

FOREST GOVERNANCE IN INDIA: COLLECTIVE RIGHTS AND CLAIMS IN THE FOREST RIGHTS ACT

Prakash Kashwan
Indiana University, Bloomington

Policy Brief I

June 1, 2010

This brief is meant for dissemination of preliminary findings of an ongoing research project on property rights in India's forests and forestlands. The analyses presented here are based on author's doctoral dissertation research and a decade long engagement with India's forest policies and programs. A more detailed note including additional explanations and references will be posted over next few weeks at <http://mypage.iu.edu/~pkashwan/>.

The note is intended as an intervention within an ongoing policy debate around questions of forest governance in India. The need to keep this note short has forced the author to assume readers' familiarity with these debates. Given this, some readers may be interested in the reports on Forest Rights Act (FRA), 2006 available at <http://www.forestrights.nic.in/> and <http://www.forestrightsact.com/>

Research support from the International Foundation for Science, Stockholm, and the Ford Foundation, New Delhi is gratefully acknowledged. The author is thankful to Rajesh Ramakrishnan, Shankar Gopalakrishnan, Suneel Padale, Ajit Menon, Daniel Taghioff, and Forrest Fleischman for comments and suggestions on earlier drafts and David Price for his prompt editorial inputs. The author welcomes critical comments and feedback, which may be directed to pkashwan@indiana.edu. Usual disclaimers apply.



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India's forests have a history of contestation over questions of forest dependent communities' rights vis-à-vis forest department strategies of treating forests as its exclusive domain managed under 'scientific forestry'. The Joint Forest Management (JFM) program was expected to change things, but there is a wide ranging consensus amongst scholars that it has failed to foster effective public participation. India's Forest Rights Act (FRA) promises to address the question of long standing conflicts about forestland cultivations, and to democratize India's forest governance, broadly speaking.

Are forest dwellers not very keen on claiming collective rights over forests? May the recent history of 'participatory' forest management have something to do with it? How does the agenda of 'forest management' link to the day to day concerns of ordinary forest dwellers? What stakes do the village leaders have in the current modes of participatory forest management? How might that affect the prospects for democratic governance of forests envisaged under the Forest Rights Act, 2006?

FRA's provisions for collective rights of forest dwellers to 'protect, regenerate, or conserve community forest resources' are perhaps as much talked about as are provisions for recognizing private rights over cultivated lands. Despite universal acknowledgement of the importance of forests to the livelihoods of forest dwellers, comparatively little attention is paid to another set of collective rights over livelihood resources enshrined in the FRA, i.e. rights over Non-timber Forest Produce, fisheries, water bodies, grazing etc. This policy brief presents key findings, relevant to the debate on collective rights, based on a year's worth of field research conducted in the state of Gujarat, as well as insights from the researcher's longstanding engagement on such issues.

Primary data collected under this research suggests that by November 2009 close to 40 percent of *Gram Sabhas* (village general assemblies) had filed for collective claims over forests or forest produce. While the lament that the number of collective claims are far lower than many expected is

common, the proportion of eligible communities that have claimed one of the collective resource rights is higher than the percentage of potential claimants who have actually filed for individual rights to cultivated parcels¹. This is significant given that the officials involved have often undermined the filing of collective claims. There is some evidence to suggest that local forest department officials have not been informed of the provisions of collective rights at all, whereas senior officials have given them detailed instructions on how to 'defend' forest department's position on private claims.

Indeed, the complex mosaics of forests interspersed with parcels of lands that have been cultivated at different times defy a neat separation between 'individual fields' and 'common forests'. Effects of this peculiar landscape are reinforced by the uncertainties surrounding the processing of individual claims filed so far. Given the conflicting versions of potential post-FRA scenarios, and their prior experience of dealing with the forest bureaucracy, ordinary adivasis are having a difficult time conceiving of a vastly changed scenario of forest governance enshrined in the FRA. Ironically, the initial response of bureaucracy in the adjudication of claims at sub-divisional level has vindicated people's skepticism. It is in the context of the uncertainty about approval of individual claims that delineating a landscape for collective management and conservation of forests become difficult. In this context, the proposition that clear demarcation of boundaries of individual fields located within forests must precede the recognition of collective claims, may be worth exploring.

In addition, may the recent history of forest management have something to do with people's skepticism about the promises of democratic forest governance? At least 200 villages within the two districts studied are protecting their forests to the best of their abilities² despite the fact that they have been denied significant benefits due to them in Joint Forest Management (JFM) arrangements. The Forest Department has given away community protected forests to paper mills, and it has ignored villagers' calls seeking departmental assistance towards effective forest protection. This has done great harm to the confidence that many communities were beginning to show in community-based forest management. Notwithstanding that scholars and practitioners had anticipated such a fate for JFM, the impact this has had on communities' faith in participatory forestry has to be addressed before their confidence in an even more democratic form of forest governance is rebuilt. JFM's losses do not necessarily amount to FRA's gains. Therefore, the present level of enthusiasm towards collective rights should also be seen in the context of slender possibilities of resolving the ongoing crises of legitimacy created by proponents of JFM, and the challenges of forest conservation internal to the communities.

Despite the department renegeing on promises made under JFM, communities continue to seek forest department interventions because they need some kind of state support for effective forest protection. The forest protection arrangements practiced in JFM, for instance, are poorly designed, and lack of accountability on part of the officials makes matters worse. However, some of the fundamental issues of monitoring and enforcement of locally designed rules are equally salient in community-initiated and community-coordinated efforts, and are likely to remain so even in an ideally designed community-based forest governance system. How best to secure interests of the most marginalized in any form of 'community' arrangement doesn't seem to have been attended

¹ The issue of individual rights will be addressed in forthcoming policy briefs.

² Indeed, there are cases of elite capture. However, elite captured villages do not exhaust the list of communities that have successfully protected their forests. Even if this number is very low, it is indicative of the potential, particularly post-FRA.

particularly well either in research or in practice. This seems to be the most important of the tasks ahead.

Finally, this research suggests that decades of rendering communities as “illegal encroachers” on the one hand and “beneficiaries” on the other has, to a great extent, eroded forest dwellers’ sense of ‘rights’ over forests. FRA is premised on the ability of citizens to conceive of, demand, and effectively leverage their rights as citizens. Perhaps the most important ‘barrier’ is related to the ways in which local state-society relations work. Forest department control is executed only partly through domination (including at times by violence). In the main, it is executed by the schemes of forest protection acting on and through the ambitions, compulsions, and every day practices of village leaders and some ordinary forest dwellers. The support of local forest department officials, acquired through a variety of means, is an important component in the portfolio of strategies that ordinary adivasis employ towards securing subsistence. Therefore, wage labor opportunities, space for engagement with officials, exposure visits, and additional development benefits routed through forest conservation projects are all valued in an otherwise resource starved village economy. It is in this context that the role of village leaders in helping ordinary forest dwellers access these benefits becomes crucial. For the department that is not genuinely invested in facilitating participation, local leaders offer valuable assistance in the performance of the rituals of participatory forestry. It is important to recognize that ordinary forest dwellers are also invested in these rituals, if only by compulsion. Moreover, even ordinary adivasis are beginning to internalize ideas such as the sanctity of the figure of 33 percent forest cover and its relation to the problem of global climate change. This could be attributed in part to the role of local opinion-makers in deconstructing media reports and other information gleaned from their contact with government officials. Having said so, the influence of legitimacy that the abstract entity of *Sarkar* - ‘the state’ - evokes among ordinary adivasis should not be underestimated.

The following policy implications may be drawn from this discussion:

- An understanding and ready acceptance of democratic forest governance amongst forest dwellers cannot be taken for granted. It has to be deliberated with them over and over again before it is accepted and internalized by forest dwellers, most likely only by some of them.
- The onus of making credible the claims of the potential for realizing democratic forest governance may be on the proponents of the model. Expecting communities to jump on board at the outset may be optimistic at best, given that similar *claims* were also made in the name of JFM.
- Making operational the agenda of democratic forest governance will require specific inputs in organizing local groups, and in helping them devise rules, conflict resolution mechanisms, and internal monitoring and enforcement provisions that are agreed to by a large majority of villagers, particularly by those who depend critically on forests.
- Facilitation by state or non-state agencies external to the community seems to be vital to executing parts of this agenda, particular given the harsh reality of significant divisions within ‘the communities’.
- The policies and programs aimed at effective democratic governance of India’s forests also have to be designed to act on and through the mundane goals that ordinary citizens, particularly the poorest among them, set for themselves and their families. In other words, designing interventions that offer a variety of short-, medium-, and long-term material benefits to members among local communities is crucial for fostering effective local forest governance.