization in forest governance.

DECENTRALIZATION, DEMOCRATIZATION AND FOREST GOVERNANCE

There are strong arguments regarding the shortcomings of centralized forest governance and the relative advantages of decentralization and citizens' participation. For example, research on the commons demonstrates the capacity for decentralized community based management systems (Ostrom et al., 2002). Theories of complex socio-ecological systems also provide support for effectiveness of community based natural

resource governance in its capacity to adapt and promote shared experimentation and learning (Folke et al., 2005). Strong support for decentralization is also embodied in the principle of subsidiarity: that decision making, implementation, monitoring, enforcement and judicial recourse are best conducted at the lowest practicable level of government (Degrassi, 2003).

Political arguments for greater democracy and democratization reinforce these pragmatic arguments. Citizens' control over their collective affairs and equality among citizens in exercising that control are core values of democracy (Beetham, 1999). Principles of democracy imply that people dependent on natural resources such as forests for their subsistence should have a substantial say in decisions regarding governance of such resources (Agrawal and Ribot, 1999). Ribot (2002) uses the term democratic decentralization to mean local governance that is representative of and accountable to local populations and secures autonomous domains of decision making at local levels. Democratic decentralization is characterized by principles of accountability to citizens, representativeness, voice, secure rights and authority to local democratic institutions.

However, most decentralization initiatives for forest governance in the last two decades cannot be categorized as democratic (Ribot, 2002; Colfer and Capistrano, 2005). They remain limited to deconcentration, i.e. delegating functions to lower levels of bureaucracy that remain upwardly accountable, or even privatization, where certain government functions are allocated to the private sector or NGOs. Citizen participation in forest governance remains absent or very limited.

Policy discourses of decentralisation and participatory development are criticised for failing to account for issues of power and politics and for trying to depoliticise what is an

explicitly political process (Hickey and Mohan, 2004). They fail to engage with existing structural inequities, power asymmetries and marginalisation processes that disempower local resource users vis-à-vis more powerful actors including the state and its bureaucratic apparatus. In decentralised forest governance, failure to engage with the issues of power and politics is critically important, as state forests were often created through violence and takeovers that excluded and marginalised forest dependent populations (Vandergeest and Peluso, 1995; Gadgil and Guha, 1992). Ignoring forested landscapes' histories of injustices and appropriations often aggravates conflicts and marginalisation of forest dwellers. In most post-colonial countries, forest governance continues to be kept out of the arena of democratic politics, confined to the realm of techno-managerial rationality and administrative controls. The political economy of forest governance revolves around extraction of forest resources facilitated by centralised controls, creating a confluence of powerful forces including professional forest bureaucracies that may resist efforts to devolve powers to politically forest dependent communities.

The question then arises: why do states pursue decentralisation and seek citizen participation in forest governance when, as Agrawal (2001) points out, voluntary relinquishment of power seems to fly in the face of expected State behaviour? Explanations include the prevailing discourses of participation, civil society and democratisation that international donors have set as conditions of funding and support since the 1980s. An instrumental rationale also seems to be the difficulty of regulating spatially vast forests without the cooperation of local communities (Peluso, 1992; Sivaramakrishnan, 1999). Co-opting local communities to regulate and protect forests can

be cost-effective for the forest bureaucracy. Pursuing participation and decentralisation can also lend legitimacy to state forest bureaucracies in the face of internal demands for democracy, and help defuse tensions and conflicts that exclusionary forest governance creates on the ground.

Top-down decentralisation initiatives contrast with political demands from below for control and access to forests and forest resources. Forest dwellers' demands for greater forest access and rights are often couched in discourses of democratic rights (Forsyth 2004) and bound with claims to citizenship and democracy. Social and political movements asserting claims over natural resources use the language of rights and entitlement rather than efficiency or equity. They privilege local relationships with nature over demands of a developmental state (Baviskar, 1995; Prabhu, 2005). Members of these social movements critique and oppose the state's decentralization efforts as extending state control over local lives and livelihoods rather than empowering local people (Baviskar, 1995; Sundar, 2000).

Occasionally, such assertions from below have forced governments to concede greater role in governance. Decentralization won through political contestation by resource users may lead to institutional forms and processes that are different and provide more democratic spaces than those created through top-down decentralization. As Agrawal (2001) points out, local actor demand may not be needed to initiate decentralization, but it may be necessary to bring about real political change.

The recent enactment of a progressive forest law in India providing rights to forest dwellers is an example of forest governance reforms materializing due to demands from below. The Recognition of Forest Rights Act, 2006 (RFRA) was the outcome of a

nationwide mobilization of forest dwellers supported by a coalition of civil society groups demanding rights over forests and forest land. The RFRA accepts that creation of state forests in India led to historical injustices on forest dwellers, and tries to redress the situation by recognising individual and community rights of forest dwellers on forests and forest lands. Thus RFRA represents a political, demand-based effort to reform forest governance through provision of rights to forest dependent people. Implementation of this law began in January 2008.

India continues to operate the Joint Forest Management (JFM) programme, an example of top-down, state initiated decentralisation. Since the early 1990s JFM has sought community participation in forest protection and management. It covers almost 22 million ha. of forest lands and more than 100,000 communities. JFM represents a top down re-territorialisation of state owned forests by allocating certain forest areas to selected communities and seeks to decentralize some functions of protection and management to local communities.

These two parallel processes of forest reform being carried out in the same landscapes provide a unique opportunity to examine the differences in extent of democratization between a top-down, supply-driven decentralization program and a bottom-up, demand-driven reform. Several criteria can be utilized to assess the extent of democratization (Ribot, 2002, Crook and Manor,1998, Colfer and Capistrano, 2005). We examine the following:

- *Delegation of power and authority:* Transfer of authority to local institutions includes power to make, execute and enforce rules (Ribot, 2002).

- *Downward accountability:* Accountability of forest governance institutions to citizens allows transparency and citizens' democratic control (ibid.).

- *Impact on forest-dependent poor:* Mechanisms that ensure inclusion of marginalized sections of society are important since local communities are often inegalitarian, hierarchical and dominated by elites,who can easily capture resources at the expense of the poor (Crook and Manor, 1998, Edmunds and Wollenberg, 2003).

We examine JFM and RFRA on these criteria to understand the substantively different spaces that they open for democratic forest governance. We use both secondary and primary data on the outcomes of JFM. For RFRA, since its implementation began only in January, 2008, there is little data on its outcomes. We draw on the latest reports about its implementation on the ground to examine its provisions to make inferences about its democratic potential.

GENEALOGY OF FOREST GOVERNANCE IN INDIA: AN EXCLUSIONARY LEGACY

To contextualise JFM and RFRA, we briefly discuss the history of India's forest governance, including the processes of exclusion and marginalisation of forest dwellers. One quarter of India's land area is legally categorized as forest (FSI, 2005). Hundreds of millions of people live in and close to these forests and are often highly dependent on forest resources for their survival. The categorisation of a quarter of India's land area into legal forests, or what Peluso and Vandergeest (2001) call political forests, was carried out using forest and land laws during the 19th and 20th centuries (Gadgil and Guha, 1992; Rangarajan, 1996; Sivaramakrishnan, 1999). The colonial forestry system brought vast areas of forested landscape under its direct administrative control and systematically

redefined social interactions with forests, privileging colonial commercial interests over subsistence uses. Centralized bureaucracies called Forest Departments (FDs) were established on paramilitary principles to manage and control legal forests.

Overlapping discourses of conservation-oriented dessicationism[70] (Grove, 1995), public interest (Jewitt, 2006), progress and revenue generation (Guha, 1990) were used to justify the colonial state's takeover of forested areas and exclusion of local users. Colonial forestry was framed as modern and scientific, forest dependent rural populations were depicted as destroyers of forests, and most subsistence forest use was criminalized (Jewitt, 2005). Practices like shifting cultivation were made illegal. Colonial forest laws such as the Indian Forest Act, 1865 and Madras Forest Act, 1882, provided the instruments of control and coercion for this disciplining. The result was large-scale exclusion and marginalisation of local populations, and conflicts and contestations that still persist in forested areas (Guha, 1990; Gadgil and Guha, 1992; Sivaramakrishnan, 1999).

Even after independence, the Indian State retained the exclusionary colonial forest governance framework. Creation of legal forests based on colonial forest laws continued apace, increasing to 67 million hectares from 41 million hectares at independence (Saxena, 1997). Until the 1970s, forest conservation was not a high priority in India's developmental polity and forest exploitation for industrial demand and revenue generation remained paramount. Large areas of "mixed and unproductive forests" were felled and converted into industrial or timber plantation (Saxena, 1997). The 1952 Forest

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[70] Dessicationism emerged as an eighteenth century belief that droughts and soil erosion were closely connected with depletion of tree cover; thus failure to conserve forests was to invite disaster (Grove, 1995; Skaria, 1999).

Policy invoked the national interest to specifically discount local forest dependent people's needs and demands from forests (GOI, 1952).

In the 1970s, deforestation and forest degradation became important environmental issues (Rangarajan, 2001). The government responded by further centralising forest governance, passing two important laws, the Wildlife Protection Act (WLPA), 1972[71] and the Forest Conservation Act (FCA), 1980, both of which expanded the forest bureaucracy's power without creating any space for people's participation. The centralising trend was further strengthened by the Supreme Court of India's strict and literal interpretation of forest laws, especially the FCA, 1980 (Rosencranz and Lele, 2008). This further concentrated forest governance, empowering the forest bureaucracy vis-à-vis other arms of the government and the forest dependent people. The increasing centralisation had important consequences for the millions of forest dwellers who lived on or cultivated lands categorised as legal forests, increasing their vulnerability to eviction and creating new conflicts.

Despite the increase in India's legal forest area after independence, actual forest cover has declined dramatically. The bureaucracy's inability to effectively regulate vast forests with millions of inhabitants partly explains forest degradation (Carney and Farrington, 1998). The percolation of democratic practices and discourses at local levels has led to increasing contradictions and conflicts with the exclusionary forest governance framework. This led to realisation of the need to find a role for local people in forest management. A new forest policy issued in 1988 acknowledged local needs and dependence on forests and encouraged people's participation in forest governance. In the

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[71] See Rangarajan (2001) for the background of the enactment of WLPA 1972.

early 1990s, JFM became the government's flagship strategy to address the contradictions between increasing centralization and the acknowledged need for local participation.

TOP-DOWN DECENTRALIZATION: JOINT FOREST MANAGEMENT

JFM started as an experiment by forest officers in West Bengal to involve communities in protecting state-owned degraded forests in return for certain concessions. Their success led the Government of India to adopt this approach in 1990 (GOI, 1990), and state-level FDs gradually adopted it. JFM envisages a partnership between forest dependent communities and the state-level FDs to protect state-owned forests. The World Bank and other international donors supported JFM as a means for forest protection and improving local livelihoods (Kumar, 2000).

JFM represented a major break from exclusionary forest governance in its emphasis on community participation in forest governance. State FDs implement the program, recruiting local communities for forest protection in exchange for access to forest products including a share of the timber harvest and investments in village development. Community institutions called JFM Committees are created with general bodies of all eligible voters in the community and executive committees elected from the general bodies. A memorandum of understanding (MOU) between the community institutions and the FD spells out the community's responsibilities and the various benefits it will receive.

Officially the program is a success with almost 22 million hectares of forest enrolled and participation of over 100,000 communities through 2008 (GOI, 2008). The actual ground level situation is much more ambiguous with little evidence that these numbers

reflect actual forest protection and regeneration or effective community participation. Springate-Baginski and Blaikie (2007) estimate that only 50-70% of JFM committees are active. They also point out that activity is closely linked to the disbursal of funds, with many groups becoming inactive after funding stops. JFM's outcomes from the perspective of democratic decentralisation are diverse nationwide, but a broad critique is as below.

Delegation of Power and Authority

The colonial era Indian Forest Act, 1927 continues as the legal framework for JFM (Sundar et al., 2002). All legal powers remain with the FD (Springate-Baginski and Blaikie, 2007). The lack of legal rights for communities participating in JFM affects all aspects of its implementation.

The major decision making power and authority in JFM rest with the FD and the communities have only the duty of protection (Ravindranath and Sudha, 2004). In most states, FD personnel occupy the most important position in the village level JFM committees. The village institutions depend on the forest officials for legal support for regulating forest use and the MOU signed with the FD has no legal validity (Springate-Baginski and Blaikie, 2007). Although forest management micro-plans that form a part of the MOU are to be prepared in consultation with the community, they are subservient to the FD's large scale Working Plans[72] (Sundar, 2000). Often the FD unilaterally prepares the micro-plans with little consultation with the communities. As a result, the FD's priorities tend to dominate forest management. Springate-Baginski and Blaikie (2007) point out that this may have the perverse effect of replacing biodiverse mixed forests

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[72] Working Plans are the Forest Department's 10-20 year forest management plans. The central government approves these semi-legal documents and any deviation has to be justified.

providing multiple livelihood benefits with monocultures of valuable timber species. The funds for micro-plans are channelled through the FD, which has a veto on how they are used. Sometimes villagers complain of having to give a cut to the forest personnel for getting the JFM funds released (Sundar et al., 2002). The lack of delegation of power and authority means that the communities in general become subservient to the FD.

Accountability

At the community level, the FD initiates or approves major decisions related to forest protection and management. FD officials convene and preside over both General and Executive Committee meetings, and major decisions involving community members relate only to suggestions about entry point activities for village development and selection of people for forest patrolling. The FD takes all major decisions regarding use of funds, silvicultural and harvesting operations etc. without consulting villagers (Banerjee, 2007).

In most states the FD can unilaterally dissolve a committee whose performance it does not like. As the executive committee's powers come from the FD's backing, it need not have much accountability to community members, creating spaces for elite capture. The FD operates on paramilitary lines with upward accountability and JFM committes become the lowest cog in this hierarchy. Marketing of timber and other valuable products from forests under JFM is under the FD's non-accountable control (Springate-Baginski and Blaikie, 2007). In Orissa, the FD has leased forests protected under JFM to paper mills for harvesting without consulting villagers (Sarin et al., 2003). Elsewhere, forest land under JFM has been diverted for mining and industrial projects without compensation to communities. Lack of financial transparency is another key issue of

accountability. Villagers generally are not aware of the funds allocated to their village

and its uses, even though communities are supposed to jointly control these funds (Sarin

et al., 2003).

The rules framing local institutions' creation, jurisdictions and boundaries provide an

excellent example of the lack of delegation of authority and lack of accountability in

JFM. The FD has the sole discretionary power to select the communities and allocate

forest areas for JFM. This power means that they can pick and chose communities,

creating different forms of moral hazard. Targets, limited funds, and limited forest area

mean that only a few communities are selected for JFM and the development funds it

brings (Sundar, 2000). FDs have often used JFM to reassert control over forests and lands

that had slipped out of their control or were disputed (Sarin et al., 2003). The allocation

of forest area to one particular community under JFM means that many others who use

that forest area and could possibly lay claim to it may be excluded (Sundar et al., 2002).

Impact on Forest Dependent Poor

With their primary objective of protecting state forests, FD personnel have no

obligation to account for the interests of marginalized forest users. When the FD provides

legal backing to JFM committees dominated by local elites, politically weak local forest

users may be excluded from forest access and use (Sarin et al., 2003, Springate-Baginski

and Blaikie, 2007). Decentralization in a political environment characterized by clientage

has the consequence of strengthening patronage ties and further entrenching local elites

(Francis and James, 2002). Elite dominance and resource capture have been reported in

almost all studies of JFM and negative impacts on the poor have been widely documented

(FPP, 2005; Kumar, 2002; Brahmane and Panda, 2000; Vasundhara, 2006). JFM has

often been used to carry out forestry plantations on forest land cultivated and claimed by poor tribal and other forest dwellers (Kumar et al., 2005). In Andhra Pradesh, the FD has used the JFM committees to evict vulnerable tribal shifting cultivators from 37,000 ha. of forest land (FPP, 2005; Springate-Baginski and Blaikie, 2007).

Summing up JFM

JFM is critiqued by many authors as an attempt by the forest bureaucracy to reinforce its control of forested landscapes by engaging local communities as hired labour to monitor local use of the landscapes (Sarin et al., 2003). FD efforts to control the self-initiated community forest management groups in Orissa and the longstanding Vana Panchayats in the state of Uttaranchal reinforce the belief that JFM is primarily a program to extend and reassert state control (ibid.). An independent evaluation of a World Bank-funded JFM project in Andhra Pradesh commented that a decade of JFM has helped the FD consolidate its grip on forest resources and penetrate the heart of village decision making and resource politics (FPP, 2005). JFM is seen as reducing *de facto* and *de jure* local spaces for democratic forest governance as the program overlooks or actively co-opts the existing tenurial and rights systems and pre-existing arrangements for community forest management (Sarin et al., 2003). Springate-Baginski and Blaikie (2007) conclude in their exhaustive comparative study that JFM has not led to democratic decentralisation of resource management. Empirical studies included in Edmunds and Wollenberg (2003) and Sundar et al. (2002) reached similar conclusions. JFM also fails to address major issues of forest and forest land tenure, even though it re-territorializes forested landscapes by allocating forests to certain communities for protection.

RECOGNITION OF FOREST RIGHTS ACT, 2006

The conversion of a quarter of India's land area into legal forests using colonial era forest laws left tens of millions of people living on and or cultivating forest lands without rights. Faulty categorisation of land as legal forests in conjunction with the Forest Conservation Act, 1980 created a situation in which millions of forest dwellers were wrongly treated as "encroachers" on forest lands, because their rights were never properly settled (Garg, 2005; Kumar et al., 2005; Ghosh, 2007). This became a major political concern in 2002 after the Government of India, following the Supreme Court's directions, tried to evict millions of people inhabiting or cultivating legal forests. The resultant human rights violations led to a nationwide movement by a coalition of forest dwellers, grassroots organisations NGOs, academics, lawyers and independent activists called the National Campaign for Survival and Dignity (NCSD). The mobilisation demanded the creation of a new national forestry law to settle forest dwellers' rights. Some political parties supported the movement as well. It eventually led to the enactment of the new Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (RFRA) by the Indian Parliament in 2006. A combination of grassroots mobilisations, a tenacious nationwide campaign by NCSD, and fortunate political circumstances in India's electoral politics enabled the law to come to fruition (Kumar, Forthcoming).

The RFRA's intent is to provide forest rights to forest dwellers, recognizing the historical injustices done to them in denying their rights in the creation of India's legal forests. The law is applicable to forest dwelling scheduled tribes (STs) and other traditional forest dwellers (OTFDs), defined as those living on forest land and dependent

on the forests for their bona-fide livelihood needs. Some of the significant rights provided to the STs and OTFDs include rights over legal forest land occupied for cultivation or habitation; right of ownership and access to collect, use and dispose of non-timber forest products and rights to protect, conserve and manage "community forest resources" (CFRs). All these rights have the potential to create spaces for voice and participation of forest dwellers in forest governance.

The rights to conserve and manage CFRs are extremely important in this respect. The RFRA defines CFRs as *"customary common forest land within the traditional or customary boundaries of the village ... to which the villagers had traditional access."* CFRs can include land that was legally categorized as state-owned forest of any type. The forest-dwelling STs and OTFDs shall have the rights to *"protect, regenerate or conserve or manage community forest resources."* This right is further strengthened by another section in the RFRA that empowers the right holders under the act to protect wildlife, forest and biodiversity as well as adjoining catchment areas, water sources and other ecologically sensitive areas.

The rights determination process is to be initiated at the community level by the Gram Sabha (village assembly), which would receive claims, verify them and consolidate them for consideration by a higher sub-divisional level committee (SLDC). The final rights determination and preparation of record of rights will be done by the SLDC and a district level committee (DLC). Both the SLDC and the DLC would consist of officials and at least three members of elected local self-governance institutions.

The law, if implemented properly, can lead to major changes in forest governance, creating greater spaces for democratisation and participation by erstwhile marginalised forest dwellers. Some of its implications as compared to JFM, are as follows.

Delegation of Power and Authority

The provisions for CFRs in RFRA provide, for the first time, a statutory basis for community forest protection and conservation. In contrast to JFM, communities claiming rights under RFRA will have legal powers to protect and conserve forests. Under RFRA, the FD will no longer have the discretionary power to unilaterally allocate or withdraw forest areas to forest dwelling communities as under JFM. The community, once conferred the rights over its CFR through the legal procedure provided in RFRA, will have the rights to protect the CFR without taking any approval from FD.

This has prompted many self-initiated community forest groups protecting state forest land in Orissa to file claims for community forest resources. In Ranapur block of Nayagarh district, 78 such claims have been filed as per the procedures under RFRA (Vasundhara, Pers. Comm., 2008) with more in preparation. In Maharashtra state, Mendha-Lekha village, famous for its pioneering community forest protection, is one of 400 villages that have applied for recognition of community rights to state forest land (CSE, 2008). It is reported that around 50 villages in Gudalur, Tamilnadu have demarcated their CFRs and prepared their claims, as well as 293 villages in Andhra Pradesh and a number of tribal hamlets in Waynad and Attapad areas of Kerala (CR Bijoy, Pers. Comm., 2008). CFR claims in various other states are expected to intensify as awareness grows about this important provision. In some cases, villages currently under JFM are also claiming rights over community forest resources under RFRA.

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Communities' ability to opt out of JFM agreements yet retain rights and protection powers over CFRs will shift power toward them, away from the FD.

Unlike JFM, where community selection and allocation of forest area to selected communities is the FD's prerogative, under RFRA forest dwellers have the power to initiate the process of demarcating and claiming CFRs. RFRA allows communities to reclaim as part of their traditional or customary territory areas that were converted into legal forests in the past. A conflict resolution mechanism between neighbouring communities for overlapping claims is also provided whereby a joint village assembly of such communities would be called and negotiations carried out. Only when neighbouring communities cannot resolve boundary claim conflicts does the matter go to the next higher level committee (SLDC) for resolution.

Through the process of creating CFRs, RFRA tries to shifts the re-territorialisation of forested areas from a bureaucratic function in JFM into democratic spaces of contestation and negotiation. There is a strong possibility that existing ad hoc allocation of areas for JFM by the FD will be challenged by excluded communities of forest dwellers who might be able to provide evidence of their customary forest use as RFRA requires for claiming rights. Such claims and counterclaims would lead to local conflict and legal action, disrupting and challenging the existing JFM arrangements and forcing negotiations at local level between communities and the forest bureaucracy.

Accountability

By providing legal rights to communities to manage and protect forests, RFRA has created a centre of authority at the community level and ensures that the FD will no longer have complete say in managing community forests. Community institutions for

managing CFRs will have legal backing under RFRA whether or not the FD supports them. This will necessarily lead to changes in JFM's institutional arrangements, with greater accountability to the legally empowered and recognised community institutions. The FD will no longer have the power to impose unilateral timber management and extraction decisions without community consent. Right holding communities can legally challenge FD decisions if it does not consult and seek their consent.

Local level contestations based on RFRA are already being reported. For example, in the West Bengal hills, local forest dwellers organized a blockade of a FD timber shipment out of the area, arguing that under the RFRA the FD no longer has the right to harvest and export timber without their consent (Sinha, 2008). One expects that case law as well as state guidelines on these overlapping claims, powers and rights will develop over time.

Diversion of forest lands for activities such as mining, industrialisation and other development activities is a critical area of policy level accountability affected by RFRA. Before RFRA this was the prerogative of the state and central governments, with no voice or accountability to the forest dependent communities. Rights under RFRA will allow communities to challenge such unilateral diversion of forest land. In Orissa, for example, local movements are planning to use RFRA to challenge a mining development plan in Niyamgiri and an industrial development project of the Korean Steel company POSCO in an ecologically sensitive area in Jagatsinghpur (Asher, 2008). The interpretation of conflicting laws on such issues will be finally decided in courts, but the very opening up of this issue provides spaces for political contestation.

RFRA also has important implications for more than three million people who live inside the more than 600 wildlife sanctuaries and national parks. These protected areas have become sites of continuous conflicts between the Forest Department and local communities as displacements and restrictions on customary forest use have disrupted forest dwellers' livelihoods. The government's Tiger Task Force characterized it as a "war of conservation" that has adversely affected both human rights and conservation (GOI, 2005).

The RFRA directs that rights provided in the law must be given to forest dwellers living inside protected areas. It ensures that unilateral decisions such as suspension of NTFP collection and involuntary resettlements are no longer possible, and that forest dwellers can be resettled elsewhere only with their prior informed consent. Thus the law imposes accountability on the state towards the vulnerable people living in protected areas, which are often their ancestral homes. The creation of this legal space has already led to local protests and resistances against unilateral decisions on protected area management. In Tamilnadu, local communities have strongly protested against declaration of Mudumalai Sanctuary as a "critical tiger habitat", claiming such a declaration is illegal under the RFRA (Masinagudi Panchayat, 2008).

Impacts on Forest Dependent Poor

RFRA has significant implications for the forest dependent poor. Under state ownership of forests and JFM, poor forest users and forest dwellers have been marginalized, excluded and harassed. By recognising their legal rights on forests, the RFRA can ensure their tenure security and curtails the Forest Department's power to harass them. The strategy of using JFM to remove forest dwellers cultivating forest land

becomes much more difficult. RFRA can also contribute to secure land rights for hundreds of thousands of marginalised shifting cultivators in Orissa and northern Andhra Pradesh.

As the new law gives forest dwellers ownership rights over non-timber forest products (NTFPs), Forest Department attempts to regulate the use of forests and its products will require the right holders' consent. Rights over NTFPs also open spaces for pro-poor changes in the regulatory regimes for these products. In Orissa, for example, trade in kendu leaves (used for making country cigarettes) and bamboo is nationalized, with the State keeping substantial royalties. After the passing of the RFRA, forest dwellers would have legal rights over these royalties, upwards of Rs. 1 billion annually, and mechanisms for sharing these royalities with the millions of forest dwellers who collect them would need to be arranged. The communities can also now reject the State monopolies for collection and marketing of many NTFPs and sell these products on the open market.

JFM AND RFRA: FROM SUBJECTS TO CITIZENS

Indian forest governance has treated forest dwellers as "subjects" to be regulated and managed rather than citizens of a democracy with rights and responsibilities. Effective democratic decentralization occurs when citizens and their collectives have a voice and role in decision making that affects their welfare. Secure rights of individuals and groups provide them the legal and moral *locus standii* to participate in decision-making. JFM does not provide secure rights to participants; at best it offers certain concessions in exchange for forest protection. These concessions can be withdrawn at any time without recourse. The FD, with its powers under the Indian Forest Act, 1927, holds all the cards

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in JFM, and the question of a democratic relationship with local communities does not arise. Unilateral discretionary powers also mean that the bureaucracy moves to align with powerful local interests to fulfil its objective of protecting and exploiting forests, and often marginalizes people who actually depend on forests for their livelihoods.

By providing secure rights to forest dwellers, the RFRA has created possibilities for changing the rules of the game, reducing the power asymmetry both between the bureaucracy and the local communities, and between the elites and the weaker sections within communities. RFRA has the potential to create accountability of the forest bureaucracy to forest dweller communities. It also provides for shifting tangible legal powers and authority to forest dwelling communities. This opens legal spaces for the marginalised subjects of forest governance to become citizens with rights and responsibilities, and equal partners in the governance of forest resources.

The extent to which these possibilities materialise will be decided through ongoing political contestations. RFRA itself was the product of a political process, pushed by the nationwide mobilisation of forest dwellers and their supporters. On the other hand, with JFM institutionalized in forest governance, the FDs, NGOs involved in JFM, and many existing JFM committees are vested in the status quo. The accountability and shifts in power relationships that the RFRA brings are a direct threat to these powerful actors, who are working to fight the effective implementation of RFRA. At policy levels this includes lobbying to retain JFM in its current form, trying to exclude protected areas from the purview of RFRA, etc. Conservation groups and retired forest bureaucrats have filed public interest litigations questioning the constitutional validity of the RFRA. At the implementation level, State governments have focused mainly on settling individual

rights on occupied forest rights and have generally ignored the issue of settling CFRs. FDs in many states have been given a central role in implementing the law, giving them the space to sabotage it.

Coalitions of tribal and forest dwellers and their NCSD advocates are countering the efforts to subvert the RFRA. At the policy level, these coalitions are pressuring Parliament and the central government ministries to issue proper implementation guidelines for RFRA. Various national and state level groups are trying to counter the court cases against RFRA and ensure that the law is implemented in its true spirit. At the grassroots level, coalition members are trying to ensure proper implementation of the law. Political contestations over the RFRA and its implementation are taking place across scales.

The comparison between JFM and RFRA illustrates the qualitative difference between a top-down, state initiated decentralisation program and a demand driven, political reform process. RFRA stands in sharp contrast to the top-down decentralization of JFM in its origins, narratives and consequences, and opens further spaces for democratic contestations in India's forested landscapes. RFRA's enactment was an outcome of democratic politics and the realisation of its potential is proving to be contingent on a fiercely contested political process across scales ranging from villages to the national parliament.

The struggle over forest rights and governance in India and the RFRA represent a microcosm of the larger struggle for democratic governance and citizenship in India. It serves as an example for other nations and communities grappling with similar issues of democracy in forest governance. The forestry sector in India will be worth keeping an

eye on for the next few years as top-down decentralization and bottom-up struggles for democratization play out with each other.

REFERENCES

Agrawal, A. (2001) The Regulatory Community. Mountain Research and Development. 21(3), 208-211.

Agrawal, A., Ribot J. (1999) Accountability in Decentralization: A Framework with South Asian and West African Cases. Journal of Developing Areas. 33(4), 473-502.

Asher, M. (2008) Yesterday's 'encroachers' are today's rights-holders. InfoChange. Accessed 06/15/2008, 2008, from the World Wide Web: http://infochangeindia.org/index.php?option=com_content&task=view&id=7051&Itemid=112

Banerjee, A. (2007). Joint Forest Management in West Bengal. In O. Springate-Baginski & P. Blaikie (Eds.), Forests, People and Power: the political ecology of reform in South Asia. London: Earthscan.

Baviskar, A. (1995) In the Belly of the River: Tribal Conflicts Over Development in the Narmada Valley Delhi: Oxford University Press.

Beetham, D. (1993) The Limits of Democratisation. In D. Held (Ed.), Prospects for democracy: north, south, east, west. Princeton: Stanford Univ.

Brahmane, G., Panda, B. (2000) The Adivasis and the World Bank Aided Madhya Pradesh Forestry Project. Paper presented at the Workshop on the Indigenous People, Forests and The World Bank: Policies and Practices, Washington DC.

Carney, D., Farrington, J. (1998) Natural Resource Management and Institutional Change. London:Routledge

Colfer, C., Capistrano, D. (2005). The Politics Of Decentralization: Forests, Power And People. London: Earthscan Publications

Crook, R., Manor, J. (1998) Democracy and Decentralisation in South Asia and West Africa: Participation, Accountability and Performance Cambridge: Cambridge University Press

CSE (2008) Mendha Lekha demands its rights under Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Accessed on 06/20/2008 from World Wide Web: http://www.cseindia.org/programme/nrml/Mendha_Lekha.htm

DeGrassi, A. (2003) Constructing Subsidiarity, Consolidating Hegemony: Political Economy and Ago-Ecological Processes in Ghanaian Forestry. Environmental

Governance in Africa. Working Paper# 13. Washington, DC: World Resources Institute.

Folke, C., Hahn, T., Olsson, P., Norberg, J. (2005) Adaptive governance of social-ecological systems. Annual Review of Environment and Resources, 30(1), 441-473.

Forsyth, T. (2004) Social movements and environmental democratization in Thailand. In Jasanoff S, Martello M (eds.) Earthly politics: local and global in environmental governance. Politics, science, and the environment . Cambridge: MIT Press

FPP (2004) Peoples' Declaration. National Convention in Defense of the Rights of Forest Dwellers towards a Resolution of the Forest- Forest Dweller Rights Conflict. Accessed 06/16/2008, 2008, from the World Wide Web: http://www.forestpeoples.org/documents/asia_pacific/peoples_decl_delhi_8dec04_eng.shtml

Francis, P., James, R. (2003) Balancing Rural Poverty Reduction and Citizen Participation: The Contradictions of Uganda's Decentralization Program. World Development, 31(2), 325-337.

FSI (2005) State of Forest report 2005 Dehradun: Forest survey of India.

Gadgil, M., Guha, R. (1992) This Fissured Land: an environmental history of India. Delhi: Oxford University Press:.

Garg, A. (2005) Orange Areas: Examining the Origins and Status. Pune: National Center for Advocacy Studies

Ghosh, S. (2007) Commons Lost and 'Gained"? Forest Tenures in the Jungle Mahals of South West Bengal. Norwich: Overseas Development Group, University of East Anglia.

GOI (1990) Involving of village communities and voluntary agencies for regeneration of degraded forest lands (Letter no. 6-21/89-PP dated 1 June 1990) New Delhi: Government of India, Ministry of Environment and Forests.

GOI (2005) Joining the Dots: The Report of the Tiger Task Force. New Delhi: Government of India, Ministry of Environment and Forests.

GOI (2008) Annual Report 2007-2008, Ministry of Environment and Forests, GoI. New Delhi: Government of India, Ministry of Environment and Forests.

Grove, R. (1995) Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600-1860. Cambridge: Cambridge University Press.

Guha, R. (1990) <u>The unquiet woods: ecological change and peasant resistance in the Himalaya</u>. Berkeley: University of California Press

Hickey, S., Mohan, G. (2004) <u>Participation- From Tyranny to Transformation? Exploring New Approaches to Participation in Development</u>. London: Zed Books.

Jewitt, S. (2005) Europe's 'Others'? Forestry policy and practices in colonial and postcolonial India. <u>Political Geography</u>, <u>13</u>(1), 67-90.

Kumar, N. (2000) <u>India: Alleviating Poverty Through Forest Development</u>. Washington DC; World Bank Publications.

Kumar, K., Choudhary, P., Sarangi, S., Mishra, P., Behera, S. (2005) <u>A Socio-Economic and Legal Study of Scheduled Tribes' Land in Orissa</u>. Unpublished Study Commissioned by World Bank Washington.

Kumar, K., (Forthcoming) <u>Democratic Assertions:Historical Injustices and the Making of India's Forest Rights Act</u>.

Kumar, S. (2002) Does "Participation" in Common Pool Resource Management Help the Poor? A Social Cost–Benefit Analysis of Joint Forest Management in Jharkhand, India. <u>World Development</u>, <u>30</u>(5), 763-782.

Masinagudi Panchayat. (2008) <u>Letter written by President, Masingudi Panchayat, Mudumalai, to the Collector, Nilgiri District dated 19th March, 2008</u>. Retrieved from Forestrights listserve, July 5, 2008.

Ostrom, E. (2002) <u>The Drama of the Commons</u>. Washington DC: National Academy Press

Peluso, N. (1992) <u>Rich Forests, Poor People: Resource Control and Resistance in Java</u>. Berkeley: University of California Press.

Peluso, N., Vandergeest, P. (2001) Genealogies of the Political Forest and Customary Rights in Indonesia, Malaysia, and Thailand. <u>Journal of Asian Studies</u>, <u>60</u>(3), 761-812.

Prabhu, P. (2005) The Right to Live with Dignity. <u>Seminar</u>, <u>552:</u> 14.

Rangarajan, M. (1996) <u>Fencing the Forest: Conservation and Ecological Change in India's Central Provinces, 1860-1914</u> Delhi: Oxford University Press

Rangarajan, M. (2001) <u>India's wildlife history: an introduction</u>. Delhi: Permanent Black.

Ravindranath, N., Sudha, P. (2004) <u>Joint Forest Management in India: Spread, Performance and Impact</u>. Universities Press.

Ribot, J. (2002) Democratic decentralization of natural resources. WRI: Washington, DC

Ribot, J., Agrawal, A., Larson, A. (2006) Recentralizing While Decentralizing: How National Governments Reappropriate Forest Resources. World Development, 34(11), 1864-1886.

Rosencranz, A., Lele, S. (2008) Supreme Court and India's Forests. Economic and Political Weekly, 43(5), 11.

Sarin, M., Singh, N., Sunder, N., Bhogal, R. (2003) Devolution as a Threat to Democratic Decision-Making? Findings from Three States in India. In D. Edmunds & E. Wollenberg (Eds.), Local Forest Management: The Impacts of Devolution Policies London: Earthscan Publications.

Saxena, N. (1997) The saga of participatory forest management in India. Bogor: Center for International Forestry Research.

Sinha, A. (2008) Crores Lost in Timber Protests - yet to Shut Down The Telegraph, May 14

Sivaramakrishnan, K. (1999) Modern Forests: Statemaking and Environmental Change in Colonial Eastern India Chicago: Stanford University Press

Springate-Baginski,O., Blaikie, P. (2007) Forests, people and power: the political ecology of reform in South Asia London: Earthscan

Sundar, N. (2000) Unpacking the 'Joint' in Joint Forest Management. Development and Change, 31(1), 255-279.

Sundar, N., Jeffery, R., Thin, N. (2002) Branching Out: Joint Forest Management in India Oxford University Press: London

Vandergeest, P., Peluso, N. (1995) Territorialisation and State Power in Thailand. Theory and Society, 24(3), 385-426.

Vasundhara (2008) Study Report on the Implication of National Afforestation Programme on Community Forest Management System in Orissa Bhubaneswar: Vasundhara