RECENT CHANGES IN INDIA'S FOREST POLICY

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THE PROBLEM.

This paper is about the rights of Indians living in or near the forest and dependent on these forests for their economic and other needs. The paper focuses on economic rights, i.e. property and usufructuary rights. It has two main parts. The first places property rights in an Indian historical perspective. The second part concentrates on recent reforms of forest policy.

Twenty-three per cent of the Indian landmass is under the administration of the Forest Department (FD). This land is state property.[2] Questions relating to forests are therefore, to a large extent, questions relating to the FD. The degree to which the FD allows different categories of people access to forests is crucial for the well-being of the people concerned, whether these are tribal or not. In this context, economic rights often boil down to the non-transferable, inheritable rights, including usufructuary rights or access rights, that people may be granted communally or individually.[3]

Property rights are human rights. The Universal Declaration of Human Rights states in Article 17 that "Everyone has the right to own property alone as well as in association with others", and that "No one shall be arbitrarily deprived of his property". Property rights are, however, subordinate to certain other civil rights. As noted by Gewirth, a person may be legally deprived of property by taxation to enable others to enjoy their right to life and well-being (Gewirth 1985).

Feder and Feeny distinguish four types of property rights:

1. Exclusive and alienable private property rights transferable by inheritance and enforceable by law

2. State or crown property rights

3. Communal property rights vested in groups and

4. Regimes where no property rights are assigned, i.e. open access "common property" regimes (Feder and Feeny 1991).

According to this definition Common Property Resources (CPR) are non-exclusive resources to which everybody has free and equal access. In practice, it is often difficult to distinguish between CPR and communal properties. In India, many of the resources termed CPR by Feder and Feeny may be communally controlled state-owned resources.[4]

The concept of common property resources has its roots in the older concept of "the commons". The contemporary debate on CPR circles around Hardin's article "The Tragedy of the Commons." In this article he argued that open-access CPR will be overexploited because it is rational for each user to exploit the resource to the hilt before anyone else does so. In other words, each user tries to pass on almost all costs or externalities to other users.[5]

GLOBAL DEVELOPMENTS.

In recent years, the rights of indigenous people have received considerable attention worldwide. The ILO has played an important role in bringing about this development. Already in 1957 it created convention 107 which was ratified by 27 countries. The 1957 convention was modest compared to its 1989 successor, the Convention on Indigenous and Tribal Peoples in Independent Countries. This convention, ILO 169, **inter alia** grants indigenous and tribal people extensive rights of ownership or possession to traditionally occupied territories (Jensen and Jastrup 1993; Wille 1990).

The UN Commission on Human Rights has formulated a Draft Declaration on the Rights of Indigenous Peoples, and in December 1993 the UN General Assembly unanimously declared an "International Decade of World's Indigenous People". At the World Summit on Human Rights in Vienna in 1993, the rights of indigenous people were specifically mentioned, but the summit did not reach agreement on the question of rights of indigenous peoples to territory.

Land rights have been recognized in some countries. In North America and New Zealand, where European colonists entered into treaties with indigenous leaders, such treaties have formed the basis for land rights. Even in Australia, where the British did not enter into treaties with the indigenous population, indigenous property rights have been defined. In June 1992, the Australian Supreme Court in the Mabo case ruled that indigenous peoples continue to hold property rights or "Native Title" to the areas they have been using continuously provided that others had not explicitly acquired a right over those areas (Borch 1992). Previously, the court had held that a title had to be explicitly bestowed or recognized to be valid. In the absence of such a recognition, indigenous territories were held to be "empty" (**terra nullius**).

In 1993, the Australian parliament passed the Native Title Act. This act was a compromise interpreting the court's decision to mean that indigenous peoples hold "Native Title" to certain categories of traditional territories including lands leased out for mining (McLaughlin 1995). In other cases, Native Title would be extinguished on payment of compensation estimated to run into hundreds of millions of dollars over a period of twenty years (Charlton 1993). So far, the property rights conferred on indigenous people in Australia have in the main been communal, but demands for individual alienable rights have also been made (Crawford 1995:213).[6]

In a parallel global thrust, environmental rights have also expanded considerably in recent years. Like indigenous rights, environmental rights have a physical survival aspect, but environmental rights are increasingly assuming the outline of a global regime encompassing all species everywhere. An example of a broadly defined right is the global right to non-depletion of the ozone layer by chlorofluorocarbons indirectly recognized in the Montreal protocol. The Montreal protocol and other similar agreements show that nature is increasingly being valued as a collective good (Eder 1994).

Other environmental issues are more spatially constricted focussing on the preservation and management of particular terrestrial biotopes and habitats such as forests and wetlands, or the survival of particular species to secure ecological stability and biological diversity.[7] Tropical forests have been identified as repositories of much of the world's biodiversity as well as important agents for sequestering carbondioxide. As the highlands and lowlands of the forested tropical and sub-tropical regions of the world are also the homes of many of the worlds indigenous people, the concerns of the indigenous people and the environment converge. This may lead to conflicts between the rights of indigenous groups and the interests of conservation:

> "There are not easy answers to these questions if one acknowledges that both endangered species and endangered human cultures have an ethical right to exist" (Rosencranz et al. 1991:235).

Apart from the possible conflicts between indigenous and environmental rights, a further conflict has been sharpened in recent years, i.e. a conflict between the rights of indigenous people and the right to development for society as a whole. Arguing that "all the land is our land", indigenous people increasingly claim the right to refuse development projects on their territory.[8] Some even argue that a denial of this right should "be tried in a world tribunal within the control of indigenous peoples set for such a purpose" (Kari-Oca Declaration and Indigenous Peoples Earth Charter, point 61).

Indian Reactions to Global Developments.

India has ratified ILO convention 107, but is strongly opposed to ILO 169. This comes out in, for example, the writings of B.K. Roy Burman, an anthropologist.[9] In an article entitled "Indigenous and Tribal Peoples, Global Hegemonies and Government of India", Roy Burman accuses the West of having manipulated ILO 169 by referring to indigenous people as "populations" and to tribal people "peoples". The term "indigenous populations", in Roy Burman's interpretation of the convention, refers exclusively to the original inhabitants of the Americas, Australia and the Pacific, As "populations" have no right to self-determination whereas "peoples" have, the convention "will create problems for Asia and parts of Africa" because tribal peoples there will be entitled to claim the right to self-determination. Roy Burman probably shoots his arrows off the mark. In fact, the ILO convention meant to give the same rights to indigenous populations and tribal peoples.

Further, it pointed out in an addendum that the term "peoples" would not have any consequences "as regards the right to self-determination as understood in international law" (Wille 1990:61).[10]

Roy Burman further argues that the preparatory work for the ILO convention was biased in favor of the Americas which have less than one per cent of the world's tribal and indigenous people. Though having around 30 per cent of the world's total tribal population, India was represented by only one person.
In a similar vein Roy Burman criticizes the UN Working Group on Indigenous Populations. Finally, Roy Burman criticizes the UN Working Group for not recognizing European minorities such as Basques and Gypsies as indigenous people, while categorizing tribals of Thailand, national minorities of China, and even the Tamils of Sri Lanka as indigenous. Roy Burman's critique expresses the conviction that the present move for indigenous and tribals rights is basically a form of Western imperialism undermining Indian national self-determination. In Roy Burman's opinion, the governments of Asia and Africa are fighting "a grim battle against international hegemonies" operating "under the humanist cover of the ILO Convention." (Roy Burman 1992:32 and pers. comm.).

Though overstated, Roy Burman's view is shared by many Indians, including statal actors. Altogether, India's position on indigenous rights is hesitant or negative. In contrast, India's position on environmental treaties is rather positive. India is a party to Article 21 adopted at the Rio Earth Summit, and it has ratified the Biodiversity Convention (Times of India, April 14, 1993, Kothari 1994). It has ratified the Montreal-convention in negotiating which it played a central role (Herring 1994b, Rajan 1992), but it has maintained a critical stance on global standards for environmental management (Gandhi 1991). The official Indian line often coalesces with that of Indian NGOs to present a common anti-North front.

One of the persons who has systematically tried to define a southern standpoint is Anil Agarwal. Before the Rio summit, Agarwal's Delhi-based Centre for Science and Environment (CSE) publicized a Statement on Global Environmental Democracy for ecological justice and human rights (Agarwal et al. 1992). This tract seeks to strike a balance between Southern radicalism, Gandhian philosophy, liberal human rights, natural science, and "green" economics. Through a critique of industrialization and colonialism, Agarwal defines a position from where he can demand, as a matter of human rights, that the North pay the full ecological costs of its "gargantuan consumption" to the South. In a more recent editorial in Down to Earth this argument has been further developed. The editorial, which has been either written or conceived by Agarwal, argues that in order to assess the real ecological costs a "global structural adjustment" should be carried out. For using the South's share of atmospheric benefit the North should pay US$ 50-100 bio. yearly, and for maintaining the tropical forests the North should pay another US$ 80 bio. In addition, the North and the rich in the South should pay the full ecological costs of luxury products such as bananas, tea and shrimps. It further argues that local communities should be entrusted with carrying out these valuations as they know how to value the

environment in a politically sound fashion from the position of "environmental rights and democracy" (Down to Earth, November 15, 1993). Such arguments have earned the CSE both national and international acclaim and "international notoriety" (Herring 1994b:13). Apart from that, they have helped India formulate a standpoint on complex environmental problems.

When it comes to the protection of flora and fauna, India has signed several international conventions including the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and chaired its Standing Committee in 1983, 1985 and 1987 (Rosencranz et al. 1991:15). In fact, India and Denmark were the only two countries to have signed all major international conventions regarding wildlife before the Rio Earth Summit (Rosencranz et al. 1991:234). This smooth participation grew out of India's domestic polities. In 1972, India passed the Wildlife Protection Act (WPA) with strong support from Indira Gandhi (WPA 1992, foreword). The WPA goes further than CITES itself (Herring 1994a).

According to Kapoor (1994), India plans to have 633 sanctuaries and 147 national parks covering five percent of the country's territory. India already has 450 sanctuaries and 80 parks presently covering more that 4% of the total land mass occupying 20% of the forested area (Cherail 1993:7). These areas are said to be home to about 20% of the tribal population. The national parks also include 21 Project Tiger reserves covering 30,000 sq. km. (The Hindustan Times March 1, 1993 and Samar Singh 1993). Tribals and others, including traders, have reacted to the protection of flora and fauna by arguing that their livelihoods and traditional lifestyles are threatened. Ivory traders moved the courts to protect their rights to earn a livelihood after ivory trade was curtailed by an amendment in 1986. The 1991 amendments to the WPA enhanced punishments and practically banned hunting and trapping as well as commercial felling and exploitation of wildlife in sanctuaries and national parks.[11]

According to section 11.2 of the WPA, "the killing or wounding in good faith of any wild animal in defence of oneself or any other person shall not be an offense". A problematic issue arises when considering whether it should be an offense to kill an animal which, so to speak, violates the right to property by damaging standing crops. This question has become particularly relevant after elephants were placed in schedule I of the WPA affording them greater protection.[12] Section 17.a of the WPA prohibits the picking or uprooting of any specified plant from any area specified by the Government of India (GOI). Scheduled Tribes are exempted from this, but only as relates to plants for "bona fide personal use". The WPA does not prohibit grazing or movement of livestock in sanctuaries (section 33.d). However, when an area is elevated to a national park, grazing and movement of livestock are banned. This has obvious implications for peoples' usufructuary rights.

The above summary of India's responses to global moves shows that India's position has been consistently positive as regards the protection of flora and fauna and that this has grown out of its national policies, that it has pursued some other environmental issues aggressively in international fora, but that it has been less enthusiastic with respect to tribal or indigenous rights.

Global discourse, however, is only one among several discourses. In the following I shall concentrate on the process of rights bargaining on a national level. It will become clear that sub-statal entities have obtained and retain considerable rights. However, unlike some other entropy-resistent entities the forest dwellers have been peripheral and generally weak, but even the forest dwellers are increasingly in a position to gain access to international actors thereby engaging the state on two fronts.

THE "STANDARD ENVIRONMENTAL NARRATIVE".

In the contemporary debate within India on the rights of the forest-dependent people, the rich North takes the backseat while the Forest Department takes the frontseat. The debate is not as predictable as for example the debate on Sri Lanka's recent political history, but it is possible to discern three recurring elements or themes. These may be called

1. FD's sin of commissions
2. FD's sin of omission and
3. The myth of people's prudence

Together these constitute what Greenough calls the "standard environmental narrative" (Greenough 1991; see also Jeffery 1994; Sinha and Herring 1993).

In its streamlined form, this narrative holds that before the advent of the British, local communities lived largely in balance with nature prudently managing their common property resources to satisfy a variety of needs of people of the community. This was achieved by the then vibrant local organizations and with minimal interference from the state. The narrative further posits that the British, committing a sin of commission, stole or expropriated the CPR, including the forests, without compensating the people and placed the forests under the exclusive control of the FD in order to exploit India's rich forests commercially for the benefit of the empire. After 1947, it is argued, that the FD continued along the road of scientific commercial forestry laid out by the early German foresters - the British were not capable of formulating a forest policy - further undermining the resource base of the local communities. Through no fault of theirs, these communities, therefore, had to exploit whatever resources they had access to in a less sustainable manner.[13] Simultaneously, the FD has been increasingly corrupted by forest contractors, politicians and other gangs and mafias. Altogether the FD has failed in its duty to protect the forests thereby committing a sin of omission. This has caused an environmental crisis affecting not only those living in the forests, but others as well. Now, it is only the forest-

dwellers, and particularly the tribals, who, with the support of NGOs, can turn the situation in the direction of sustainable usage by recovering and applying indigenous knowledge.

The standard environmental narrative is simultaneously a distortion of history and a tool for coming to grips with real problems. It is a useful tool because it ascribes notions of sustainability, prudent resource use and indigenous knowledge to Indian village communities, and because it affords a central place to the FD and to CPR. Nation-states have often been built around a narrative postulating a shared ancient culture. According to Gellner, such reinterpretations of tradition typically accompany the transition to a post-agrarian societies. Similarly, it would seem that today many actors, both international and national, are in the process of building environmentally stable societies around a narrative postulating shared ancient sustainable livelihood practices. This narrative provides a place of honor to people
hitherto only peripherally involved in projects of improved resource management and cajoles them into "participating" in this new project.

However, myths may distort history and provide arguments for policies which may have unwanted consequences. In the present case it would seem that the narrative unduly romanticizes forest-dwellers of the past and present, and unduly demonizes the state and its agent the FD. By casting the FD in the role of a new and foreign Leviathan, it precludes a realistic assessment of what the FD actually has done. Moreover, the narrative creates some gaps in history leaving little room for understanding the quest of pre-colonial states to extend their sway over the forests. For example, what to make of a presumably historical events such as Ashoka's deportation of 150,000 people from Kalinga to clear forests for cultivation (Farmer 1984:7)? The narrative also leads into unconvincing claims as when Vandana Shiva proposes that famine was not a problem for forest-dwellers in pre-colonial days.[14]

Further, the narrative gives rise to theories which celebrate practices which may be criticized from an equity point of view. For example, Gadgil and Guha have argued in their book This Fissured Land that the caste system promoted sustainability by dividing natural resources between castes (Gadgil and Guha 1992). This is not only questionable because, in fact, forest-dwellers rarely depend on a single forest resource, but it is also problematic because the theory thereby may seem to underpin the institution of caste.[15]

Whence This Fissured Land?

Contrary to the standard environmental narrative, it may be argued that the "fissured lands" which characterizes much of India today are not a product of British colonialism. According to Spate and Learmonth:

> "The natural vegetation of the Indian Subcontinent, except for the higher mountains and in the more arid parts of Baluchistan and the Thar, is essentially arboreal. It

> has, however, been cleared, exploited, and degraded to such an extent that this statement has little practical significance today ... *Three millennia* of clearing for cultivation and of unregulated grazing, both often produced by burning the jungle, have stripped the forest from nearly all the plains, and much of the lower hills and plateaus, or turned them into scrub" (Spate and Learmonth 1967:73 quoted in Erdosy 1992:1, my italics).[16]

This typical Indian landscape is a relatively open savannah crisscrossed by footpaths connecting villages or leading into the jungle where fuelwood and other resources are extracted. While trees producing fodder leaves are lopped but left standing, other trees are felled to be used as fuel and timber. The CPR between the village and the unexploited forest signal the moving frontier between that which is fully private and that which is not yet colonized. Over time, villagers practice a slow, but steady form of resource exploitation which converts the jungle into fields and forests to jungles. This process has largely been synonymous with civilization. To quote a 16th century writer, "Niranjan [God] has commanded that agriculture will be your destiny" (Eaton 1993:194)[17]. Once in full possession of land, peasant households generally closed it off to other peasants, or opened it only for specific purposes and at a cost. In time this leads to the creation of stratified villages.

During British times, the conversion of forests was mainly done by peasants:

> "In almost all the provinces of British India the assault on the waste was mainly a matter of innumerable small, piecemeal advances: here a cultivator or a landlord took into cultivation a piece of wasteland already within his boundary, here an individual or a village community was assigned 'government waste' under the Waste Lands Rules" (Farmer 1974:11-12).

Even after independence, agricultural expansion, whether in the form of illegal "creeping" encroachment, legalized encroachment, or as planned state-sponsored colonization, has been the most important cause of conversion of forests (ibid.:78-9). The annual rate of agricultural expansion, according to Farmer's estimate, has been around 2.7% from 1947 to 1963 (ibid.:86). Most of this expansion has occurred into areas classified as cultivable wasteland and not in forests.[18]

The question arises whether tribal societies follow a more forest-friendly mode of resource use than caste-based Hindu societies. Insofar as tribal societies practice more extensive forms of agriculture under conditions of low population pressure, this may be the case. However, it should be remembered, as Pathak (1994) insists, that most tribals are forest peasants and that tribal societies are not egalitarian enclaves. This comes out well in Hardiman's study of the Dang forests of Gujarat where Bhil chiefs held rights over forest resources before and after the British arrival. According to Hardiman, the forest resources were not managed commonly, but tribal chiefs sold timber cutting rights, grazing rights

etc. to outsiders. The levies they obtained from such contracts formed a larger part of their income than the taxation they levied on their own people or the protection money, known as **hak**, they compelled neighboring plain people, including the British, to pay (Hardiman 1994:97). The trade in forest products did not lead to the formation of a class society because the Bhil chiefs used their income to repay their debts to traders-cum-moneylenders or redistributed it to other tribals, particularly their close relatives. Hardiman's account does not support the view that tribals and forests live "symbiotically". Some would go further than Hardiman. According to Buch:

> " .. the only symbiosis in the relationship of the Bhils with the forest seems to be that between a meat cleaver and the goat that it is about to decapitate" (Buch 1991:84).

Other studies, such as Freeman's study of tribals inhabiting the dense forests in Kerala, tend to confirm Hardiman and even Buch (Freeman 1994). In this connection, it should be noted that the more well-known environmental movements in India have originated among caste Hindus and Buddhists, and not among the allegedly prudent tribals. This applies to the Chipko and Apiko movements and their much earlier precursor among the Bishnois, all of whom are Hindu settlers in precarious environments. Similarly, the message of prudence is being preached by Buddhists both as state-policy in Bhutan and as a form of resistance by Tibetans in exile.

In North-Eastern India tribal groups are under pressure from migrant groups from Bengal and Nepal, who have already colonized large areas. This has provoked anti-immigration movements in several places including Assam and Chittagong Hill Tracts. Some of these movements are themselves a threat to the forests. Among such movements, the Bodo tribal movement has had a guerilla base inside the Manas National Park causing severe harm to the park through poaching, burning and felling (Herring 1994a).[19] Though the evidence is scarce, it would seem that even tribals such as the Nagas who enjoy formal communal tenure over large forested tracts, often prefer to sell their forests to contractors and/or politicians or hand them over to the FD for commercial exploitation (Roy Burman, pers. comm., January 15, 1994; see also Gadgil and Guha (1992:207), and Arnold and Stewart (1991:6)). In Nagaland community forests account for 181.150 hectares as against only 91.525 hectares of state forests (Thakkar 1989:45). The situation in the North-East is often used by the FD to question the notion that local communities manage resources sustainably when in full control of their forests (see Roychowdhury 1995:28-29).

The above is not meant to deny that during the British period forests came under pressure to supply timber for the railways and for the shipping industry and later to meet the war-needs of the colonial power.[20] After independence, the control of malaria, the abolition of private and princely forests, the grow more food campaign, increased hunting, increasing population, and the general rise in demand for forest products combined to further degrade the commons, but it would seem that the Indian landscape primarily bears witness to

agricultural practices which are much older. The fissures were there long before the British arrived.

SINS OF COMMISSION: CHHATRAPATI SINGH AND THE THEFT OF THE FOREST.

As mentioned, the FD has been accused of denying people's rights of access. This question is bound up with the nationalization of forests which occurred early in British rule. The FD itself was not created until 1864.[21] Unlike most other departments in British India, the Imperial Forest Service was neither of British, nor of Mughal derivation. It was designed by German foresters among whom Dietrich Brandis was the most prominent.[22]

Among the attempts to provide a critical and comprehensive analysis of the legal roots and consequences of the nationalization of forests, the short book by Chhatrapati Singh (1986) stands out as one of the best. It is often quoted and it has evidently been read by a number of people working in the field, including donor agents. Singh's overall position is that

> "... Indian laws are a labyrinth of contradictory ideologies existing simultaneously. Forest laws are essentially colonial and capitalist in nature. The Directive Principles [of the Constitution] which amongst other things also relate to common property resources are, however, socialistic in orientation. Between these two is sandwiched a liberal ideology embodied in the Fundamental Rights. To add to the confusion there is a whole range of case laws ranging from anarchic neo-colonialism to utopian socialism" (Singh 1986:viii-ix).

The booklet concentrates on the Indian Forest Act of 1927.[23] This act "gave more power to the government in the reserved forests, increased the number of listed offenses and enhanced the punishment for some of these offenses" (Nadkarni 1989:60). It extended to private lands by allowing that "State governments may regulate timber cutting, cultivation, grazing and burning or clearing of vegetation on private forest land" (Rosencranz et al. 1991:217). According to Singh (1986:x), the Indian Forest Act of 1927 does not conform to the principles embodied in the constitution. As a legal rationalist Singh, therefore, holds that the act should be held unconstitutional and another basic act legislated instead. Singh criticizes the 1927 act on several counts chief among which is the question of expropriation of land. Singh traces the British forest policy to the Bengal Regulation 1 of 1824 which enabled the British Crown to acquire land. As regards private lands, the Land Acquisition Act of 1894 later became the main legal instrument, but as regards forests a separate legislation was evolved resulting in Act VII of 1865. This act was succeeded by the 1878 Forest Act. Finally, 81 of the 84 sections of the 1878 Act were incorporated into the 1927 Act (ibid.:10). This legal complex enabled the colonial state to take over CPR, thereby extinguishing the property rights of the forest-dwellers and closing off the resources which had hitherto been at their disposal. Singh's argument hinges on two further points: that the "theft" of the forests was a new policy and not a continuation of the

policy and practice of earlier rulers, and that the British motive was the exploitation of resources rather than their sustainable use. Both of these questions, which are essentially historical rather than legal, have been extensively debated and much moral prestige is attached to them.

The late 18th century so-called permanent settlement in Bengal was preceded by extensive debates about the relation between ruler and subject in pre-colonial times. One school of thought held that Oriental rulers were the owners of all land while the other school, basing themselves on French Enlightenment philosophers, held that Oriental rulers had recognized the property right of their subjects and that the British should do the same. This school argued that a rule of property would encourage the **zamindars** in Bengal to improve their holdings, the wastelands and the irrigation systems thus contributing to a capitalist development of agriculture (Guha 1963:99 and 171-3). The permanent settlement which eventually was carried out, created a large number of so-called revenue villages paying land revenue to the state according to the rate fixed by land revenue settlements. In return the owner(s) of these villages obtained rather strong private property rights. The forests settlements, however, "ran against the grain of legislation on land rights" (Commander 1986:6). Villagers living in such forests were not accorded private property rights, and they were also largely exempted from the payment of land revenue.[24] In that sense, the forest settlements confirmed the theory that the pre-colonial rulers had been the owners of all resources while the revenue settlements confirmed the competing theory. Basically, this policy still holds: there has been no recent Mabo-like case in India drastically revising the rights of forest-dwellers in state-owned forests. The drastic changes which have occurred have consisted in re-classifying forest land as revenue land, or in further nationalization of private land.

The enactment of the 1865 Act re-started the debate on pre-British forms of forest control. Baden-Powell argued that pre-British rulers had a right over the forests subject only to the privileges or concessions they might choose to grant, while the Madras Government held that people using the forests should be presumed to have owned it. The forest conference in 1874 in Dehra Dun saw Brandis in a mediating role arguing for limited state-ownership of forests and the creation of a country-wide network of village forests, but the majority of the participants were "for the constitution of all forests as state reserve controlled by the forest department" (Gadgil and Guha 1992:130; Rosencranz et al., 1991:218). The result was the 1878 Act, which according to Gadgil and Guha,

> ".. by one stroke of the executive pen, attempted to obliterate centuries of customary use by rural populations all over India (Gadgil and Guha 1992:134).

Singh agrees with Guha and Gadgil that the British policy was a clean break with earlier practices and that it was inspired by commercial interests and not by conservation motives (Singh 1986:2-4). Singh claims that in pre-British times "forest dwellers were granted life tenures" or occupancy rights (ibid.:14 and note 12), while the British wanted to "directly

usurp the land" (ibid.:15). In a more recent book, Singh has elaborated on the pre-British forms of ownership. He argues that the pre-colonial state acted as a trustee for the public (Singh 1992:76) and speculates that

> ".. if the colonization forces had not interrupted the natural growth of common law, as it happened in India, the natural growth of the tradition would result in the common trust view, as it has evolved in the U.S.A" (Singh 1992:xx).

Simple as it seems, this statement covers a complex situation. Many pre-British rulers claimed that all land, indeed, the entire universe, was theirs. What they generally lacked, however, was the administrative capacity to establish direct and effective control over peripheral areas. South Asian states have generally been segmented and hierarchical. In such political systems it makes little sense to enforce exclusive state ownership over forests. The kings ruled over people who would supply them and their household with the things they needed to enjoy (**bhoga**) their exalted status.[25] Some of these things were jungle products provided by tribals and others as a sign of their submission.

I also do not agree that the British closed off the forests entirely obliterating existing customary usage. For one thing, only about one-third of the forests were constituted as reserved forests initially (Sunder n.d.:27). The rest were either constituted as village forests or as protected forests. Gadgil and Guha, in fact, agree that village forests or panchayat forests were recognized by the Madras government (Guha and Gadgil 1992:144). In the hills of Uttar Pradesh, in Orissa and in North-East India, the British did not obliterate existing rights either. Similarly in contemporary Himachal Pradesh,

> "Contrary to indications from other areas of India (Guha, 1984) the process of settlement of rights in Kullu and Mandi *did not result in the termination of local people's rights, but rather their acceptance and formalisation.*" (Hobley 1992:7; my italics).

The landowners and even tenants in Himachal were able to keep the area under reserved forests small. Their rights were not even revised after independence. Landless people, however, were left with no rights in demarcated forests and had to seek resources in undemarcated forests where they were at the mercy of stronger local people. On this background it seems an exaggeration to claim that the British usurped the land.

Fundamental rights: Police and Magisterial powers.

According to Singh, the 1927 Forest Act contravenes the civil rights enshrined in the constitution. The 1927 act, as well as the WPA, empowers a forest officer to search and arrest without a warrant persons whom he considers to have committed a minor or a major forest offence. By contrast, the Criminal Procedure Code specifies that arrests without a warrant can be made only in case of cognizable, i.e. serious, offenses against persons or the security of the state. The Forest Act, moreover, creates a judicial system manned by

forest officers for the trial of forest offences by stating in para 8 that a forest settlement officer has "powers of a civil court in the trial of suits" and can therefore hear and compound cases. In practice, this power rests with the District or Divisional Forest Officer (DFO).

Singh is right that the merging of magisterial and executive powers in forest officers violates civil rights norms, but he fails to mention that a case may proceed by appeal from the FD to the regular courts.[26] A person accused of a forest offence stands a good chance of being acquitted in court and the FD therefore hesitates twice to move the courts if it fails to compound the case.

Singh's comparison of police officials and forest officials may also be criticized. Though a forest official has the power to arrest, the complaint or report he may file in the court against an accused is not a police report as only the police proper can file a case under section 173 of the Criminal Procedure Code (Reddy 1993b:43). The forest officer, therefore, lacks important powers of the police. However, the very fact that a forest officer is not a police officer, in a sense, makes the forest officer more powerful than a police officer. While a confession made in front of a police officer is not considered a proof of guilt by the court, a statement made in front of a forest officer is admissible as proof according to various High Court judgements (ibid.).

Acquisition versus regularization.

As already mentioned, the Forest Act of 1927 lays down the procedures of expropriation. The government is to notify the public of its intention to take over land so that any person holding rights in that land may stake his or her claim. According to Singh "hardly any tribal or forest dweller would come forward to claim his right" (Singh ibid.:11). This seems overly pessimistic.

A report by a settlement officer, C. Ashokvardhan, from Bihar illustrates how the state settles claims to the forests. The report refers to the post-independence period. It is a critique of another report by a study group set up by the Planning Commission in 1985 and chaired by B. K. Roy Burman in which Burman argued along the same lines as Singh that in Orissa communal holdings and traditional inheritance patterns were neglected during settlements. Burman also found that individual rights embedded in communal rights disappeared when communal rights were removed. According to Ashokvardhan, Burman's criticism is incorrect or misleading as regards parts of Bihar, if not elsewhere. The forest rules as specified in the Indian Forest Act and in later acts, rules and regulations do not obliterate the rights of village communities, but recognize rights in land by succession even in reserved forests. The Bihar Private Forest Act defines a right holder as

> "...a person who has by custom a right of cutting or collecting in, and removing from a forest, timber, fuel and other forest produce for his domestic and agricultural purposes and of pasturing his cattle in the forest" (Ashokvardhan, p.4 xxx).

Further, the Chhota Nagpur Tenancy Act and the Santal Parganas Tenancy (Supplementary Provisions) Act recognize rights to

> "land reclaimed from jungle by the original founders of the village and all their descendants in the main line..." (ibid., xxx)

The Forest Settlement Officers finds such rights by previous records or by local enquiry (ibid.; annexure-2). In other words, they may allocate rights to right holders who do not themselves make any claims, a very different kind of situation from the one sketched by Singh and Burman.

One wrong identified by Roy Burman and acknowledged by Ashokvardhan relates to the tribal lands which were taken over by the **zamindars**. When the **zamindars** in Bihar lost their property rights as a result of land reforms, their tribal tenants also lost their claims in **zamindari** forests. This seems legalistic and unjust. In some parts of India, however, the government was more supportive of tenants rights than in Bihar. According to S. Muhammed (1968), in Bengal the government compensated farmers who lost rights in **zamindari** forest at the time of **zamindari** abolition. According to Arnold and Stewart (1991:6), uncultivated lands in zamindari areas were vested in the state after zamindari abolition and handed over to the FD or the panchayats. In effect, this meant that such lands would often have become CPR.[27]

Roy Burman also claims that FD does not accept tribal rights to collect "weeds" and plants. To this Ashokvardhan replies that the state guarantees access to these products for household consumption, and that agents appointed by the government are bound to purchase many of these products from the tribals at "remunerative prices" which, however, are often very low.[28]

The possibility of the state's extinguishing people's rights in the forest areas may be compared to the possibility of people being able to acquire rights over state forest lands. Such rights are often won by illegal encroachment which is subsequently "regularized" by the state. In parts of India, illegal cultivation is common. According to a figure quoted by Baviskar (19xxx:2493) about 10% of the forest land in Madhya Pradesh has been permanently encroached between 1956 and 1989. Though it is very difficult for forest peasants to obtain title to such large areas, it is, nevertheless, possible to extinguish state rights by concerted pressure.

Compensation.

During British rule, the state paid compensation when it acquired land and resources for public purposes (Singh 1985:21). Initially, according to Singh, this was also the case after independence when most laws concerning land acquisition were rendered injusticiable by enlisting them in the ninth schedule of the Constitution. However, several attempts have been made to remove this protection in the interest of social justice. Thus, in 1971 Article 31C of the Constitution was enacted by the 25th Constitutional Amendment to give protection to laws seeking the realization of the Directive Principles of the Constitution. Para 39 (a to c) of these Directive Principles read:

> "39. The State shall, in particular, direct its policy towards securing-
>
> (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
>
> (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
>
> (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;" (ibid.:55-56).

Thus, in the spirit of socialism a possibility was a opened to challenge the protection given to the powers of acquisition inherited from the British. During the Emergency Article 31C was further amended (by the 42nd Amendment) to prevent the Directive Principles being defeated by invoking violation of Fundamental Rights. But in the Minerva Mills case, the Supreme Court held the 42nd Amendment void finding it destructive of the basic structure of the Constitution. The paradoxical result for the forest-dwellers, according to Singh, was to create ambiguity around article 31C making a revision of the acquisition acts more difficult.

Subsequently, the Janata Party government by the 44th Amendment deleted Article 31 making the right to private property a legal and a not a Fundamental Right. According to Singh, this was another unfortunate development as Article 31 had, at least, guaranteed the right to compensation. The 44th Amendment was aimed at the rich, but it also hit the forest-dwellers.

Singh here points to an interesting human rights problematic, but it would be wrong to deduce that the state has discontinued compensating alienated land. For example, according to Indurkar and Gogate (1991), oustees from national parks have to be compensated in Maharashtra. The case of the dams on the Narmada also shows that the state is bound to honor at least some demands for compensation. By 1992 the rehabilitation budget for the Sardar Sarovar dam had been hiked from INR 190 mio. to nearly INR 6 bio. after the state came under pressure from potential oustees and from the World Bank (Sethi 1992:9). Maharashtra and Madhya Pradesh are the only two states which have an act regarding

resettlement and rehabilitation (Mitra 1995:34). Nowhere, perhaps, are the rules and procedures for obtaining compensation working well. Possibly, the draft rehabilitation policy of 1995 will develop a framework for handling future situations. There is no doubt that the state will increasingly have to obtain land for various projects in the future. I am not convinced, however, that the problem lies in the Constitution.

Singh, Rawls and the Politics of Reform.

Singh's intention throughout his whole exercise is to build a new legal superstructure on the basis of Constitution. His approach stresses the necessity of reform of inherited colonial laws such as the 1927 Forest Act. According to Singh,

> "...strategy-wise the best legal approach would be to challenge the laws concerning compensation - and land and forest laws in general - so that appropriate compensation is granted on the grounds of the **ultra vires** and irrational nature of such laws rather than on the grounds of a violation of human rights" (Singh 1986:40).

Singh's stand implies a rejection of human rights arguments based on the right to life or the right to particular life-styles. While such a human rights approach may secure legal remedy in individual cases, it does not touch, he says, the underlying legal structures which make violations of human rights legal. For the same reason, Singh considers Public Interest Litigation (PIL) an emergency solution and not a substitute for legal reform (Singh 1992:87). However, as is evident from a later book on water rights by Singh, he has hesitantly started to move with the current by adopting a more pro-human rights perspective. As noted by Upendra Baxi in his foreword to that book, Singh opens up for the human rights approach by arguing that there is a case for converting needs into rights (Singh 1991:iii and chapter 2) and construing the right to water as a right to life. However, Singh maintains his preference for "rectification of existing statutory rights" (ibid.:8-39). To this Baxi pessimistically responds that it is strange that Singh expects the legislatures to overhaul the legal framework as it was the state which initially took away peoples rights. Baxi, evidently, considers the higher courts more likely agents of reform than the legislatures.

Singh's preference for a detailed revision of existing laws comes out clearly when he states that he does not even want to discuss policy statements regarding forests or water as

> "... *within the context of Indian state craft policy statements are not binding on any government or administration. Such documents, therefore, have little to do with the actual practice*" (Singh 1991:12, italics supplied).

It seems that Singh has forgotten that he himself has advocated that progress may be made by exploiting the contradictions in legal and administrative structures. As I shall

argue, the 1988 New Forest Policy together with the 1990 circular on Joint Forest Management and other factors has marginalized the 1927 Act.

Though Singh does not want to depend on human rights litigation, he does refer to sources external to the Constitution and Indian law as sources of inspiration. According to Singh, a possible basis on which to build a new legal framework for forest-dwellers would be an application of the principles of justice enunciated by Rawls in his book A Theory of Justice from 1971.[29] Singh notes that when the state acquires private land as well as common property resources, this should honor Rawls' principle that economic inequalities are to be arranged in such a way that they are "to the greatest benefit of the least advantaged, consistent with the just saving principle". According to Singh, forest-dwellers are made to suffer dis-proportionately when their land is alienated by the state as they are denied even a just compensation (Singh 1986:42). This may well be true, but it may be noted that Singh neatly avoids discussing the rider on "just saving" which refers to inter-generational equity and which would therefore be relevant in the present context.[30] If one takes Rawls seriously one would have to answer the argument relating to just savings and also the other arguments in favor of state ownership of forests. Singh does not attempt to do this. The reason for this may be that Singh, following the standard environmental narrative, accepts the argument that the motive for the expropriation of forests was, and presumably still is, profit. As Grove has shown, this was not the case. Decades before the creation of the FD, botanists and naturalists had convinced the East India Company that there was a connection between resource management, deforestation, drought, flood, famine, climatic change, epidemics and political stability. This ecological argument lay behind some of the early protective interventions in the forests in British India (Grove 1990). It was exactly with reference to sustainable usage and ecological stability that the forest policy makers initially opted for state ownership of the forests. Thus, the Secretary of State in 1864 pronounced an early variation of the "Tragedy of the Commons" argument:

> "And in the first place we may express our belief, that under no conceivable circumstances is it possible that personal interest can be made compatible with public interest in the working of forests... the length of time require for maturing a growth of timber is so great that no individual can have a personal interest in doing more than realizing the largest possible present amount from any forests tract of which he may get possession" (from K.M. Tewari 1985:901-2).

Commander enumerates (1986:8-9) many additional arguments in favor of state-ownership of the forests. Such arguments range from ecological to economical (economies of scale) and managerial (necessity of specialized training), neither of which have been discussed by Singh.

Despite my criticism, Singh's plea for consistency and fairness - and not fairness only - carries considerable weight. The Forest Act of 1927 is still on the statute book. This does

not mean that no reforms have taken place, but they have taken another route than the one prescribed by Singh.

SINS OF OMISSION.

In the following I will delineate the lines along which reforms have been made since the 1970s and the various constrains and influences which have decided the path taken. In other words, I will consider the ability of Indian political, bureaucratic and legal structures to react to their policy environment in a structured and adaptive manner given the overall background outlined above. Following Grindle and Thomas, I shall take reform to mean "deliberate efforts on the part of government to redress perceived errors in prior and existing policy and institutional arrangements" (Grindle and Thomas 1991:3). I shall be concerned mainly with agenda setting and policy making, less with policy implementation. Further, I shall consider a forest policy to be broadly

> " ... a system which consists of the following elements: (i) The statement of objectives, (ii) A body of legislation, (iii) The structure and administration of a governmental forest organization, and (iv) The planning, budgeting and execution of programmes of the governmental forest organisation" (Husch 1987:6).

One of the major reasons behind the recent attempts at reform seems to be the perceived inability of the FD to protect the forests, i.e. the FD's sin of omission. For a long time the FD maintained that all the areas under its control were forests. "The rate of deforestation" was taken to be the amount of land transferred from the department for non-forest purposes. For example, logging was not considered a non-forest activity and, therefore, logging leading to deforestation was not considered deforestation (Anil Agarwal, pers. comm.). In 1982 the Centre for Science and Environment published its First Citizen's Report on the State of India's Environment in which it estimated that the deforestation rate was likely to be around 1 mio. ha per year as compared to the official figure of 150.000 ha per year. When in 1982-83 the first study came from the National Remote Sensing Agency [NRSA] it showed an even higher deforestation rate of 1.3 mio. ha per years over the period 1972-75 to 1980-82. This clash led to a "reconciliation" between the National Remote Sensing Agency-Indian Space Research Organization data and the data presented by the Forest Survey of India in Dehra Dun. According to J.B. Lal, Director of the Forest Survey of India, substantial decline of forest cover had occurred almost exclusively in non-reserved forests where the FD is not fully empowered to manage the forests (Lal 1992:218). In any case, the FD was forced to admit that a portion of the forests under its administration had little or no tree cover.[31]

The failure of the FD to protect the forests from degradation as seen in the loss of tree cover was taken as evidence of a general ecological crisis. Apprehensions about an exponential ecological crisis are widely shared both at elite and popular level. While the decline in political institutions is often dated to the mid-1960s (the ascent and murder of

Pratap Singh Kairon, Chief Minister of Punjab and Haryana, being a common way of dating the onset of the decline), the late 19th century, the WWII, the period after independence when private forests were nationalized, and the last two decades have all been quoted as the point of onset of the environmental crisis. The Stockholm Summit on the environment in 1972 and the Chipko movement both sensitized decision makers and others to the situation, and when the satellite photos became available, the reality of the crisis was confirmed.

The National Commission of Agriculture and Social Forestry.

The first major step towards reform occurred with the recommendations of National Commission of Agriculture (NCA) established in 1976. The NCA appraised the whole agricultural sector devoting volume IX of its report to forestry (National Commission on Agriculture 1976). To many commentators, the report represents an attempt to quash the rights of the forest-dwellers and tribals (**adivasi**). Sharad Kulkarni, one of its critics, notes:

> "The National Commission on Agriculture (NCA) advocated commercialization of forests at all costs, disregarding the sustenance derived by adivasis from the forests. It stated, "free supply of forest produce to rural population and their rights and privileges have brought about destruction to the forests, so it is necessary to reverse the process. The rural people have not contributed much towards the maintenance and regeneration of the forests. Having overexploited the resources they cannot in all fairness expect somebody else will take the trouble of providing them with produce free of charge" (quoted in Rosencranz et al. 1991:221).

Gadgil and Guha suggest that the stress on commercial forestry was adopted "retrospectively" by the NCA under the influence of the FAO which had advocated commercial forestry from the early 1960s (Gadgil and Guha 1992:187). It is probably true that the report was influenced by the FAO, and the report itself notes that the World Bank was promoting man-made forests. However, the NCA does not appear to be a doctored document. Instead, the report systematically opened up for a range of new developments stressing profitability and underlining the need for economically viable projects. The report noted that there was a wide gap between the production of industrial wood from state forests and the increasing demand. This gap was made up by felling trees on private lands and by pilferage from state forests. On this basis, the report argued the intensification of forestry:

> "If the forests are bled both by the rural sector and industrial sector, there will be no incentive or initiative left to change over from present low-cost low-yield forestry to a commercial high investment economic forestry development" (National Commission on Agriculture 1976:4).

An important result of the report was the priority accorded to social forestry. The concept of social forestry was coined by Jack C. Westoby of the FAO, but brought into prominence in India by the NCA. It means farm and community forestry to meet the needs of communities for fodder, fuel, small timber etc. in order to "lighten the burden on production forestry" (Arnold 1992:5).[32] Social forestry schemes are made on farm lands, communal, pasture and wastelands, tank foreshores as well as on road margins and along railway lines and canal banks (Reddy 1993:31). The social forestry plantation from the first five year plan to the sixth covered about 8.2 mio. ha, but during the seventh plan alone 8.8 mio. ha plantations were raised from 1985 to 1990 (Prasad n.d.:4). This is probably one of the highest plantation rates in the world, and it has been further increased. According to Kondas (1985), the allocation to social forestry was INR 522 mio. (US$ 52.2 million) during the fifth plan from 1974 to 1979, and INR 3,590 mio. during the sixth plan from 1980 to 1985. By 1993, the annual investment by central and state governments on afforestation had reached INR 7 bio. (Times of India, March 24, 1993). The percentage outlay on social forestry vis-a-vis production forestry similarly went up from 13% in 1951-56 to 78% in 1982-85. In 1986-91, the five-year plan allocated more than 1% of its total outlay to the forestry sector, more than twice the percentage in the 1951-55 plan (Society for the Promotion of Wastelands Development 1992b). Foreign collaboration in social forestry started in 1979-1980. In the course of five years or so, the World Bank, SIDA, USAID, CIDA and others contributed US$ 214 millions (Kondas 1985:891; National Council for Applied Economic Research 1988:57). Altogether donor contributions may have accounted for more than half the total investment.

It seems that these large investments are responsible for reversing the trend of deforestation. The latest report of the Forest Survey of India shows an increase in forest cover of 560 sq. km. or 56.000 ha (Forest Survey of India 1991). On an aggregate level this may be said to atone for the FD's sin of omission. However, social forestry has been criticized from a human rights point of view on two counts: Farm forestry is said to have lead to a decline in food production, and plantations on village commons are said to have excluded poor villagers from access to resources. The critique is difficult to evaluate as many different social forestry schemes have been carried out. An evaluation covering the period 1980-84 of farm forestry projects in Gujarat showed that farm forestry did not entail a diversion of agricultural lands for plantations (Forest Department, Government of Gujarat n.d.:35). On the other hand, Arnold et al. (1988) in their evaluation of the SIDA-supported social forestry schemes in Tamil Nadu, have noted that social forestry schemes there have contained no mechanism for explicitly targeting the poorer groups. The authors concluded that the schemes have had "little impact... except in the form of employment" on the target groups (ibid.:2). Sharma (1993) has confirmed the employment potential by noting that social forestry schemes have often reduced the dependence of agricultural laborers on agricultural work by providing alternative sources of employment at different times of the year, promoting work for village artisans, encouraging technology transfer to villages, developing markets, and providing minor forest products for tribals and others etc. Similarly, a World Bank mid-term review of several internationally sponsored social

forestry projects acknowledged "massive employment benefits to the community and improved wasteland planting" (The Economic Times, January 22, 1991).

The Forest Conservation Act of 1980: Conservation by Centralization.

While social forestry brought forestry and agriculture closer, administratively the two have diverged. In 1976 forests and wildlife were transferred from the State to the Concurrent list by the 42nd Amendment (Rosencranz et al. 1991:219). This enabled both the central government and the states to make laws under clause (2) of Article 246 of the Constitution.[33] In the event of inconsistency the laws made by parliament prevail. In 1985, the GOI created the present Ministry of Environment, Forest, and Wildlife and (MoEF) by moving Forests and Wildlife from the Ministry of Agriculture and merging them with the Department of Environment. The MoEF has administrative jurisdiction over national forest policy, forestry development and the Indian forest service (Pathak 1994:56).

The first major central act relating to forests was the Forest Conservation Act (FCA) of 1980. This act was not based on detailed study or scientific recommendations. Instead, the FCA was an exercise in fast policy-making by an ordinance which was later converted into an act.[34] The FCA was spurred by the need to bring into line states such as Uttar Pradesh and Kerala which had hesitated to implement GOI directives (Pathak 1993). The FCA was further grounded in the 42nd amendment which made the protection of the environment, the forests and wildlife constitutionally binding through Article 48A (D.N. Tewari, pers. comm.). The FCA furthered centralization by providing for the following:,

> "[The Forest (Conservation) Act of 1980] prohibits state governments from declaring any reserved forest, or any portion thereof, as non-reserved without the prior approval of the central government. It also prohibits the state governments from allotting any forest land, or any portion thereof, for any nonforest purpose.

The act has been severely criticized along two lines: for allowing deforestation when not needed, and for not allowing afforestation when needed. Regarding the second point, the FCA laid down that forest land on which some trees were found could not be cleared for reforestation (Section 2, iv). Moreover, section 2 has been interpreted to mean that "non-forest purpose" includes "the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants" and even any work relating to or ancillary to conservation development and management of forests and wildlife.." (Rosencranz et al. ibid.:222). The Department of Agriculture and Cooperation in the Ministry of Agriculture and Rural Development on September 3, 1983 wrote to all the states that raising bamboo would also constitute an infringement of the FCA (FRI, Silviculturist ledger files). Thus, the GOI in its attempts to end the conversion of forest land, arrested economically and environmentally viable afforestation.

The restrictions were also felt by larger projects. Thus, Krishna Mohan Tiwari claims that a INR 400 mio. World Bank project failed and left the state of Uttar Pradesh with a huge debt because the FCA and the U.P. Hill and Plain Area Tree Conservation Act 1976 were "rigidly" applied (Forest Law Times, 1992, journal section, p. 3).

To evaluate projects which involved releasing forest land, the GOI carried out environmental impact assessments. These were able to temporarily halt projects of all sizes. While this benefitted tribals and others threatened with eviction in the short run, it also meant that it became increasingly difficult to release forest land for their resettlement once a project was cleared. In the case of the Sardar Sarovar dam on the Narmada river, the World Bank insisted that India made a plan for resettlement. In 1989 the Narmada Control Authority declared that it was unable to find land for the resettlement of the evacuees. The World Bank allegedly used "strong-arm tactics" to prevail upon the GOI to release 2,700 ha of forest land to resettle oustees though the Forest Department as well as the state government of Madhya Pradesh resisted (Times of India, April 2, 1993, see also Gayatri Singh 1989).[35]

As intended, the FCA has had an impact on the regularization of encroachment. For example, in Madhya Pradesh the then Janata government had agreed to "regularize" before 31. December 1979 certain land areas encroached by tribals and low-caste Hindus before 1976. After the FCA was passed, the case moved to the GOI which refused regularization. The conflict was sharpened by Maoist Naxalites who backed some of the encroachees. During the BJP rule of the state, the Tribal Welfare Minister encouraged further large-scale encroachment. Finally, on July 17, 1990, the Chief Minister announced that the GOI had agreed to "regularizing the encroachments by over 93,000 families over forest land" and that 272.000 acres of forest land would be converted into revenue land (Naidu, 1990?xxx). Thus, it was possible to convert large amounts of forest lands to non-forest purposes despite the FCA, but the case shows that it requires very considerable political clout to do so.[36]

Initially, the FCA had no penal clauses and the act did not specify who should deal with infringements of the act (Ashwani Kumar, pers. comm.) A penal clause was inserted only eight years later, in 1988.

The 1988 amendments made it very difficult for various local non-governmental bodies to follow the intentions of the National Forest Policy of 1988 to improve the management of degraded lands such as village forests as this would often require central clearance (Rosencranz et al. 1991:222; Arnold and Stewart 1991:7). In May 1992, Forest Conservators were authorized to clear cases of de-reservation of up to 5 ha of land. Presently, it is being discussed whether industries should be allowed to invest in forestry on government-owned degraded forest land (Times of India, March 24, 1993).

In summary, the FCA has been a *very* efficient act which over a period has brought down the annual loss of forests as measured in terms of formal de-classification from apr. 150.000 ha to apr. 15.000 ha per year (Anonymous 1992:6), or, according to Prasad, from 143.000 ha to 27,000 hectares per year from 1980 to 1990 (Prasad n.d.:3). However, it has been counter-productive in so far as it has prohibited afforestation. It has also been an inordinately centralizing act. Therefore, it has rightly been criticized by proponents of commercialization, development and livelihood rights who uniformly consider it impossibly restrictive.

The 1988 National Forest Policy: "Forests should not be looked upon as a source of revenue".

During the last years of British rule, Sir Herbert Howard outlined a new forest policy. He agreed with the policy in effect from 1894 that forests primarily should safeguard the environment. He prioritized the needs of the agriculturists over the needs of commercial forestry arguing that "the satisfaction of the wants of local population free or at non-competitive rates comes before revenue." Howard's draft policy was never implemented, but according to Taylor it was used by the Congress government after independence when it formulated the first forest policy of independent India in 1952 (Taylor 1981 and 1982).[37]

The National Forest Policy (NFP) of 1988 succeeded the 1952 policy. The Central Board of Forestry (CBF), which advises the GOI, had worked on this policy since the seventies. As late as December 1986, the CBF attempted to steer the process in a conservative direction stressing departmental control over all forests including private forests. A similarly restrictive position was taken by the National Committee on Development of Backward Areas which recommended curtailment of rights of tribal communities. However, a committee formed by the Ministry of Home Affairs opposed such views advocating instead "an ecosystem management approach" based on an understanding of the "symbiotic relationship between forests and forests dwellers".[38] Further input was received from a high-powered technical committee established in February 1972 shortly before the Environmental Summit in Stockholm. The National Committee on Environmental Planning and Coordination consisted of representatives of the GOI, experts and voluntary agencies, and was serviced by the Department of Science and Technology. It drafted a national environmental policy statement which strongly influenced the debate on the environment (Lal 1981). One member of this committee was the population biologist Madhav Gadgil (Sunil K. Roy in Times of India, August 1, 1983). In 1983, Gadgil produced a proposal for a new forest policy (Gadgil, M., Narendra Prasad and Adi Rauf 1983). The proposal was revised by the GOI and published as "Recommendations regarding the revision of the National Forest Policy".

The NFP which eventually emerged sought to protect the livelihood rights of the forest-dwellers without relinquishing departmental control:

> "The holders of customary rights and concessions in forest areas should be motivated to identify themselves with the protection and development of forests from which they derive benefits.... The life of tribals and other poor living within and near forests revolves around forests. The rights and concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. These and substitute materials should be made available through conveniently located depots at reasonable prices.... Similar consideration should be given to scheduled castes and other poor living near forests. However, the area, which such consideration should cover, would be determined by the carrying capacity of the forests (see section 4.3.4.2 to 4.3.4.4. of the NFP).

The policy tried to be simultaneously pro-people and pro-environment. As it is in tune with national and international developments, it was widely considered a progressive policy statement. One of the few who has criticized it is Shyam S. Sunder, a retired IFS officer from Karnataka. In an unpublished study Sunder has stressed that the FD should maintain a tight control over the reserved forest to secure "national needs". He regards this as entirely feasible, at least in Karnataka.[39] Sunder, therefore, argues against the development of the forest villages on par with revenue villages as visualized in the policy (Sunder n.d.:28). According to Sunder, forest based industries use less than 5% of the output from the forests and the industrial needs are, therefore, not the cause of degradation. If, as the NFP prescribes, the forest are considered gene pools and if exotic species are to subjected to long-term trials before being introduced, the production of the reserved forests risks stagnating.

Instead Sunder accepts the soundness of the eucalyptus plantations which between 1974 and 1984 accounted for 2/3 of the total number of seedlings sown under social forestry schemes (Sharma 1993:222). Such eucalyptus plantations have united environmentalists and spokespeople of the poor all over India against plantations of this exotic (and hence ill-suited), highly water-consuming (hence non-sustainable) and mono-use (hence anti-poor) crop.[40] Sunder confronted some of the major environmentalists in India on this issue, i.e. Vandana Shiva and J. Bandyopadhyay who used government statistics on food production in Kolar District in Karnataka to argue that eucalyptus plantations had caused a dramatic decline in the yield of the food-staple **ragi**. According to Sunder and Parameswarappa, Shiva and Bandyopadhyay grossly manipulated these data to produce a skewed eco-social audit portraying eucalyptus as "an ecological terrorist" (see Burgess 1992). According to Sunder, the real need is not to open the reserved forests to people and people's management, but to restock the wastelands, 89% of which is outside the reserved forests (Sunder ibid.:17). Around 80-87% of the biomass produced in India's forests is used as firewood or fuelwood (ibid.:16). The country requires 150 million tonnes of firewood a year of which only 7.5 million tonnes is departmentally harvested. The rest is obtained legally or illegally by local communities. To restock the wastelands, Sunder argues that land ceiling laws should be raised above the present ceiling of about 20 ha.[41] The use of

the wastelands should be regulated by formulating a land use policy including both agriculture and cattle-grazing (Sunder ibid:36).

Sunder's critique is harsh considering the NFP aims at

> "[I]ncreasing substantially the forest/tree cover in the country through massive afforestation and social forestry programs, especially on all denuded, degraded and unproductive lands... with particular emphasis on fuelwood and fodder development, on all degraded and denuded lands in the country, whether forest or non-forest land... to meet essential national needs."

What Sunder really reacts to is the belief in the ability and willingness of the villagers to protect and manage the forests if only the FD would let them. Together with Nadkarni (1989:94), Karanth (1992) and to some extent Pathak (1994), Sunder represents a critical rationalist viewpoint on what drives life in the forests.

Despite Sunder's criticism, the 1988 NFP is an important document and not, as Chhatrapati Singh suggested, an irrelevant exercise. One of the major ways in which some of the ideas contained in the NFP have been sought to be fleshed out is through Joint Forest Management or JFM.

Joint Forest Management.

Joint Forest Management (JFM) or Joint Forest Planning and Management (JFPM) refers to an arrangement between the FD (or the Revenue Department) and a local body, such as a registered village development society, a village forest protection group or a panchayat, by which that body undertakes to manage and protect state-owned forest in return for a share of the minor or major forest products it yields. The arrangement may be for a specific period of time, and does not involve signing over the land to the village group. The idea is to elicit the active cooperation of the villagers by appealing to their long-term economic interests and their "eco-emotional" interests in protecting their immediate environment. Or to use Gadgil's words: to appeal to the "prudence" of villagers by giving them a stake in the future (Gadgil 1983:114).

As Simon Commander has argued in his discussion of the "Prisoners Dilemma" afflicting the relation between the FD and forests-dwellers, this dilemma can be solved by "the development of enforceable contracts and incentives which eliminate the excessive bias towards immediate demand and profit fulfillment" (Commander 1986:15-16). The JFM intends to do that though the degree to which the contracts are enforceable are not entirely clear. It is doubtful how village bodies will be held accountable for not protecting the forests. Probably, the FD will simply try to regain control.[42]

Under JFM villages are given an amount of self-determination to decide who can use the designated area for what purpose during which period. The villagers may disagree, but the idea is to leave it to the villagers to decide failing which either the FD or a mediating NGO may try to mediate a compromise. The NGOs are accorded a formal and central position in promoting and facilitating JFM schemes.

The share accruing to the village groups varies. In Gujarat it is 25% of the value of the timber. In Rajasthan it is 60% (Society for the Promotion of Wastelands Development 1992b:35). If the village group does not receive any technical or other support from the FD, it may be entitled to as much as 80% of the value of the yield. As regards minor forest products, the protecting body is typically entitled to the entire harvest.

The division of the share is left to the village group and may, again, be disputed: the panchayat may claim it as the officially elected statutory local body, the forest protection committee may lay claim to it, the leaders of the village may consider it their personal property, those who had hitherto used the area legally or illegally may lay claim to it, those who are most needy may claim it, those who have done most to actually protect the area by their daily (paid or unpaid labor) may argue they should have the lion's share, just as either women (who are often efficient protectors) or men may claim it irrespective of what is specified in the written agreement. Moreover, other communities which used to have rights in the area may claim a share or react to being excluded by the new protectors. In short, the village group will face the same problems of sorting out claims as the government faces.[43]

The village committees do not at present have any legal powers to impose fines on offenders except in Bihar and Haryana (Roychowdhury 1995:28). This lack of legal powers is a major problem for groups that have been recognized as managers of local forests (Hobley 1992:28). Unless these groups are empowered, JFM is likely to produce failures which again could lead to the abrogation of many other programs premised on people's participation. On the other hand, given the fact that villagers often consider thrashing offenders the best form of punishment, legalizing popular sanctions may spur new forms of human rights violations (see Zutshi 1993:45 -xxx).

These objections and premonitions notwithstanding, JFM represents a daring step to involve local communities - howsoever defined - and to acknowledge and extend local interests and rights over forests. The prestige of JFM is evident from the fact that by 1992 the state governments of Bihar, Gujarat, Haryana, Jammu and Kashmir, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tripura, West Bengal and Andhra Pradesh had accepted JFM (Society for the Promotion of Wastelands Development 1992b). However, one must be careful when assessing the novelty of JFM. The new element is not that local communities are accorded access to forest because they have rarely been fully excluded. Access to the forests in return for help in controlling fires is also nothing new. As Nadkarni states the new element is shared management:

> "The real alienation of people was not from forest use as such, as it was from the regeneration and management of forests. This alienation from management, though understandable in the case of reserved forests, was hardly forced on them in the case of protected forests including bettas [privately managed state-forests near areca-nut plantations] and in village and other community forests. The local demand as far as community forest lands were concerned, was to hand them over for private cultivation rather than to regenerate them for common use on a sustainable basis..." (Nadkarni 1989:164)

Thus, JFM augers exactly what it says: Joint management, i.e. a degree of responsibility-sharing between state bodies and village bodies with the objective of higher incomes and better protection. In other words, JFM does not mean withdrawal of state-control and the handing over of control to local groups to create a property regime similar to that among tribal communities in the North-East. JFM means, instead, a closer interaction between state and people designed to match the interests of both entities through a dialectic process of control.

Inter-departmental relations further complicate JFM. The National Wastelands Developing Board (NWDB) was created in 1985 by Rajiv Gandhi who placed it within the MoEF. In September 1992 the Board was moved to the Ministry of Agriculture and Rural Development. The NWDB is to manage non-forests wastelands, i.e. mainly panchayat lands and revenue lands, while, within the MoEF, the National Afforestation and Eco-Development Board is to promote afforestation, eco-restoration and eco-development on the degraded forest-lands. In an article in Down to Earth, Roychowdhury and Narain (1992) have elaborated on this division. They claim that although most wastelands are formally located outside the FD-controlled areas, much of this has been encroached leaving half the real wasteland under the control of the FD. Therefore, if the NWDB gains control of the wastes classified as forest land, the MoEF would loose both terrain and the control over large government allocations.

To complicate matters still further, the new Panchayati Raj and Nagar Palika Bill may be difficult to harmonize with JFM as this bill may eventually cause degraded forest lands and certain "undemarcated lands" to be vested in and managed by the panchayats exclusively. In other words, the division of power between the democratically elected panchayats and the more or less spontaneously formed forest protection groups is unclear.

The Conservation of Forests and Natural Ecosystems Act.

On Singh's agenda, the revision of the 1927 Indian Forests Act stood highest, but it was only in 1994 that a draft for such a bill started circulating.[44] The debate on this draft has many aspects of which I shall discuss merely two.

The draft visualizes that local communities will have the authority to manage village and protected forests in agreement with the FD, but the draft also specifies that the "carrying capacity" of the land is to be taken into consideration when defining management schemes, and that the FD may supersede village bodies if the resources under their control are mismanaged. The concept of carrying capacity was used in the 1988 NFP without attracting much criticism, but in the case of the present draft bill, its use is considered a threat to forest people.[45] It may seem strange that "carrying capacity" is an evil, while "sustainability" is generally considered a good thing. Perhaps the potential technical precision with which the carrying capacity of a piece of land may be scientifically assessed by outsiders is what prompts defenders of people's rights to argue that the concept is but an excuse for global or national managers to attack overpopulation and poor local management techniques. Moreover, as noted by Amita Baviskar, Indian foresters probably do not possess the technical competence at present to determine the carrying capacity of vast areas of land areas. This means that applying the criteria will increase arbitrariness rather than precision (see Goswami 1995:6). On the other hand, neither the FD nor villagers are incapable of monitoring CPR or of learning. I would, therefore, argue that recognizable improvement in management is a reasonable objective given the highly degraded state of most CPR.

Once new management plans and methods are introduced in village forests and elsewhere where villagers have rights, existing rights, whether formal or informal, will have to be revised because the very idea of environmental management implies a negotiation of rights to bring them into some kind of conformity with ecological considerations. The need for revision and clarification of rights also arises because many rights were formally fixed long ago and are simply outdated. In some areas rights accrue to people who no longer live in the area and who have neither a stake in the area, nor a need for such rights. Thus, "rights on forests should be reviewed" (Saxena 1995:48), or, more radically, in the words of Baviskar,

> "... we urgently need a 'forest settlement', not to 'extinguish' or 'commute' rights as the draft Act intends to do, but to recognize and incorporate them into a management strategy, into institutions and practices of participation" (Baviskar 1994:2500).

A settlement of all CPR-related rights is a huge project. In the tradition of other grand settlement campaigns such as land revenue settlements and land consolidation operations, N.C. Saxena, director of the Lal Bahadur Shastri Academy of Administration, presumes that it will be carried out by government officials, but it would be in tune with our times that it be carried out with people's participation (i.e. as institutionalized open bargaining). The results should be public and accessible at panchayat or village level in the same manner as land records are planned to be. This again would offer an opportunity for the FD to update its procedures to achieve a degree of transparency, a precondition for reducing the opportunities for the FD to extract bribes.[46]

The lines along which the revision of the 1927 Act should be made are vehemently disputed.[47] Certain potentially explosive issues such as the proposal for a total ban on shifting cultivation have hardly been opened. Dissatisfied with the official draft, Madhav Gadgil has proposed an alternative "Peoples' Bill" stressing integrated management and settlement of rights with hamlets rather than villages. This, however, will not settle issues as management plans will be contested in practice, if not in theory, no matter who designs them. There seems little doubt, however, that the 1927 Forest Act will be revised before the year 2000.

THE CENTER HOLDS.

Forest relations in India have been characterized by a long-drawn tussle between a very large number of different groups seeking formal and informal tenurial and usufructuary rights, and a tightly organized forest department. The rights of the forest people to utilize and colonize the forests have existed in a kind of juxtaposition to right of the FD to work the forests to satisfy the needs of the nation in general and its claim to secure the inter-generational rights of all citizens to the reproduction and conservation of nature, including wildlife. Since its creation, the FD has moved along these three crisscrossing paths. In the last two decades, the FD has been forced into the defensive by advocates of livelihood rights.[48] As this movement is in tune with global developments, it has accumulated a great deal of cultural capital which it has invested in lobbying and campaigns. These campaigns are based on the "soft fact" of people's prudence and the harder fact of environmental crisis which together substantiate demands for reform of use rights and tenurial rights. As Renteln has noted (1990:49), human rights are difficult to ground in human nature. They are therefore often sought to be grounded in human needs. The Indian rights discourse achieves this by uniting human rights, human needs and cultural rights. At the same time, the environment of this discourse itself changes. As Eder has noted regarding the environmental movement in Europe,

> "Environmental movements have made in the early eighties the "environment" an issue. In the meantime, others have joined them and have also contributed to the social construction of this issue. As a result, there has been a basic change in the relationship between the movement and its action environment, in that it no longer dominates the discourse using the action repertoires of exposure and scandal" (Eder 1994:6, note 9).

Similarly, in India all actors have expanded their ability to master the discourse on people's rights and the environment. This has led to increasing disagreement between the movement for access rights and what is disdainfully referred to as the conservationist lobby. Activists inside and outside of government have found themselves operating in a tighter ideological marketplace. Yet, spokespersons on behalf of the rights of forest-dwellers and of new forms of natural resource management have been increasingly involved in policy formulation and implementation.

For example, a year after Rajiv Gandhi was elected Prime Minister, T.N. Seshan gave him a copy of Centre for Science and Environment's State of India's Environment. According to the editors of this book, Anil Agarwal and Sunita Narain, "[S]oon after Rajiv sent us an extraordinary invitation to address a special meeting of the Union Council of Ministers on the book." This was followed by meetings at 27 parliamentary consultative committees. The governments of V.P. Singh and Chandra Shekar did not show as much interest in the environment, but their Minister of Environment and Forests, Menaka Gandhi, did plough a lone furrow which earned her an image as The Minister for Cats and Dogs (kutta billi ka mantri) as she put it. The present Minister, Kamal Nath, works even closer with NGOs, including the Centre for Science and Environment. Some would argue that Agarwal has achieved enough clout to substantially influence the minister by helping to generate an overlapping or informal consensus at the top level (Bharucha and Herring 1994:26).

In Ellefson's terminology, forest policy making in India is dominated by a combination of bureaucratic (FD and MoEF), chief executive (Prime Ministerial and Ministerial), court room (Supreme Court), and "living room" (media and NGO) politics rather than by pressure group and cloak room (i.e. horse-trading) politics (Ellefson, 1992:26).[49] In other words, the reforms that have taken place are departmentally centered and dependent on the "go-ahead" from top-politicians and top-bureaucrats who, to some extent, rely on the input from individuals outside the government whether from the scientific community or NGOs. The point is that the whole area has attained a certain rationality, consensus and aloofness associated with the world of top politicians, top bureaucrats and intellectuals. It is the absence at central and state levels of tribal parties or other political parties representing the interests of forests-dwellers, the absence of green or environmental parties, and the absence of strong interest organizations of forest workers and of forest industries which has made it possible and necessary for top bureaucrats and top politicians to decide on policy in conjunction with NGOs acting as "macro" actors (Webster 1993), the informed and educated public, and the judiciary. There are signs that political parties are beginning to play greater and more visible roles, but these signs are still weak (Roychowdhury 1993b).

It may be argued, as Guha does, that organized industrial and commercial interests influence policy making considerably. However, Guha is hard pressed to instance when and how such interests have influenced policy formulation. The forest contractors used to be a commercial interest group, but after the creation of the quasi-governmental Forest Corporations, this group has been weakened. Other possible commercial actors include the Confederation of Indian Industries (Herring 1994b:16, Bharucha and Herring 1994:9, The Economic Times 1989 and 1991), but none of these interest groups were capable of preventing the GOI from reducing commercial exploitation to such an extent that India imports worth INR 1,000 crore (say 333 mio. US$) annually of timber, pulp and paper etc. while exports are negligible (Times of India March 24, 1993). Guha instead argues that the FD itself has represented commercial interests. On the other hand, he also acknowledges that the FD has always tried to adjudicate the different interests of conservationists, industrialists, activists and scientific foresters (Guha 1994:2193).

In reality, the ordinary forest-dwellers and tree farmers are the major groups with economic interests in the forests and forest products as they cultivate in forest areas as well grow, collect and sell large quantities of fuelwood and other forest products including timber. The total number of "forest-dwellers" in India is estimated at 48 mio. people (Ramachandran et al. 1995:45), but this group has rarely participated in the policy process. One reason for the lack of participation is that a major portion of the economic activities of the forest-dwellers are illegal.[50] Another reasons is that they, like many other groups in India, have concentrated on influencing the implementation of government policies through what Grindle and Thomas call "informal and nonpublic channels" rather than on policy formulation (Grindle and Thomas 1991:62-3).

Instead of being represented through organized pressure groups, the forest-dwellers are often represented through NGOs. The NGOs typically do not portray these groups as economic interest groups, but impute an environmentalist rationality to them. This is problematic as economic rationality "only incidentally coincide with ecological rationality" (Herring 1994a:6).

Most environmental NGOs have no mass base. For example, the Bombay Natural History Society, which was established in 1883 and now styles itself as the oldest all-India NGO, had only 3,775 members in 1991. The Kerala Sastra Sahitya Parishad (KSSP) may be an exception. This NGO was prominently involved in putting the brakes on the Silent Valley Hydro-Electric Project in Kerala. It may appear as if it was the "groundswell of popular opinion stirred up by the ever-active KSSP" that shelved the project. On closer inspection, however, D'Monte has argued that it was the personal opinion of the Prime Minister, Indira Gandhi, which was the deciding factor (Rosencranz 1991:281). According to D'Monte, the Silent Valley case followed a pattern repeated elsewhere of local agitations, press campaigns, scientific deliberations, and international pressure and was finally settled through the "access of environmentalists to the highest echelons of power in Delhi" (D'Monte 1985 quoted from Rosencranz et al. 1991:282). Some NGOs based in Delhi itself have been very influential. I have already referred to the Centre for Science and Environment and to this should be added the World Wide Fund for Nature-India (Bharucha and Herring 1994:8). Neither of the two derive their influence from a large membership.

In their wide-ranging discussion of how reforms are made in developing countries, Grindle and Thomas have noticed that intervention of "the highest echelons of power" is a common phenomena. In developing countries leaders tend to be highly visible in decision making and the decision making process tends to be very centralized. Grindle and Thomas argue that this is the result partly of the colonial heritage of most developing nations and partly a consequence of the ideas leaders have of their own role as nation-builders. At the same time, the political leaders and top civil servants in the developing world generally have to base their decisions on insufficient and unreliable information and they are also largely forced to depend on policies being implemented by a civil service with limited technical capabilities (Grindle and Thomas 1991:4 and 43-61). The picture I have painted of the

reform process in India confirms Grindle and Thomas' state-centered model of policy making.[51]

In the reform process, the central government has acquired more and more control of policy formulation and implementation at the expense of the states. Despite aiming at uniformity across the states, the GOI has allowed experimentation to go on in different states at uneven speed to minimize the risks of overall failure. To handle the new situation, the central administration itself has been restructured by placing forestry on the concurrent list and by moving forestry and wildlife to a new ministry, the MoEF, but as in most countries of the world, the administrative line dividing forestry and agriculture remains blurred.

At state level, administrative reform has occurred much more slowly despite what Pathak calls "schooling" by the central government. The forester has been prompted to reorient himself to an active role in development side-lining the old role of a "lone sentry" guarding the forests,. But the FD is still poorly equipped, poorly trained, and inordinately adverse to the delegation of power. As in most other countries, it is still practically a male precinct (Sarin 1992).

The reforms attempted have sometimes resulted in further conflicts between forest-users and the FD. After the FD has practically stopped green felling, forest-dwellers have been deprived of the wages they would otherwise earn in departmental forestry operations. Further, many development projects have been shelved or delayed as the GOI has tightened its control over reclassification of forest land. This has often been resented and resisted by forest users. On the other hand, the state has invested heavily in afforestation on private and common lands often with substantial foreign support. This has benefitted a large number of villages both directly and indirectly, but social forestry and farm forestry tends to leave out tribal forest-dwellers with little access to land on which to raise trees. As Pathak says, social forestry has made the forests "slide from the hills to the plains" (Pathak 1994:124). This had led to increasing demand for access to and control over protected and reserved forests. The response to this has been the JFM and similar schemes which seek to combine the profit motive, sustainable management, state control and local participation. What is wanting is a reform of the 1927 Indian Forest Act to provide an overall framework for controlling access, but allowing people to satisfy more of their economic wants.

SUMMARY.

In this paper, I have discussed property rights in India and the circuitous routes taken by an administrative structure to partially reform itself. Further, I have discussed the kind of pressures the FD has been subjected to. It could be argued that the legal and administrative frameworks that I have recounted have no real bearing on the forest situation which is locally and often illegally negotiated. It could also be argued that

a study of movements like the Chipko movement is a better way to understand the state of the forests. I agree that studies of major movements and of day-to-day interaction are important, but this does not reduce the centrality of the FD and top executives to policy. When it comes to forest administration, the center still holds.

NOTES

1. This paper has been written as a chapter of my dissertation tentatively entitled Human Rights, State and Society in South Asia. Due to time constraints it has not been possible for me to rewrite the chapter in the format of a conference paper. At a few places in the text the reader will encounter this code: xxx. It means that something is lacking or has to be checked. I would like to thank Durga Das Gupta, Ministry of Human Resources Development, and Dr. D.N. Tewari (Tiwari), Director-General of the Indian Council of Forestry Research and other gatekeepers for agreeing to this research project. At the Forest Research Institute in Dehra Dun, where I stayed from the beginning of March to May 2, 1993 and from January 19 to January 30, 1994, I would like to thank B.K. Sethi, Publicity and Liaison Officer, Ved Prakash and his family at the Officers' Rest House, Arun P. Singh, the librarians at the Central Library and the Center for Documentation (the former Silviculturist Library), and Banwari Lal who worked with me as a typist in April 1993 and as an assistant in 1994. I would also like to thank Anil Agarwal, Sanjeev Prakash and Chhatrapati Singh for sharing with me their perspectives on "the forests question".

2. There is no statutory definition of the term "forest" in India. Forest land is generally taken to be land under the Forest Department (FD) including national parks, sanctuaries, reserved forest as well as other protected and unprotected forests such as some village forests owned by the FD, but controlled by private individuals or bodies. There are also protected forests owned by the Revenue Department, but managed by the FD (Singh and Singh 1993). In a few cases the FD manages forests not owned by the state.

3. Usufruct is the "right of enjoying the use and advantages of another's property short of destruction or waste of its substance" (Concise Oxford Dictionary). For a detailed example of how the FD defined usufructuary rights, see Report of the Forest Policy Committee (1951) on grazing rights. Similar examples of **van nistar**, **haqdari**, **dafayti** and **paidawar** rights etc. are found throughout India.

4. The sea is still largely an open-access resource in India (Madsen 1993).

5. Hardin's argument is a species of game theory (McCay and Acheson 1987:2).

6. I would like to thank Mette Duekilde and Frank Sejersen, IWGIA, for information on the Mabo case.

7. For the concept of biodiversity, see Wilson (1994).

8. Water scarcity is going to be an increasing problem in Asia and Africa in the coming decades and people living in river

valleys will come under increasing pressure to share the waters with others (Falkenmark 1993).

9. Roy Burman retired as professor from the Vishva-Bharati University founded by Rabindranath Tagore. He has been member of the Committee on Forest and Tribals in India under the Ministry of Home Affairs which submitted a report in 1982 arguing that tribals by virtue of their symbiotic relationship with the forests should not be excluded from the forests (Kulkarni 1987:2144).

10. Roy Burman's article was published in 1992 and, therefore, does not take into account the Vienna human rights summit which concluded that both indigenous people and tribals were "people" and not "peoples".

11. In practice, the state has failed to enforce the act. Poaching of tigers, rhinoceros, elephants and musk deer has increased in recent years to cater to demands in East and South East Asia. Tiger bones are said to be worth INR 9.000 to 18.000 per kilo (Forest Law Times, March 1993, pt. 1, p. 23). Musk is worth three times its weight in gold. Some rate wildlife trade as the third biggest illegal trade after narcotics and arms trade and value it at US$ 5-10 bio. a year (Baum and Goldstein 1993:23; see also Chengappa 1993 and Herring 1994a). The involvement of Tibetans in the trade has turned out to be crucial (Anonymous 1993). Others playing major roles include Nepalese, Kashmiris, Arabs, Italians, and increasingly East Europeans and Russians.

12. According to D.N. Tewari, the compensation rates for damage caused by wildlife approved by the Government of India (GOI) are: For death or permanent incapacitation: minimum INR 20,000, for grievous injury: INR 6,666, for minor injury: cost of treatment, for loss of cattle: market value, for house or crop damage: as per assessment (Tewari xxx, Indian Forester 1991).

13. Herring calls this the "Lamentably Desperate Villagers" theme (Herring 1994a:22, note 12).

14. See David Hardiman's comments on Vandana Shiva's book Staying Alive (pp. 59-60) in Hardiman 1994:90.

15. Several other critical comments have been made about Gadgil and Guha's treatment of ancient and medieval history in their book This Fissured Land. An Ecological History of India, India's environmentalist "bible" (see Rahul 1994:2008, Hebbar 1995, Mukhiya, 1992, and Djurfeldt 1992). Rahul's article, in particular, criticizes Gadgil and Guha from a human rights point of view.

16. See Lal (1992:94-7) for the foresters view on grazing.

17. See Karanth (1992) for the details of how contemporary CPR are converted into private property; see Zimmermann (1987), Farmer (1974:6) and Eaton (1993) for long-term views.

18. Wastelands, according to one definition, includes "all uncultivated lands, which are capable of, or are, supporting vegetation" including "forest lands, privately owned or encroached upon degraded lands, and lands under the control of Revenue Departments/**panchayats**, which is used as open access lands and for grazing by the village communities" (Saxena 1991). According to Y.S. Rao (1993:1), of India's total land area of 297.319.000 ha, 74.150.000 ha or 25% is "forest and wood land", another 168.990.000 or 57% is arable and permanent crop land, while permanent pasture amounts to 12.038.000 or 4%. The remaining 14% is "other land", much of it wastelands. The concept of CPR tends to replace the older concepts of cultivable or uncultivable wastelands. According to Arnold and Stewart (1991), CPR include cultivable wastes and fallows, common grazing lands and pastures, some protected and unclassed lands, as well as private lands to which the owner allows partial common access. According to one estimate, CPR constitute 21.55% of the total land area (Karanth 1992:1680 quoting Chopra et al. 1990:31), a large part of which is in Gujarat and Rajasthan. If one follows Anil Agarwal (pers. comm.) and regards all areas to which non-owners have some kind of economic access as CPR, the proportion of CPR would rise substantially as practically no forests in India, except the best protected national parks, are closed (Karanth 1992:1680).

19. National parks affected by political extremism include Nagarjuna Sagar, Indravati, Kanha in 1990, Manas since 1989, Dudhwa, and Corbett (Jain 1993).

20. The wooden railway sleeper is probably the most frequently cited cause of colonial forest degradation. Gandhi in his book Hind Swaraj singled out the railways as one of the evils introduced by the British. The standard environmentalist discourse, it would seem, tags on to Gandhi by identifying the railways as the major cause of environmental degradation. It should be noted, however, that a human rights champion such as V.M. Tarkunde is very critical of Gandhi's stand on railways (V.M. Tarkunde, pers. comm. 1992).

21. The year of founding of the FD is sometimes given as 1867. The history of the forest administration may be traced six decades further back to 1806 when a police officer was made the first conservator of forests to control the felling of teak in the Malabar forests (K.M. Tewari 1985).

22. Brandis studied in Denmark and the Danish forest service, as many other forest services, is based on the German model. For Brandis, see e.g. Rawat 1993 and Guha 1993. There was no FD in the U.K. till 1920 when forest officers returning from India helped establish one.

23. Singh (1987) is a summary of the six volume report on amending the forests laws submitted to the National Wastelands Development Board and the Ministry of Environment and Forest (MoEF), December 1986. Unfortunately, this work is not available to the present author.

24. Till the creation of the Imperial Forest Service many out-of-the-way villages were entirely without revenue obligations (K.M. Tewari, 1985). Subsequently, forest villages were made to pay nominal land assessment charges (Thakur and Thakur 1994:219).

25. For bhoga as royal entitlement, see Derrett (1976); also compare the Danish concept **herligheder** which has also been used to signify rights over and enjoyment of the products of nature (Lyngs 1992:7).

26. Combining juridical and executive authority in a single office began before Cornwallis. Some loosening occurred already in 1831 with Bengal spearheading the principle of division of powers (Madsen 1979).

27. The effect on forests of **zamindari** abolition and the integration of the princely states hold both drama and surprise. According to K.M. Tewari, the main expansion of agriculture after the 1950s occurred on the private forest lands previously held by princes and **zamindars** (K.M. Tewari 1985:911). According to M.N. Buch (1983), the abolition of intermediary right holders and zamindari-landlordism opened up for the conversion of almost 4 mio. ha ex-Malgujari forest land in Madhya Pradesh. See also Gold (1994) for a lively account of the process in the state of Ajmer, Thakur and Thakur (1994:230) on Bihar, Muhammed who notes that forests under FD ownership increased from 61% of all forests in 1949 to 92% later (Muhammed 1968), and Lal (1992:205-7). Not all forests owned by princes were converted: Several national parks were constituted out of princely hunting reserves.

28. According to Campbell (19xx), over 50% of all forest revenue and 70% of all forest-related export revenue come from Minor Forest Products also knows as Non-Wood Forest Products (NTFP), rather than from Major Forest Products, i.e. mainly timber. Almost all important NTFP have been nationalized.

29. Singh misunderstands Rawls' concept of a "veil of ignorance" which he takes to mean insufficient knowledge. In fact, it refers to an ideal model of an "original situation" in which people decide on norms as if they were ignorant of their own social position. This misconception, however, hardly influences the outcome of Singh's argument.

30. In Rawls' recent book Political Liberalism from 1993 the reference to "savings" has been removed from the principles of justice, but it still forms a part of his theory.

31. For a pointed critique of the reliability of the satellite data, see Ravindra and Das 1993.

32. Social forestry had its predecessors in fuel and fodder reserves, fuel wood plantations, village forests and panchayat forests which were advocated by Voelcker in 1893 and even earlier by Brandis (Taylor 1981).

33. The 1919 constitution transferred forestry to the provincial level but the ministry was "reserved", i.e. under a British minister, till 1935. The GOI maintained financial control till independence.

34. D.N. Tewari, then in the Ministry of Home Affairs, claims he insisted that it be short (pers.comm.).

35. For a run-down of the main sources relating to the Narmada river projects, see Esteva and Prakash 1992:51.

36. See also Bhaskar (1993) for the transfer in 1992 of 28,588 hectare of forest lands to 60,000 claimants, including many Keralite Syrian Christians, in Idukki and neighboring districts in Kerala. The Kerala High Court intervened to stop regularization.

37. For forest policies of 1894, 1952 and 1988 are reproduced in Jha (1994).

38. Apparently called the Report of the Committee on Forest and Tribals in India, Ministry of Home Affairs, 1982. See Down to Earth, 31.1.95, p. 26. - xxx

39. More recently, Karnataka has had great difficulties controlling its forests due, in large measure but not exclusively, to the growth of a very powerful gang led by Koose Muniswamy Veerappan. Veerappan, the son of a poor peasant, started his career as an ivory poacher and later turned to sandalwood, kidnapping and extortion. All trade in sandalwood is controlled by the state and since 1992 export of sandalwood has been banned increasing illegal extraction (Roychowdhury 1993). In 1995 Veerappan's gang was about to collapse, but for several years he has been able to elude and kill the police pursuing him (Chengappa and Subramanian 1993 and Rai 1993).

40. See Shiva 1991:149 for a critique of Sunder.

41. The proposed Forest Bill discussed below agrees with his suggestion.

42. The proposed forest act discussed below intends to make the mismanagement of forests anywhere in India an offence.

43. According to Roychowdhury (1995:28), it is only in Orissa, Bihar, Madhya Pradesh, Jammu and Kashmir, Haryana and Andhra Pradesh that villages have the right to decide about the distribution of benefits.

44. A Draft Forest Bill to succeed the 1927 Indian Forest Act was withdrawn by the CBF in 1982 (Kulkarni 1983:92, Pathak 1994:52). According to Baxi, the CBF did not consult any interest group apart from the Indian Board of Wildlife before presenting its draft (Baxi 1983:104).

45. The concept has also been vehemently criticized by organizations outside India; see The Ecologist 1993:135.

46. A common bribe to the forester is chicken and liquor. This prestation appears to be the traditional offering of tribals to their own chiefs (Hardiman 1994:103).

47. See Kulkarni 1994 for a surprisingly positive view and Guha 1994 for a bleakish reaction. In early 1993 Singh left his position at the Indian Law Institute, New Delhi to head the newly established Centre for Environmental Law at the World Wide Fund for Nature-India in New Delhi. The position of C. Singh on the draft is not known to this author.

48. At an international seminar on forestry research at the FRI in Dehra Dun in 1993 a Chief Conservator of Forests of Uttar Pradesh said: "There was a time when the local people went to the DFO [Divisional Forest Officer] to settle their own family cases and no case went to court. Now the whole Forest Department has come under a cloud." The statement is illustrative of the feeling of siege expressed by a British forester at the seminar: "We are our own worst enemies... we are being taken over by anthropologists, sociologists and socio-economists who are talking to us as if we were purely technical managers. We should be able to speak in our own right."

49. Ellefson's analysis deals mainly with the US. It builds on C.E. Van Horn, D.C. Baumer and W. T. Gormley, Politics and Public Policy, Congressional Quarterly, Washington, 1989.

50. The Fuelwood Policy Committee Report 1975-6 estimated the total consumption of fuelwood to be 133 mio. tonnes of which 84 mio. tonnes were secured illegally (Pathak 1994:86, note 15).

51. Bharucha and Herring (1994:5) stress the importance of line ministries and NGOs in policy formulation while Pathak (1994:60-1) trace the source of reform both to the judiciary and the executive.

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