‘Forest Governance
and
Food Security of Adivasi and Traditional Forest Dependent Communities’

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Body of Content

Section ONE

Background and context building

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The objective behind drafting this note is to revive a debate that emerged decades back primarily within the civil society actors – forestry support groups, NGO practitioners, rights advocates and researchers across the country around forest governance and the protection of rights of the forest dwellers. The debate challenged existing forms of forest governance that was primarily externally driven, project and investment oriented, and commercial in nature under the garb of a scientific approach. Though there are community centric and pro-poor initiatives by government, in principle forest governance in the post-colonial India was not very different from British India that never prioritised local users' rights over commercial exploitation. This resulted in alienating local forest dwellers from forests and nurtured distrust about Forest Department's plans.

With path breaking legislations like Panchayat Extension to Schedule Areas Act and Forest Rights Act, there was a paradigm shift in the manner in which forest and other community resources were governed in India, But the basic character of resisting all forms of community control of resources, especially forests, seems to be continuing with increased investments on forests through a highly centralised decision making apparatus. As evident from a body of previous work on forests, good governance maps out a set a rights regime that impacts access, therefore, on input and output, i.e., protection and returns. Forest being a critical resource for tribal and other traditional forest dwellers, its governance is key to their survival and sustenance. The note is expected to retrieve, revitalise and rejuvenate some of these critical debates supporting community control of resources and redirect related advocacy efforts.

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Forests have been a source of food and shelter for millions in India. The poor, especially the tribals, have been dependent on forests round the year as it provides employment during agricultural lean season in the form of collection and sale of minor forest produces, fuel wood, etc. Various studies by government and non-government agencies have established that about 40% of the annual income of poor and the landless come from non-timber forest produce (NTFP)[1]. It is estimated that 80% of the population of developing countries use NTFP to meet their needs in health and nutrition (FAO, 1997). A World Bank estimate shows that the medicinal plant industry/herbal market in India is worth 5000 crore INR. NTFP provide about 40 percent of total forest revenues and 55 percent of forest-based employment. In Odisha, the contribution is about 80% and 50% respectively.

As per government figures about 65% of the forest cover is in 187 tribal dominated districts, out of 50 districts which have dense forest cover, 49 are tribal districts. (MoEF: 2006). About 260 million people live below poverty line, out of which 100 million are partially or wholly dependent on forests, out of which 70 million are tribals. (FSI: 2004). Odisha has about 29302 forest fringe villages and out of the total number of forest fringe villages of the country, 60 percent belongs to the Central Indian states. The central Indian forest patch that extends from western Odisha to eastern Maharastra is a rich reservoir of wide variety of flora and fauna, where tribal dependence on forest is fairly high. These central Indian states apart from having good area under forest cover also have major portion of the Schedule V areas of the country.

As per various studies undertaken at different points of time, in most forested parts of Odisha, especially in northern, southern and southern-western, forest dependence amongst tribals and other traditional forest dwellers have been fairly high with an income from forests ranging between 30 to 40 per cent from non-timber forest produces and other forest produces. However, dependence on forest produces for sustenance for the tribals has been a rollercoaster ride with issues concerning shifts in forest governance, market fluctuations and associated low returns, migration and growth of other local livelihoods opportunities.

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[1] *The readers may kindly know that 'minor forest produces' and non-timber forest produces' have been used interchangeably in this report.*

Section TWO

Evolution of Forest Governance in India – Colonial and post-colonial

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Commonly perceived as rights of local forest dwellers over forest products and forest land, forest rights have been a major area of concern as well as debate in India since pre-independence times. In colonial and independent India, although a large tract of land would be recorded as "unclassed" forest in Government records, ownership was unclear, and because most of these forests were home to a large number of tribals, the land was acquired by the Forest Department without settling their rights over them. After Independence, supported by improper survey and settlement, large tracts of land were declared as "reserve forests," meaning no rights either existed there or would exist later and all who either resided or claimed rights would be termed as encroachers.

Colonial learning teaches us 'one who controls forests, controple'. The history of forest management has been all about limiting local use rights and establishing control for public good. Forest has also been a political resource with a major chunk of political donation coming from it and also has been responsible for toppling democratically elected governments. Moreover, after land, the major source of rural conflict is for forest. Therefore, in order to establish control over forests, there existed a marked difference in the perceptions between the state and the tribals about the rights over the forests and forestland. This has been primarily responsible for conflicting interpretations around ownership, usufructory and endowment rights over forests and forest produce. Moreover, forest laws while made forestry a scientific operation did not recognize the existing rights and concessions. It created a perception that traditional forest use practices are unsustainable.

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Since colonial times, in the name of conservation, the tribals or the original inhabitants have been asked to justify and prove their existence on their own land. For the colonial powers, forest was commerce, trees were timber and indigenous people were trespassers and encroachers. Furthermore, the indigenous people were regarded as the greatest threat to the expanding British colonialism designed to be achieved through legitimizing control over forests. Unfortunately, forest management has not been very different in post independent India – the laws and policies have been mostly the same only the policy makers have changed. The exploitation of national resources has continued in the name of national objective by systematically marginalizing tribals and other forest dwellers.

There are thousands of cases of local inhabitants claiming that they were in occupation of notified forestlands prior to initiation of forest settlements under the Indian Forest Act. There are a number of cases of pattas/leases/grants said to be issued under proper authority but which has now become contentious issues between different departments, particularly the Forest and the Revenue. The problem is compounded by the fact that in many cases there is no clear demarcation of forest lands. In fact most of the disputes and claims relating to use and access to forests have lingered on and evaded resolution in the past because of the failure to demarcate precisely the extent of the forest. All of these require remedies and an approach aimed at only evicting the forest-dwellers is worsening the situation, not remedying it.

A little peep into the ecological history of India would clearly reveal that forest as a natural resource was never meant to be used for the local forest dwellers. It was to be used as a means to perpetuate to be their subjugation instead. Forestry in colonial India was all about commercial exploitation and revenue and thus recognized no rights and concessions for forest dwellers, who were mostly tribals. There existed no legislative framework that could make forests available for meeting local livelihood needs and the colonial powers made no effort to hide their intention, i.e., forestry for commerce, especially timber. Forestry science was introduced as a codified, printed and formal curriculum by them to continue political domination that implied non-recognition as well as opposition to the largely oral indigenous forest management traditions. This marked the beginning of a forest governance system that was alien, induced and most importantly excluded forest dependent

communities in the name of scientific forestry, public interest, national development, conservation and industrial growth. The national governments in the post-colonial phase inherited the colonial worldview that not only aimed at the use of eastern forests to boost western industrial development, but also harped on the non-existing incompatibility between conservation and livelihoods. [2]

Forest Rights in British India

The British established a mode of forest governance that imposed restrictions on local forest dwelling communities through a definition of forests as national property meant to be used to achieve the colonial objectives, which tried to acquire control of forests for commerce and national development at the cost of local forest based livelihoods. Though Forest Administration in British India, as is known, stressed on national development, it was really meant to be used by the whole body of tax payers. [3] Thus primary focus of forest governance was commerce through limiting local rights and privileges. Such regulation of rights was reflected in the classification of forests during colonial times. As national property, forests were classified as conservation forests, commercial forests, minor forests and pasture lands. The first two categories - as the names would suggest - were out of bounds for the local forest dependent communities. Minor forests were managed by panchayats with a view to reducing the contact between subordinate forest officials and villagers. Pasture land, mostly grassland, was more for animals than human beings.

During medieval India, the ownership of the forests was with the local chiefs with access rights to the local communities. Towards the beginning of the nineteenth century, the British wanted to undertake unhindered exploitation of timber, which required that the government assert its ownership over forests and do away with the traditional systems of community forest management that existed in most parts of the country. This had nothing to do with conservation; it was a ploy to keep trees, timber and forest routes under their direct control. Teak was identified as a rich substitute to oak, already getting depleted in England, to build the Royal Navy and Railways.[4] With this avowed objective, the East India Company acquired royalty rights over teak in 1807. This meant prohibition of unauthorized teak felling and the Conservator becoming the sanctioning authority for teak felling and selling, more of an assumed power than lawfully given. By 1846, such sanctioning authority over teak extended to all forests and forest products and the Company's sovereignty extended to the total forestland by 1860. As an aftermath of the Sepoy Mutiny in 1857, during which forests and the forest dwelling communities provided the rebels with a safe hiding place, the Company administration prohibited and withdrew all access rights and privileges to fuel, fodder and other local uses. In order to legitimize authority with legal and administrative backing, the Imperial Forest Department was brought into being in 1864 to consolidate state control on forests and forestry was made a scientific operation making it inaccessible to the forest dwellers.

In order to legitimize it with law, a series of legal instruments were passed in the form of forest acts from 1865 to 1878 to 1927. Forest Acts defined and classified forests to specify distinct functions

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[2] The basic objective of this discussion is to bring into debate some apprehensions on the true nature of forest rights in India by putting in perspective the policy developments both during colonial and post-colonial India, focusing at length on the two 'widely accepted' revolutionary resource rights legislations of the last one decade. It endeavours to analyse the strengths of the consultative processes and assesses the extent to which they translate the needs and aspirations of the people they intend to benefit before getting the legislative endorsement as law.

[3] The Old Forest Policy, Dr.Voelcker's Report on Improvement of Indian Agriculture, pp. 155-162 of F.D Code, 6th Edn, Circular No. 22-F, October 1894.

[4] Oak was used for shipbuilding in England. During the 19th century, Oak supply for shipbuilding went down heavily forcing the colonial government to look for alternatives in its colonies in the east. Burmese and Indian teak was identified as good substitutes and the East India Company was thus mandated to make laws accordingly.

limiting local forest rights. These Acts empowered the government to declare its intention to notify any area as a reserved or protected forest, following which a "Forest Settlement Officer" (FSO) supposedly would enquire into claims of rights (to land, forest produce, pasture, etc.). Legal instruments helped the colonial forest administration camouflage timber extraction as conservation thus curtailing and prohibiting customary use rights. The so appointed FSO was hardly helpful in settlement of rights and created no administrative space for meeting local needs. On the contrary, valuable trees were reserved and elaborate provisions were made for punitive actions. Thus started a purposive state intervention in forests and measures relating to scientific conservancy was promoted for legitimacy. Moreover, the 1927 Act remained India's central forest legislation and with minor modifications is still operational in independent India.[5]

Forest Rights in Independent India

With independence, local forest dependents expected to get their rights back. But far from improving, the rights situation actually worsened. Though policy makers changed, the policies remained more or less the same. In 1948 during the process of accession of the Princely States after independence, the activity of consolidation of government forests continued. Though the States proclaimed the lands of ex-princely states and zamindari lands as Reserve Forests, no effective steps for settlement of rights were taken. This inevitably sowed the seeds of the future forest land conflicts between the tribals, non-tribals and the state[6].

Forest governance in post-colonial India could be broken up into three phases. The first phase, which lasted from independence in 1947 till the early 70s, was the phase of commercial exploitation of forests for industrial development as well as for creating farmland for the large peasantry. The second, which lasted till the commencement of the 1988 National Forest Policy, was a phase of conservation with increased State control. During this phase, forest conservation was made a directive principle, a fundamental duty in the Constitution and brought to the Concurrent List for greater control of the national government. It was also the time when powerful legislative instruments like the Wildlife Protection Act, 1972 and the Forest Conservation Act, 1980 were put in place. The FCA restricted the use of forests and forest land for non-forest use. This phase, like the previous one, had no space for forest dwellers and tribals in the protection and management of local forests. With the coming of the National Forest Policy in 1988 began the third phase, which not only made forest a local resource but also made the participation of local forest protecting communities mandatory in regeneration of degraded forests. But did it help?

The development of legal instruments in the second phase was a response to forest and wildlife depletion in the first phase. These instruments were extremely conservationist in nature, did not differentiate between local and external use, stressed excessive Government control in the form of Eminent Domain, and restricted or did not recognize existing local use rights. The assumption was

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[5] *As per the Act, the Government can constitute any forest land or wasteland which is the property of the Government or over which the Government has proprietary rights, a reserved forest, by issuing a notification to this effect. This Act enabled the colonial Government to declare more and more land as reserve forests, without ascertaining the rights of the tribals and other forest dwellers.*

[6] *During consolidation of forests in the 1950s and with the coming up of the Forest Conservation Act (FCA) of 1980, a large area were recorded as forests without settling local rights. Many of these forests did not even physically exist and revenue lands supporting livelihoods were sealed off as forests. Moreover, the unclear demarcation of forest and revenue lands, the Supreme Court's definition of a forest were other crucial issues that went a long way in denying rights to the tribals and forest dwellers. The final blow was given by MoEF (Ministry of Environment and Forests) with its May 2002 circular to evict all `encroachers' immediately. In June 2004, the Government of India made a significant admission by holding that 'historical injustice' has been done to the tribal forest dwellers of the country, which needs to be immediately addressed by recognizing their traditional rights over forests and forestland. With changes and amendments, the Forest Rights Act was finally passed in December 2006 that promises to give up to 4 hectares of forestland to tribals and traditional forest dwellers basing on recommendations of the Gram Sabha.*

that forest had been destroyed by the forest dwellers/tribals and needed to be protected/conserved from them, although in reality mindless exploitation of the forest and its wildlife were the handiwork of the rich and the influential. Although the Forest Conservation Act restricted forest diversion for non-forest use, by prescribing prior permission and a high conversion rate, it in effect made such diversion possible. However for the rich, forest land diversion was easier whereas the poor forest-dwelling tribals were termed as “encroachers” and a direction for their eviction was issued by the Ministry of Environment and Forests (MoEF) through the May 2002 circular.

This incapacitation of forest-dwelling tribals was aggravated by the establishment of the Protected Area Network, which meant further inviolable areas with no or negligible rights over forests and forest land by the tribals; it enabled the State to evict local forest dwellers without settling their bona fide rights to residence. It is unfortunate that even the recent amendment to the Wildlife Protection Act of 2002 (WLPA) has made no reference to the Panchayat Extension to Scheduled Area Act (PESA) and has withdrawn continuance of rights even after the final notification of a protected area. A constant and consistent process was initiated to make the conservation legislations like WLPA and the Forest Conservation Act (FCA) more powerful than right providing legislations like PESA, although the latter was an amendment to the Constitution.

One of the residual features of the colonial Government that survived even in the Post-independence period was its obsession with technocratic expertise and utter mistrust and complete rejection of people's power and knowledge as important inputs for achieving national development goals. Development policy making in India, unfortunately, positioned itself on the astounding premise that people did not know anything. The prevailing social and political culture, the legal rational bureaucracy, and—most dangerously—the nation as a whole were made to believe in and sustain such an exclusionary development design, skilfully promoted by Government institutions. Curiously, almost all enabling- and right conferring provisions were in the form of policies that had no legal sanction while the restrictive ones were in the form of Acts, which had legal backing. Besides, regulatory authorities and right-guaranteeing institutions mostly focused on commercial exploitation and conservation whereas the rights of local forest-dependent communities still remained an area of utter indifference[7].

[7] *Proceedings: International Conference on Poverty Reduction and Forests, Bangkok, September 2007*

Section THREE

Participatory and Self-Initiated Forest Management Approaches

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Colonial forest administration was revenue-centric and exploitative, thus recognized no rights and concessions for forest dwellers', especially tribals. In order to continue domination, colonial forces introduced forestry sciences as a codified, printed and formal curriculum to establish its supremacy over oral and indigenous traditions. This marked the start of a forest governance system that conspired to exclude people who needed forests most in the name of scientific forestry, public interest, national development, conservation and industrial growth. The national governments in the post-colonial phase accepted such worldview on forests even though it was oriented to the use of eastern forests to boost western industrial development.

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The country witnessed some exemplary and forward looking law making successes from mid-80s to 1990 in the form of; a) The Environment Protection Act, 1986, b) The National Forest Policy, and c) the 1990 forest land regularization guidelines. While the EPA was more regulatory, the other two were enabling and empowering in nature. Efforts were made for the first time to make resource governance local community centric and traditional occupancy rights over forestland prior to commencement of Forest Conservation Act were recognized and recorded.

Existing forest governance experienced a paradigm shift with the commencement of the 1988 National Forest Policy making forest a local resource with local communities to have the first charge on nearby forests. The 1988 NFP led to the coming up of two landmark developments; a) the introduction Joint Forest Management in 1990, and b) the 1990 guidelines for regularisation of encroachment on forestland, settlement of disputed claims over forestland, conversion of forest villages into revenue villages, etc. As per the National Forest Policy, participation of local communities residing in and around forests was made mandatory in the protection and management of forests. To this effect, Government of India introduced a guideline in June 1990 around involvement of local communities along with the state forest department to manage degraded forest patches. By 1990, both West Bengal and Odisha had established great examples of community led forest protection initiatives in respective states. Odisha had gone one step ahead in recording local communities' engagement in forest protection and management in most of its forested districts. Therefore, the Government of Odisha circular on participatory forest management came in 1988, two years before the national circular.

Joint Forest Management and Social Forestry

The JFM guidelines of June 1990 sought to involve village communities and voluntary organisations in the regeneration of degraded forests ensuring an institutional mechanism that designed a participatory framework of SFDs and village communities. It ensured the involvement (read supremacy) of FD by making the Forester Secretary of the Van Samrakshyana Samittee. The local forest protecting communities were entitled to enjoy the usufruct rights over dead fuel wood, timber, 100 per cent rights over NTFPs, as well as significant share i.e. 50 per cent share timbers on final harvesting. In other words, JFM is to bring both the local forest users and forest department into a common platform for management of forest. In this regard, each SFD hs issued itsown JFM resolution. The JFM programme, over the past decade, has been spread all over the country and over 20 percent of the country's forests have been brought under JFM. As per records (ENVIS: 2016), about 14.5 million households are engaged in JFM with total forest area under JFM coming t about 2,29,38,814 ha with 1,18,213 JFM groups.

The Social Forestry Project (SFP) that started in the 1980s aimed at gathering people's participation for forest development through widespread plantation to ensure their socio-economic betterment.

Plantations of quick biomass growing species were identified that were planted and protected with support from the Forest Department. The idea was to supplement with farm income for economic justice. Besides, Forest Department also carried out a community-oriented tree plantation on community and government lands for the benefit of the villagers called as the Village Woodlots (VWL).

History of Community Forest Movement in Odisha

Self-initiated forest protection in Odisha dates back to the early years of 20th century where local communities have protected and managed nearby forests with their own efforts, though often without defined rights. It is difficult to touch upon specific reasons as to why Odisha is unique in the country in terms of self-initiated forest protection, it could be because of the; a) large scale forest depletion that the country experienced during the mid-19th century and onwards, b) benevolent kingdoms in the south and north that made some deliberate efforts to define communities' rights over local forests, and c) amidst large scale felling, efforts for forest conservation made to deal with natural calamities like cyclones and drought. These three reasons are however not substantiated by empirical data but seem to have travelled from one generation to the other as part of the oral tradition.

Though there are instances of village based forest protection in Keonjhar and Sambalpur being the early 20th century and 1930s respectively, community based self-initiated protection grew as a social movement post-independence and mostly in the early 70s as an offshoot of the national awareness/consciousness on environment conservation. The movement was led by school teachers, local political and opinion leaders and community based organisations. The districts where this movement spread as a cultural and political awakening are Nayagarh, Balangir, Dhenkanal and Mayurbhanj. Forest protection was considered as a public service and more as a service to one's own village around environment and conservation followed by being a source of survival. Forest protection was carried out either by each and every villager physically protecting forests by 'rotation of stick' (*Thengapali*) or by hiring watchmen.

Being self-initiated and spontaneous, local forest dwellers devised indigenous protection and management methods that was inclusive, egalitarian and focused on equity. While the CFM movement faces a very familiar criticism of villages protecting their own patch and plundering the adjacent, the champions of CFM feel that this incentivizes and encourages for more and more villages coming together for local forest protection. This points to a very important strength of CFM in Odisha and that is managing anthropogenic pressure on nearby forests by way of balancing household needs and demands. Though the protection and management methods were diverse and hardly uniform, what cut across as a common thread was the benefit sharing mechanism. Across the state, these villages devised specific windows for collection of wood and non-wood forest produces periodically for housing, farm implements and food.

With JFM in the 1990s, the biggest point of conflict between these two forms of community led protection initiatives was on which forests should be brought under the fold of JFM ? While the state forest department focused on converting the CFM groups to JFMCs, CFM and forestry support groups launched a campaign opposing this move by asking the SFD to launch JFM only in degraded forests as the guidelines mentioned. CFM groups vehemently opposed the inclusion of forest officials into the JFMCs as undemocratic and authoritarian. For the SFD, it was easier to show results if they focused on already established protections rather than mobilizing for new and fresh protections. Besides, JFM tried to incentivize protection by promising final felling of timber that CFM groups critiqued as unsustainable.

Forestry support groups and grassroots and state level non-government organisations in Odisha have played a significant role in supporting the CFM groups and withstanding the lure of money to ensure that the CFM movement is not derailed. The CFM support groups engaged themselves in sustaining the movement through constant and consistent work around capacity – both individual and institutional, developing collective strength by making distinct efforts to federate the groups at different levels, and documenting and disseminating successes to gather support from outside the state and country.

The success of CFM in Odisha significantly contributed in multiple ways that were reflected in; a) increased forest dependence caused due to increased access; b) resource induced village cohesion, and c) increased municipal and village development functions. During the 90s, especially after 1988 forest policy, the demand for decontrolling procurement and trade of minor forest produces gained momentum. The demand got a legal back up with PESA Act providing for a community led institutional set up by vesting ownership rights on the Gram Sabha. CFM was able to ignite visible grassroots mobilization by creating a movement for decentralized resource management that was supported by an Act of Parliament.

This enabled Government of Odisha to become the first state in the country to introduce a number of progressive policies to free up around 68 NFTPs from state control. The process got rejuvenated with the coming up of FRA that defined, 'MFP as all NTFPs of plant origin'. With increased decision making authority over community resource, forest dependence experienced a high rise because of increased access and opportunity to procure and sale NTFP locally. Moreover, these self-initiated forest protection initiatives have generated good amount of funds to support village development activities in Odisha. These funds are generated through benefit sharing, fine and sale of timber. There are a number of such examples in the districts of Balangir, Sambalpur and Mayurbhanj. The growing 'kitty' of the CFM groups was one of the reasons why JFM did not succeed in Odisha. The funds generated by the SIFPGs are much larger than what VSSs (Vana Samrakshyana Samittee) got from the SFD.

In the last two and a half decade, the SFD have made all efforts to increase programmatic investment on forests through JFMCs through Forest Development Agency, externally aided projects and now by CAMPA. This investment and funds driven forest protection programme no doubt has hampered the self-initiated initiatives but with the coming up of the legal window in the form of Community Forest Resource (CFR) rights under Forest Rights Act has brought in a new dimension with regard to revival of the established community processes.

Section FOUR

Evolution of Rights Protecting Legal frameworks

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Since the primary intention of colonial laws was to take over lands and deny the rights of communities, the "settlement" process initiated during the late nineteenth and early twentieth centuries was hardly effective. Surveys were often incomplete or not done (82.9% of Madhya Pradesh's forest blocks have not been surveyed to date, while in Orissa more than 40% of State forests are "deemed" reserved forests where no settlement of rights took place). Where the claims process did occur, the rights of socially weaker communities—particularly tribals—were rarely recorded. The problem became worse particularly after Independence, when the lands declared "forests" by the Princely States, the zamindars, and the private owners were transferred to the Forest Department through blanket notifications. In short, what the Government records called "forests" often included large areas of land that were not and never were forest at all. Moreover, those areas that were in fact forest included the traditional homelands of communities. As such consolidation of Government forests did not settle existing claims on land; all people, mostly tribals, who lived in these forests, were subsequently declared "encroachers," as they did not have recognized rights and claims to their ancestral homelands.

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Challenging the Eminent Domain of the State:
Panchayat Extension to Scheduled Area Act, 1996 and The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Panchayats Extension to Schedule Areas Act, 1996

During the 1990s with the background of National Forest policy of 1988 and the 1990 forestland regularisation guidelines, rights of the tribals and other forest dwellers over local resources were considered sacrosanct and non-negotiable and a move was initiated to secure Constitutional recognition for these rights. Sustained campaigns led first to the 73rd Amendment to the Constitution to give recognition to decentralized governance in rural areas. This was followed by the constitution of the Bhuria Committee to look at tribal rights over resources through extension of the provisions of this Amendment to the Schedule V areas. Based on the recommendations of the committee, Parliament passed a separate legislation in 1996 as an annexure to the 73rd Amendment specifying special provisions for *Panchayats*5 in Schedule V areas. Known as the Panchayats Extension to Schedule Areas (PESA), Act 1996, it decentralized existing approaches to forest governance by bringing the *Gram Sabha*7 center stage and recognized the traditional rights of tribals over "community resources"—meaning land, water, and forests. PESA was important not just because it provided for a wide range of rights and privileges, but also because it provided a principle as well as a basis for future law making concerning the tribals in India. In consistent with this central law, the states promulgated respective state laws ensuring rights to tribals over local resources.

It is more than two decades since PESA came into effect, but the obstacles in enforcing its provisions have remained largely unaddressed. A number of states including Odisha have not yet come out with respective PESA Rules that would enable implementation of the Act restricting its avowed objective of power to the people to take shape. The states are struggling to devise definitive procedures to define rights over forests and minor forest produce. Meanwhile, some states like Maharastra, Gujurat, and Odisha, in an effort to perpetuate State control over forest resources, tried to dilute the provisions of PESA although they had no legal jurisdiction to do so (Saxena 2004). The Government of Odisha, for example, has circumscribed the provisions of PESA by adding a clause, "…. consistent with the relevant laws in force," while incorporating the constitutional provision concerning the competence of the *Gram Sabha* to manage community resources and resolve disputes according to the customs and traditions of the people. This clearly implied that tribals could have rights over forests and minor forest produce, only if existing laws allowed it. Instead of changing State laws inconsistent with PESA, the Government of Odisha changed the provisions of

the Act, thus negating the rights conferred on the community by the Constitution. The original objective of the Central Act was that state governments should change their laws according to central legislation.

The Central Act talked about providing ownership rights over minor forest produce to the *Gram Sabha.* The MoEF constituted an expert committee to define ownership, which recommended that "ownership means revenue from sale of usufructory rights, i.e. the right to net revenue after retaining the administrative expenses of the department, and not right to control." While Odisha and Andhra Pradesh are still silent about what constituted community resource, Madhya Pradesh defined it as land, water, and forest. This implies that the powers given by PESA to exercise rights over community resources are non-existent in majority of the states.

Although the Central Act left no room for doubt that reserve forests should be considered community resources under the purview of PESA, the official assumption is that reserve forests are out of the PESA domain. For instance, the NTFP Policy of 2000 in Odisha restricted the *Panchayat's* control over minor forest produce in reserve forests. It said that the *Gram Panchayats* shall not have any control over minor forest produce collected from the reserve forests whereas the PESA, in its spirit, sought to extend ownership of forests to any forest located in the vicinity of the village that the people had been traditionally accessing. The policy-makers knew very well that it would be foolish to create such a distinction because it was almost impossible to differentiate between produce collected from reserve forests and that from others. Nevertheless, they went ahead with putting in place the proviso that reserve forests cannot come under the purview of PESA because the relevant laws laid down that no rights can exist in the reserve forest area.

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

As a result of the 1990 guidelines came the Government's decision to settle all claims of the tribals and other forest dwellers on forestland through a settlement framework called as the Pre-1980 Settlement procedure. This meant that all such encroachments of forestland that could be established as encroachments before the coming up of the Forest Conservation Act 1980 would be considered as eligible encroachers for regularization. While Government was seriously considering regularisation of such cases by establishing a proper procedure, an interesting development in the forestry sector happened that changed the entire complexion of forest governance in India. In 1995, one Mr.T.N.Godavarman filed a writ petition with the Hon'ble Supreme Court of India challenging the weak implementation of Forest Conservation Act 1980 in the country caused due to restricted definition of 'forests'. This case was subsequently referred to as the 'forest case' in environmental jurisprudence.

<u>The 'Forest Case' and the Seeds of Forest Rights Act</u>

This legendary case also marked the beginning of judicial activism in the field of forest and environment when Hon'ble Supreme Court of India in December 1996 redefined and broadened the scope of forests by ruling that 'whether or not in government records, forests are all areas that are forests in dictionary meaning of the tem irrespective of the nature of ownership and classification thereof. The Apex Court also redefined what constituted 'non-forest purposes' to include not just mining but also operations of saw mills. Basing on this stayed all non-forest activities including tree felling being undertaken without the prior approval of the Central Government. It also mentioned that each state was required to form an expert committee to identify areas that are forests.

While the Central Government and SCI respectively were engaged either finding ways to regularize forest encroachment or restricting non-forest use in forests, in 2001, an Interlocutory Application No.703 was filed to stop forest encroachment by powerful people. Though the intention of this IA was to stop the rich and the influential to plunder forests, the Supreme Court forbade the MoEF recognise encroachments without permission. Unfortunately this was interpreted by the MoEF as a direction by the SCI to evict forestland encroachers. Subsequently in February 2002, the SCI instructed State Governments to file reply to IA 703 in so far as the steps required to be taken by them to prevent encroachment of forest land. Following this instruction of SCI to states, in May 2002, the MoEF came out with a circular to evict the ineligible encroachers and all post-1980 encroachers in a time bound manner.

In October 2002, the Central Government asked the States/UTs to consider settlement of disputed claims of tribals over forest lands and to this effect in February 2004, Central Government issued a supplementary guideline to settle tribal rights over forest land putting 31 December 1993 as the new cutoff date. But the Apex Court (in consonance with the forest case) stayed the operation later in February 2004 before the guidelines could be put to action. As per MoEF figures, as a result of May 2002 circular close to 3 million families were evicted from their traditional habitat that happened to be forestlands.

Basing on this, in June 2004, in an affidavit in the Apex Court, Government of India admitted that 'historical injustice' has been done to tribals and decided that there is a need to undo the historical injustice by recognising their traditional rights over forests and forest land. This enabled the formulation of the Tribal Forest Bill and its introduction in the Parliament on the 13th December 2005. Then in order to review and relook at some critical aspects of the Bill, a Joint Parliamentary Committee was set up and based on the recommendations of the JPC, introduced in the Lok Sabha on the 13th Dec 2006 as The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and rules were then framed and introduced since 1st January 2008.

Thus came the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act also known as the Forest Rights Act in 2006 with an objective to recognize, record and vest traditional and customary rights over forest land of both tribals and the other traditional forest dwellers. As mentioned, this was clear departure with regard to process and method used for determination forest rights, verifications, definitions, grievance reddressal. The process of determination and recognition of rights was well defined, decentralised, consultative and participatory as the decision about who qualifies to become a claimant is taken by a village body/Gram Sabha. Besides, for the first time oral evidence for recording and vesting rights was used.

The Act provided for two sets of eligibility procedures for the tribals and the OTFDs. For tribals, the cut off was 13th December 2005 – meaning proven occupancy before that date. But for the OTEFDs, establishing the eligibility is a bit complicated as they have to prove occupancy for three generations or 75 years (whichever is earlier) from 13th December 2005. The Act provided for 13 sets of rights for scheduled tribes and other traditional forest-dwelling communities including land under individual and community control, community forest resources and rights, etc. Forest rights to be recognized and vested for land under occupation by individual, family or community for habitation or for self-cultivation for livelihood shall not exceed four hectares. The Act also recognises the right to **homestead**, to cultivable and grazing land and to collect, sale and dispose non-timber forest produces.

Forest rights under FRA would mean;

- It shall be heritable, but not alienable or transferable and jointly titled for both spouses.
- FR can be recognised in a protected area provided it does not threaten the existence wild animals.
- No eviction of forest land under occupation till recognition and verification procedure is completed.
- Displaced ST and Forest Dwellers will have also forest right, provided they have not received land compensation, and the land has not been used for the purpose for which it was acquired within five years acquisition.
- **Forest land** means land of any description falling within any forest area and includes unclassified forests, undermarcated forests, existing or deemed forests, protected forests, reserved forests, sanctuaries and national parks.
- **Community Forest Resource** means customary common forest land within the traditional or customary boundaries of the village.
- **Minor Forest Produces** includes all NTFP of plant origin.

Joint Forest Management *versus* Community Forest Resource Rights

Though Forest Rights Act creates a legal framework through CFR for community led forest management in India, JFM continues to be a dominant form of participatory forest management with increasing administrative and programmatic investment and support. Post FRA, the JFM-CFM conflict has reached new heights and plain as FRA does not seem to have created any visible impact on the way JFM are being implemented in India/Odisha. The formation of VSSs has been hasty, project driven and have been a mere number game as it used to be. Forest Department continues to ignore CFR and has been able to create a 'kitty' through mobilising externally aided projects to support and advance JFM in the state. On one hand, it ignores the CFR process supported by another wing of government, on the other; it excuses itself from supporting the preparation of the CFR management plan that eventually could be a part of the Working Plan.

While JFM being a mere administrative order without any legal back up should be subsumed into CFR that is legal and constitutional, its numbers, however, are growing parallel to CFR in the country. With state government's lukewarm approach to CFR, the civil society organisations and forestry support groups have taken onto itself the responsibility of facilitating CFR claims at a speed that are at times unrealistic. While JFM has been a paper tiger, CFR is almost on the threshold of getting into the same trap of numbers with almost no serious efforts on sustainable forest management. Both are operating in silos and at cross purposes. As discussed earlier, if the FD has gone to well protected and dense forests to turn them into JFM, immediate attention is required to review the process followed by CSOs that are facilitating CFR claims either by turning non-functional VSSs or unprotected forests into CFRs. In some cases, this mutually inconsistent approaches have turned forests into battlefields causing inter and intra village conflicts. There are examples of existence of multiple village institutions (either a VSS or a CFR) with almost same set of people protecting and managing almost same patch (es) of forests. With the same set of villagers and varying promoters, the VSS either turns into a CFR or vice versa often leading to conflicts and leaving forests unprotected. Moreover, there is good number of examples where a big forest patch is partially under JFM led by the younger populace of the village and the rest managed by the older or senior ones under CFM or CFR (now).

Probably the need of the hour is a win-win where if every village has a CFR with Gram Sabha approved conservation and management plan wherein the forest department plays a defined role focusing on capacity building, benefit sharing and conservation with prior approval of the concerned

village institutions. It is important that FD recognises the need for transitioning from a regulatory to an advisory role at the earliest to protect and manage the large tracts of forests in the country. It will be helpful to have one strong decentralised forest protecting set up at the village level than multiple weak ones. In order to make best use of the legal back up support provided to village groups and ensure forests are well managed by the native and traditional skills, it may be a smart move to organise for a marriage between traditional and scientific forestry.

State forestry programmes and related expenditure must conform to the Gram Sabha approved management plan. It may be apt to mobilise Ministry of Tribal Affairs to send out relevant circulars and guidelines to align with externally aided forestry projects to FRA/CFR.

The post claim strategies in CFR should be Gram Sabha and village institution driven. CAMPA investment must not limit itself to JFM areas only. These village level and resource development investments *should* be done in consultation with Gram Sabha as part of post claim strategy.

Section FIVE

Procurement and Sale of Minor Forest Produces

Almost half of **Odisha**'s poplation are dependent on forests out of which a good number of people are schedule castes and schedule tribes. Traditionally, the tribals have been forest dependent communities, especially on NTFP, which keeps them busy as well as provides livelihoods during the agricultural lean season, from November to June. Several studies have established that about 30-40% of every household from the forest fringe villages come from NTFP. Some of them are directly eaten; some undergo minimum processing and sold in the nearby haats. The five most important NTFPs are Kendu leaf, Bamboo, Sal seed, Mahua and Tamarind that provides a substantial chunk of income and livelihoods to about 15 million people for about 7-8 months between November to June.

In Odisha, **Kendu leaf** plucking is carried out in a spread out area of 6 lakh ha in 23 districts with Bolangir, Angul, Sambalpur, Sundargarh, Koraput, Kandhamal, Kenojhar and Mayurbhanj being the major KL producing districts. In terms of coverage, dependence and revenue to the state exchequer, KL is the most valuable and important non-timber forest produces available in the State. Odisha is the largest producer of processed KL after Madhya Pradesh and accounts for 15% of total KL production in the country. In terms of quality of leaves, Odisha has the unique distinction of producing best quality leaves in the country. After agriculture, this KL operation and trade accounts for largest number of employment generation, which close to 20 million person-days per season.

Bamboo is abundantly found in the forest of Central and Southern Orissa. Coastal Orissa also had a fair availability of bamboos prior to the super cyclone of 1999. There are 374.77 Sq./Km of pure bamboo & 17794.61 Sq/Km of mixed bamboo forest in the state. [8] More than a million in these districts are directly and indirectly dependent on bamboo harvesting, value addition and trade. This includes about 60, 000 bamboo cutters[9] and about 30, 000 artisan families.

The total **Sal** forest of the state, as per the working plan data, is 26, 189 sq.km, out of which good sal forests are found over 19, 269 sq.km, i.e., almost 33% of the total forest area of the state. Sal seed collection provides employment for more than 80 days a year. About 2 million forest dwellers, most of them tribals, eke out a living from sal seed, especially in districts of Nabarangpur, Mayurbhanj, Deogarh, Sundergarh, Keonjhar and Kondhamal. The share of Odisha in the total sal seed production in the country is about 25%.

Mahua, a staple diet in Odisha, is widely available in major forest divisions, mostly in the western and south-western parts. An average family collects about 5 - 6 quintals a season, which is for about 4 – 5 weeks in February and March. This translates into an income about Rs. 4000 – 5000/, about 30% of their annual income. Though there is no exact enumeration of the number of people dependent Mahua for income, looking at the number of districts where it is available, the number even in a conservative estimate would go beyond 5 million.

Tamarind is mostly available in the southern parts of the state in districts like Gajapati and Rayagada. Because of high demand and relatively better price in Andhra Pradesh, a major portion of the tamarind collection in these districts is sold in Andhra Pradesh. Since tamarind is found mostly in the revenue land, which is well within the village boundary, collection is very easy and men, women

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[8] *A manager overseeing cutting operations in Ganjam district estimates —annually1 ha of pure bamboo forest yields 1 ton of bamboo whereas same area of mixed bamboo forest yields 5 quintals so in total the state has a potential to supply 9,27,000 (around 1million) tons of bamboo a year. This is a significant figure when seen in the context of national supply which is 13.47 million tones a year.*

[9] *Source: Bamboo Cutters Association, Odisha, 2006.*

even children are involved in collection. The season is for about 6 weeks with each adult collecting about 6-8 kg per day. In a good crop year, the income varies between Rs.5000 – 6000/ per person per season.

Policies guiding NTFP in Odisha:
Since independence, major non-timber forest produces like Kendu Leaf, Bamboo and Sal seed in Odisha were made available to the private traders and industries on long term lease basis. The Kendu Leaf was nationalized in 1973 followed by bamboo and sal seeds in 1980 and 1983 respectively. The Odisha Forest Produce (Control of Trade) Act 1981 established state monopoly over specified produces.

The most fundamental change in NTFP procurement and trade came in March 2000 NTFP Policy that transferred 67 items[10] (termed as Minor Forest Produces) to the purview of Gram Panchayat ownership as per PESA[11]. It is considered as a watershed in the NTFP governance of the state because of its strong intention to focus on livelihood promotion through trade deregulation.

The NTFP Procurement and Trade Policy, March 2000 identified 85 NTFP items that were divided into two categories namely, minor forest produces and the other NTFP items. Forest produces like tamarind, honey, hill brooms, siali leaves, myrabolans and the tree born oil seeds like neem, karanj, babul, kusum etc. were termed as MFPs and are kept under the control of panchayats both in the scheduled and non-scheduled areas of Odisha. The other items of NTFPs consisted of two further sub-categories, the *nationalised produces* and the *lease bar produces*. Nationalised produces like kendu leaves, sal seeds and bamboo were categorised as 'other-NTFPs' and were directly controlled by FD. Moreover, certain items, namely sal leaves, gums, resins and barks of different trees, climbers and roots of various species were put under the lease-bared items on grounds of sustainable management.

On **26th May, 2000, the Panchayatiraj Department, in exercise of power under section 152 of the OGP Act**, issued an administrative order prescribing the manner in which the Scheduled Areas transferred to the respective Gram Panchayats shall be dealt with. With this, the panchayats were entrusted with the responsibility of facilitating and supervising MFP trade in their territorial jurisdiction, i.e., within the revenue boundary of the panchayats. Traders would register themselves by giving a token amount of Rs.100/ as registration fee per each produce. It specified the way registration would be done, keep a record of monthly transaction and most importantly the way the quasi-judicial power of reprimanding unscrupulous traders will be carried out. As per the policy, the panchayats cannot use their discretion in registering traders though they can always reprimand unscrupulous ones involved in low payment, irregular procurement etc.

The State Government in November 2002 promulgated the **Odisha Minor Forest Produce Administration Rules**, which empowered the GP to regulate procurement and trading both in revenue and reserve forest areas, GP would give priority to the VSS for collection and trading, price to be fixed at the Panchayat Samittee level that has to be ratified by the Gram Sabha.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, for the first time defined 'Minor Forest Produces' as all non-timber forest products of plant origin including bamboo, bush wood, stumps, cane, tussar, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like. As per the Act, individuals and communities

[10] *Now 69 items (Baividang as the 68th item in August 2000 and sal seed as the 69th item in March 2006).*
[11] *Panchayat Extension to Schedule Areas Act, 1996*

would have 'right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside the village boundaries'. The Act, therefore, implies that tribals and other forest dwellers will have ownership rights over MFPs to be supervised and regulated by the Gram Sabha as per PESA. Though this right was very much there in PESA, the present Act confers ownership rights to the primary collectors and their collectivity. In Odisha, with majority of the NTFP with the Gram Panchayat, with the coming up of the present Act, it is expected that all the NTFP would be under the purview of the Gram Panchayat. There would be no classification of nationalized, non-nationalised, lease bar as provided by the 2000 NTFP policy.

The term forest produce was first defined under the *Indian Forest Act 1927*[12]*(hereinafter IFA).* There are two broad categories of forest produce under the IFA. The first set includes forest produce of higher economic value such as timber, charcoal, wood oil, lac, resin, mahua etc. The second category include, forest produce of lesser economic value such as trees, leaves, flowers, fruits, honey, wax etc. The Act regulates transit of forest produce and the duty levied on it. Most of the States and Union Territories adopted this law with certain amendments to suit their needs. Various State Governments have framed Rules under the Indian Forest Act to protect and preserve the forest produce. Most medicinal plants are covered under Sec 2 (4) (b) and are not subjected to regulations unless extracted from the forests. There were subsequent State amendments to the Act whereby medicinal plants were added[13]. The power to control transit of timber and other forest produce by land or water is vested in the State Government[14]. They can make rules prescribing routes by which such produce can be imported, exported or moved into, from and within the State; ensure issuance of a permit from a State Official for import, export or movement of such produce; provide payment of fees and establishments of such depots which would regulate the above mentioned activities outside the forest[15]. Transportation or import/ export of timber or other forest produce across any custom frontiers is regulated by the Central Government[16].

Besides, the *Forest (Conservation) Act 1980* outlines three objectives- to check deforestation, restrict use of forest land for non- forestry purpose and regulate lease of forest land to private or individuals. Prior approval of the Central Government is mandatory before the State government can de-reserve any reserve forest or portion thereof to be used for non- forestry purpose. In 1988, an amendment was made to the Act defining non- forest purpose to mean clearing of forests for raising commercial crops which includes cultivation of medicinal plants[17].

With the coming up of the Panchayat (Extension to Scheduled Areas) Act, 1996, the state governments were expected to formulate their own PESA rules and basing on which create decentralized resource governance structures and systems with clear devolution of power earlier vested with the state government. But it was only Government of Odisha that introduced an NTFP Procurement and Trade Policy on 31st March, 2000 transferring ownership rights to Gram Panchayats over locally available MFPs as well as bringing fundamental changes in the procurement and trade of NTFPs. Monopoly trade was withdrawn empowering the Gram Sabhas to decide the manner in which procurement and trade would take place. The NTFP trade, as mentioned earlier, starts with traders registering at the Panchayats by paying Rs.100/ per product per season and

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[12] *Sec 2(4) explains forest produce as to include timber, charcoal, catechu, wood-oil, resin, mahua flowers, mahua seeds, kuth. Caouchouc, lac and myrabolams. It also includes trees, leaves, fruits, or any other produce or parts of trees and plants.*

[13] *Like the Orissa State added gums, sandalwood, tamarind, patal garuda roots.*

[14] *Sec 41 of the Indian Forest Act 1927*

[15] Amruta Sane and Sanjay Upadhyay, Non-Timber Forest Produce /Medicinal Plants - Some Legal Concerns on Governance and Conservation relating to Harvesting, Transportation and Export, ELDF and RCDC, 2008.

[16] *Sec 41 A where the Central government can make rules to stipulate routes for movement of such produce.*

[17] *Sec 2 of the Act lays restrictions on de-reservation of forest land.*

obtain a document from the panchayat to transfer consignments from the place of procurement. As evident, permit from Forest Department for the commonly traded 85 items were not required.

The deregulation policy in Odisha had a distinct impact on NTFP trade in the central Indian states. NTFP trade in neighbouring states like Chattisgarh, Jharkhand and MP didn't seem to be influenced by PESA and continued to operate in a monopolistic trade arrangement. While this visibly impacted procurement, price and overall trade, it did greater harm to the forests by way of unsustainable harvesting created by uneven and highly fluctuating demand and supply, protective and individualistic trade practices and thereby opening up of illegal trade routes, etc.

When sal seed was denationalized in Odisha in March 2006, similar procurement issues were witnessed. During 2006 and 2007 crop year, collection price experienced an exponential hike to about 300 times, which encouraged huge collection of sal seeds in Odisha. The reason for such hike in price could be because of ban on sal seed collection in MP on sustainable forest management grounds. If we compare the sal seed trade during these years in the three states, it would be interesting to note that while one state banned collection to save its forests, price and procurement went up in the other two states, encouraging unsustainable harvesting in the two other states, especially in a state like Odisha where there were no specific regulatory authority to ensure sustainable harvesting as discussed earlier.

Forest Rights Act, 2006

The Forest Rights Act recognized tribals' and other forest dwellers' residential and cultivation rights over forestlands and vested and settled forestland under occupation both for homestead and for cultivation. In doing so, it stressed on sustainable management of forest resources through defining what sustainable use is and what is going to be the duties of the forest rights holders as regards forest conservation, sustainable management and use. Borrowing from the Bio-Diversity Act 2002, it defined 'sustainable use' as ''use of components of biological diversity in such manner and at such rate that does not lead to the decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations'.

As discussed earlier, FRA defines MFP as all NTFP of plant origin. Out of the 13 sets of rights, chapter 3 (c) confers the right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries.

Similarly, chaper 3 (i) focused on conservation and sustainable forest management is, 'right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.

After almost a decade of its introduction, Forest Rights Act continues to encounter multiple operational hurdles that merely enabled it to achieve limited results around securing tenurial rights over land and protecting rural livelihoods by providing ownership rights over forest produces, two of its most avowed objectives. While Odisha has recorded high levels of allocation of individual land titles to the forest dwellers, their rights over revenue-rich forest produces still remains much under state control bringing in almost no change in the manner in which it used to be managed earlier. While FRA directly focused on increased community control over forest resources, the idea was to provide multiple choices to primary collectors on procurement, sale and value addition. Its free market focus was to; a) increase procurement price by bringing in multiple players to the trade, b) support *Gram Sabha* create a sense of ownership over local forest resources, and c) thereby

promoting conservation and sustainable forest management with local forest protecting communities. In this regard, the Kendu Leaf procurement and trade may be discussed for clarity;

Kendu leaf, a previously nationalised forest produce, continues to be managed under strict state control whose ownership as per the FRA should be with the Gram Sabha. The state machinery still enjoys monopoly in its trade siphoning major chunk of the profit while parting peanuts with the kendu leaf collectors in the name of bonus that was kendu leaf grant in the pre-FRA period. A recent report on KL trade even mentions how the state machinery has obstructed private traders to buy directly from the Gram Sabha in Kalahandi district of Odisha. State justifies its continued control by offering an argument that deregulation of kendu leaf trade would only replace state monopoly with that of private traders' leading to cartelisation of traders causing enhanced exploitation by way of keeping the collection price at an all-time low. While states like Odisha have considered controlled deregulation, the relatively stronger forest bureaucracy of Chattisgarh and Madhya Pradesh do not even entertain any discussion on deregulation kendu leaf trade as a viable livelihood promotion option for the kendu leaf pluckers. While states label KL trade deregulation as suicidal and manufacture an 'unreal' fear of trade anarchy, the above two different trading arrangements in question have not only stagnated kendu leaf collection price but also are unable to increase the volume of bonus to pluckers. It is important to note that the state earns revenue close to 1000 crores from kendu leaf that sustains about 1.5 million pluckers in western and central Odisha.

Issues and challenges to forest produces as source of food

Changing food habits

It is largely observed now that the The relatively younger population was somehow not very keen on pursuing a livelihood dependent on NTFP collection and sale. When returns from farm sector is sinking along with no-so-encouraging levels of NTFP procurement and low uptake of wage work at the villages, the youth is only left with the above mentioned options to survive and support respective families.

Depleting forest stuck has made tribals and other forest dwellers spent more in the forests for collection of specific volumes of forest produces. Moreover, buyers don't come to remote villages and one has to walk for miles to wait for buyers creating additional discomfort. Besides, the youth and children are not very keen in consuming different varieties of *kanda* (Tuber) that they got from the forests. Earlier, tubers used to provide food for about 4 months from October to January. This collection is decreasing as food habits, especially amongst the youth is changing more towards paddy and wheat. Consumption of wild tuber for the modern gadget using youth, quite obviously, is not an indicator of modernity and status. Two issues that the study team would like to bring to the attention of policy makers are; a) household income in rural areas, and b) nutrition supplement at the household level.

Recognising forest produces as food and nutrition in government programmes

Odisha has a good amount of forest area with a wide range of forest produces on which a wide range of tribals and forest dwellers are dependent for food and income. But looking at the state of procurement and trade of such produces, one gets a fair idea about the half measures the state government has taken for promotion of these forest produces to address rural livelihoods and food security challenges. It is more than evident that the policy makers have not yet considered minor forest produces as a viable source of sustenance for the scheduled tribes and other traditional forest dwellers. The efforts have been routine, piecemeal and sporadic that is hardly concerted, business like and entrepreneurial in strategy. Moreover, Odisha does not seem to be working to design one single livelihoods vision to which different state livelihoods programmes conform. It is time

government seriously considers forest based livelihoods promotion as a prominent component within the larger livelihoods vision of the state, thereby making related actions highly intentional and purposive.

Creating multiple livelihoods options locally to boost forest dependence

Policy makers should seriously consider the option of creating multiple livelihood windows in the highly forest dependent areas so that collection of NTFPs ceases to become the sole option that has made local communities vulnerable to exploitation. Whether good or bad, the success of MGNREGA has enabled agricultural labourers to bargain and increase labour prices. The lesson learnt is simple; creating multiple livelihoods options in a particular geography is most likely to reduce existing forms of monopoly and exploitation. NTFP price is bound to increase with a viable fall back mechanism enabling primary collectors to bargain a better price. Therefore, instead of circulating within MSP or no MSP, regulation or controlled deregulation, it may not be a bad idea to try and locate options outside of forests to augment forest protection and dependence. Secondly, with regard to Kendu leaf, it is in the best interest of the pluckers, traders and the local bodies that the state government tries to work out a mutually beneficial and profitable revenue sharing model that sustains the trade irrespective of market, tax and legal limitations. Therefore, the state government should not be emotional about an archaic law like the KL Control of Trade Act and place forest produce collection and trade within the larger rural livelihoods framework. If successful, these models can be replicated in the trade of other forest produces.

Concluding Thoughts: Global and National *versus* Local

In the last couple of decades, debates around forest rights have focused basically on two areas: definition and classification of forests and the nature and extent of departmental control over different types of forests. Although classification is indicative of designated control, there are still some areas where community control is more than visible strictly from a conservation and sustainable dependence point of view. During British India, a good number of people resided on parcels of land where ownership was unclear. As discussed earlier, the situation was even worse after Independence due to inadequate and improper survey and settlement. The Government continued declaring reserve forests without settling the rights of the people who dwelt there. There are thousands of cases of local inhabitants claiming that they were in occupation of notified forest lands prior to initiation of forest settlements under the Indian Forest Act. There are various cases of *pattas*/leases/grants said to be issued under proper authority but which have now become contentious issues between different departments, particularly the Forest and the Revenue Departments. The problem is compounded by the fact that in many cases there is no clear demarcation of forest lands. In fact most of the disputes and claims relating to use and access to forests have lingered on and evaded resolution in the past because of the failure to demarcate precisely the extent of the forest. Frequent changes in the definition and classification of forests have not helped in determining and settling forest rights. Different laws, policies, and orders defined and classified forests differently. Read between the lines—all the definitions and classifications have specific control regimes attached to them. For example, forest was first defined in the Indian Forest Act, 1865 as "land covered with trees, brushwood and jungle," because its purpose was timber extraction. In 1996 the Supreme Court, as part of the interim judgement on the Godavarman case, defined forests as an extensive area covered by trees and bushes with no agriculture.

In 2007, the MoEF proposed a definition that says forest is "an area under Government control notified or recorded as forest under any Act, for conservation and management of ecological and biological resources." If the proposed definition becomes operative, then it is expected to put private forest lands out of the purview of forest laws and may come in conflict with the 1996 verdict of the Supreme Court. Through this definition, an effort is being made to address the limitations on afforestation on forest land and also restrictions on cutting and transport of trees mandated by the Indian Forest Act, 1927 and the Forest Conservation Act, 1980. This definition is bound to have enormous implications for the corporate actors, especially those active in the plantation sector. With private forest lands taken out of the purview of forest laws, large tracts of revenue land would now have forest species on them, timber from which can be safely harvested without attracting any forest law.

It is now becoming increasingly clear why the MoEF, in the recent past, has exhibited such missionary zeal in considering proposals to place large areas of forest land in the hands of industries for afforestation. With this definition, diversion of a parcel of land legally defined as forest can be possible. The MoEF, which so faithfully carried out the Supreme Court order as regards not giving land to the tribals and even termed them as "encroachers" in their own homes, instead is now ready—even eager—to take on the same mighty institution in favor of the corporate sector. The same MoEF never bothered when the Supreme Court banned collection of minor forest produce from within protected areas. It even went a step further and amended the Wildlife Protection Act according to the Supreme Court order.

A quick look into the current management approaches reveals some startling trends with regard to community rights over forest resources. On the one hand, the limitations of the so-called

progressive legal framework are getting slowly exposed. On the other, there are equally disturbing developments like changing definition of forests, forest diversion becoming easier with the preeminent role of the mining lobby. Large-scale plantation projects taken up to create carbon sinks in natural forests with no or negligible local access rights, gradual withdrawal of the State machinery from the forest-based livelihood sector, especially NWFPs, and the missionary zeal exhibited to renew the industrial–commercial approach to forest management further marginalizing local users and putting a major question mark on their continued dependence on forests.

As discussed in the previous sections, the colonial legislations had no pretensions whatsoever to protect and promote local access rights. Therefore, forest management was expected to adopt a welfare approach in independent India. On the contrary, when it came to transferring rights to the local forest-dependent communities, laws, Acts, and Supreme Court orders were introduced to obstruct such transfer. Even when no such legal and judicial hurdles were there, bureaucratic apathy, inactivity, and reluctance combined to obstruct their effective implementation. Needless to say that in both the situations, the forest dwellers, mostly tribals, continued to remain at the receiving end. The process of the marginalization of forest dwellers does not end with Acts and policies alone; Government sponsored programs and projects faithfully reflect the dominant world view of creating more space for the private players, implying penury for the perennially marginalized "public," i.e. the forest-dwelling tribals. In order to substantiate the current argument, it may be relevant to focus on some of these programs and approaches. The strict conservation orientation of the plantation projects implemented to create carbon sinks in the protected forests, to a large extent, has limited local access rights. The only right that is recognized is the right over NWFPs. The approach of such projects is to remove potential threats of deforestation, and manage forest areas so as to minimize human impact.

Global forest governance discourse has not only expanded the definition of forests, but also has caused a shift from its usual mercantile logic that puts a premium on timber—its quality and volume. Concerns about climate change, disruption of the global carbon cycle, carbon stocks, and emission and rates of sequestration have, besides adding a new dimension to forest management, also transformed forests from a local to a global resource. A new form of economic activity has spawned in the era of global warming, i.e. buying and selling of environmental services (read carbon trade). Carbon sinks are created through conserving existing forests and taking up tree-planting projects to remove greenhouse gases.

State Forest Departments will use bilateral donor funding for plantation in forest lands; on the other, the private sector, armed with a new definition of forest, will go in for large-scale plantation activities with deceptive use of jargon like "public–private partnership." In the process, they will occupy and usurp a major portion of the revenue land, especially from the cultivable wasteland category. As discussed, the locals will have no access rights in the plantation forests not to mention any such rights in the private plantation areas. The states, as well as the corporate sector, are expected to earn a fortune in the process through selling of carbon credits as well as through timber trade.

If a major chunk of the revenue land of the said category is leased out to the corporate sector for taking up plantation projects, this is definitely going to have a serious repercussion on the process of land distribution to the landless under different Government schemes. Because of the huge revenue gain for the Government, revenue lands, which could have otherwise been settled in favour of the landless, will now go to the private sector. Besides, with large-scale industrialization, the Government also has to find land, especially of the non-forest category, for industries to take up

Compensatory Afforestation, where locals will have no access rights. Besides, in matters of forest land being given to industries for compensatory afforestation, no rights assessment is done before such forest land is transferred. It is assumed that all rights are settled in a forest land area. There are instances in Keonjhar District in Odisha, where shifting cultivation areas have been given for compensatory afforestation.

The forest-dependent communities are losers both ways. On the one hand, their livelihood options are closed within the protected forests; on the other, they have no entitlement over cultivable wasteland either. Such processes are expected to create a situation where the landless will remain so indefinitely. The local forest dwellers have neither any say in matters of forest diversion nor the compensation that is received under Net Present Value (NPV) for such diversion of forest land for non-forest purposes nor in its utilization. The irony is, the local communities protect the forest, somebody else cuts it, and somebody else receives the compensation. According to the MoEF order of April 2004, money received towards NPV shall be used for natural regeneration, forest management, protection, infrastructure development, wildlife protection, and management. There is no mention of creating or compensating livelihoods for the local communities which the forest diversion has deprived them of.

The fund distribution mechanism is based on the erroneous assumption that the losses due to forest diversion are more national than local. As if all this was not enough, the hapless tribal now has to contend with the gradual closing of the NWFP option—his last remaining source for some cash income. Under the misleading pretext of falling international prices and procurement of certain commonly traded NWFPs, state governments are now increasingly trying to wriggle out of their responsibility to manage, monitor, and promote collection and trade of NWFPs. Rather than acknowledge the fact that the drop in procurement and prices of NWFPs is a result of their own policies and inaction and find ways to reverse the trend, they have chosen to place primary gatherers completely at the mercy of ruthless market forces. Their decision to curtail their involvement in the NWFP sector is based purely on calculations of profit and loss and is a complete abrogation of their welfare obligations.

In the continued harangue over national objectives and global needs, the question of the livelihood security of the forest dwellers has been given quiet burial-as if they belong to another planet. As we have seen, forests in India have always been valued for revenue profit, conservation, and as a genetic reservoir. They have never really been perceived or managed as livelihood recourse. The fact that sustainable development of forests is possible with the harmonious blending of local, national, and global needs has never been acknowledged in the country. In what can be called the mother of all ironies, the Government, through its policies and actions, first pushes the forest dwellers into utter penury and then starts poverty alleviation programs for them.

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Bare Acts and Policies – PESA, Act, FRA, NFP 1988, JFM Guidelines and so on.