

**COMMONS IN THEORY:
ASSUMED COMMONS IN PRACTICE**

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Paper presented at the RCSD Conference on
Politics of the Commons: Articulating Development and Strengthening Local Practices
Chiang Mai, Thailand 11-14 July 2003.

Theme: Politics of Tenure Reform
Sub-Theme: Rules on Paper vs. Rules in Use

ABSTRACT

Property is a three-way relationship between the holder of the property entitlements, the particular resource complex and the collective, state or social norm, which gives legitimacy to the entitlements. Generally, natural resources can be held under any one of the three property regimes: Communal Property; Private property and State Property. These, formally, should determine who the managers are, but of course what is formal and what is actual may well be different. The policy in India has assumed two options: Private or State Property: and all the natural resources are held under state property guided by various laws and guidelines.

There is a distinct trend in India where there is an attempt towards devolution: especially in protection of forests through *Joint Forest Management*. In this attempt to devolve there has been a considerable discussion on "right" and the form of "rights" on the natural resources both among the policy makers and that of the civil society. There is also a considerable divergence of opinion on this issue amongst them. While some talk about *ethical and proprietorship rights* to use natural resources others propose management or *stewardship rights* over the resource.

Most policies, especially that of the forests, of the colonial era got extended to the independent India. "Control" had been the major focus in the colonial era but it was amended to provide "privileges" to the communities after independence. The policies were again slowly brought under the "control" regime because of the degradation of the forests, through gradually cutting down the privileges once laid down. In such a situation of policy vacuum and inadequate implementation of the existing policies, the local communities took control of the depleting forests, to regenerate and manage the resources to their advantage. The interests of meeting the basic needs from the natural resources has resulted in the protection of forests by the communities irrespective of tenure; the protection over the years has been translated into claims forcing the government to come up with the Joint Forest Management (JFM) policy. The half-hearted alternative (JFM) led to the strengthening of the communities' claims, which are getting transformed into the demand for entitlements over the resource and recognition of Community Forest Management.

The commons, therefore, in such policy environment are "*assumed commons*" and not commons in reality as the tenorial arrangements over such lands lie with the Government. The forests continue to be managed by the forest department and the revenue lands by the revenue department. Though the policy makers may differ, the policies today are nowhere close to what is required for the resources to be used and managed as commons. The paper attempts to put India's forest policies in the perspective of the larger "understanding of commons" and tries to explain how the concept of "assumed commons" be understood and a framework be used for devolution of natural resources to the local communities. The paper is based on the experiences of working with the self-initiated forest protection groups in India and more particularly that of the community forest management institutions in Orissa.

Key words: Community, Natural Resource Management, Policy, Tenure.

Introduction

The National Forest Policy, 1988 was a departure from all other policies regarding forests that have been enacted so far. It recognized the fact that the forests cannot be protected by “*policing*”¹ alone, rather the village communities need to be involved in the task of protection of the forest. The 1990s brought in a big change in state attitudes towards forest management in India. The state, until then controlled and managed most of the forest resources in a paternalistic manner, appeared to finally have come around and opened its doors to the concept of "people's participation in natural resource management". The Government of India issued the first set of guidelines in this regard in 1990 and within a period of 13 years following the historic directive, 27 states had issued orders enabling "Joint Forest Management" (JFM). The words "Joint management" or "Co-management" brought in a new optimism in the management of natural resource management, as it provided access to the forests for the people who had been deliberately kept out of the forests and their use of the forest resources for livelihood was termed as a crime according to the earlier policies.

The emergence of such devolution policies are in the historical conflicts between interests of local communities in forest livelihoods and community-based decision making on the one side, and state interests in forest revenue, environmental protection and centralised control on the other (Sarin and *et al* 2003). The communities in most parts of the country have been demanding their rights over forests - in 1937, the villagers of Dhenkanal district spear-headed a "prajameli" (peoples' revolution) for traditional rights over forest resources and abolition of forest tax, followed by a "kandhameli" (tribal revolution) to demand the same (WRM's Bulletin 1999); in 1930, villages of Tehri Garwal protested against the reservation of forests; in 1970s and 1980s, villagers hugged the trees to protect them from being cut by the contractors in northern Uttar Pradesh, which is being referred to as the Chipko Movement; of late, there has been constant conflicts between the forest department and the communities protecting the forests.

Experience from a series of community initiatives in different parts of the country persuaded government to recognise the need for people's participation in forest management. The initiation of Joint Forest Management provided 'space' for communities to be involved in forest management. As we now look back at the implementation of Joint Forest Management over the last 13 years or so across the country, the devolution of powers to the community has been slow. The Forest Department in most cases has failed to discard its paternalistic attitude towards the forest resources, and hence the directives towards joint forest management are

¹ According to J.W. Nicholson “forest requires protection from men, as it is a common failing in human nature that whenever any product is found in abundance its use is abused without thought for the future. Left to themselves, the villagers take no care of their forest.” Chapter-II The need for a Forest Department in the book “**The forests within Bihar and Orissa**” (1926)

peculiarly lop-sided in favour of the State. The slow evolution of the actual nature of decentralization/ devolution involved in joint management programs confirms that the state is hesitant or is still unclear in devolving powers to the communities.

This paper tries to explore the issue of tenure in the devolution of forest management in India through the discussions across ages:

- The discussion in the colonial period resulting in the total control over forests by the colonial rulers;
- The current discussion on the devolution of forest management to the communities through Joint Forest Management.

I

Control over forest resources

While discussing about the issue of tenure, I feel it essential to understand the issue of property² and how the various category of lands are managed. Property is a three-way relationship between the holder of the property entitlements, the particular resource complex and the collective, state or social norm, which gives legitimacy to the entitlements (Attwater, 1997). The resources are generally held under any one of the three property regimes: Private Property, State Property and Communal Property. The type of property determines who the managers are. The policy in India has assumed two options: Private or State Property: and all the natural resources are held under state property guided by various laws and guidelines. With the coming of JFM a new dimension of property is emerging. The forests are being converted from solely "State Property" to "Contractual Property Regimes" where agreements are negotiated between the forest department and the communities, which may be in the form of van suraksha samitis (VSS), cooperatives or the panchayats.

The new form of "Contractual Property Regimes" has again opened up the discussion on the "right" and the form of "rights" for common property resources. There are two distinct streams of thought and there is a considerable divergence of opinion on this issue amongst them. Some talk about ethical and proprietorship rights to use natural resources while others propose management or stewardship rights over the resource. The discussion of tenure initiated during the process of colonisation of the forests during the British rule in 1860s continues till today when there is continued discussion on devolution of tenure and power to the communities.

Colonial Period

With the growing demand for timber, in the first half of the nineteenth century, steady and uninterrupted supply of timber was necessary. A long and heated debate ensued amongst British bureaucrats on how to get the timber—whether to buy at the market rate, or to enter into lease contracts with local princes for the forest lands with exclusive rights to grow and cut timber, or to outright take over the forests and manage scientifically so as to stop, what they considered wasteful

² 'Property rights regime' is defined as "A legitimate and coherent system of formally or informally enforced rules and practices used for everyday appropriation of culturally necessary means of subsistence" (Godelier 1984:71-121).. "Property is not to be understood as an object but rather as a social relation; "a benefit (or income) stream, and a property right is a claim to a benefit stream that some higher body - usually the state - will agree to protect..." (Bromley 1992:2). [from *Village laws versus State Laws: law as exclusion principle under customary tenure regimes* by Trond Vedeld, 1998].

cutting of teak by local contractors and be able to get the quantity of timber uninterrupted. (CCS, 2003)

In 1807, for the first time the forests were brought under the control of the British and the extraction of timber was brought under the Conservator's authority, which became the stepping stone to the formation of the Imperial Forest Service in 1864. According to J.W.Nicholson (1926) "*There are two reasons why such a department is necessary. Firstly forests require protection from man. It is a common failing in human nature that whenever any product is found in abundance its use is abused without thought for the future. The steady destruction of forests which has taken place in the old and new worlds is a striking example of this attitude on the part of man. ...The second main reason why a forest department is necessary is that the management of forests is a complicated science which taken years of training and experience to learn. The ordinary villager does not realize this point. He knows that forest grow and he thinks they can go on growing whatever is done to them. It is however just as wrong to imagine that forests left to themselves would grow as well as if they were properly tended as it would be to imagine that a crop like, say, paddy would grow without attention. Forestry indeed is a much more complicated science*". This was a first step towards the gradually taking over rights on every piece of land in the country, including the areas under the smaller kingdoms. It was also the beginning of "scientific management" of forests in India.

The first Forest Policy came up in 1860 and the Indian Forest Act in 1865, later replaced in 1878 through a more comprehensive legislation. The forest policy was based on the German Model, which was production oriented and meant to cater to their shipping industry. During the formation of the forest policy and the legislations that followed, there were debates within the British Bureaucracy against the complete take over of the forests.

Dietrich Brandis, the first Inspector General of Forests supported the idea of creating government forests, but strongly urged to restrict them to areas of compact valuable blocks in the interiors that could be obtained without impinging on forest rights of communities. Brandis, in fact, advocated leaving aside rest of the areas under the control of village communities as village forests. Brandis envisioned that such forest would provide numerous items gratis to the villagers: firewood for domestic consumption, and sale by poor head loaders; wood for agricultural implements, cart construction, and repair; wood, bamboo, and grass for green manure; and pasture fodder, excluding those blocks closed under the recommended rotational system. Brandis proposed creating village forest in at least 52 of the 83 talukas of Mysore. (Guha, 1995 as in G.Raju 1999)

According to E P Stebbing "...the new regime (*Conservator's authority*) was far too drastic to be continued as a method of permanent administration. The privilege

of cutting fuel for private use, which had been practised at will by all from the time immemorial, was also invaded and prohibited, a short-sighted step of amazing folly” (in CCS,2003). All the voices of dissent and churning of about half a century were, however, defeated by the real hard-liners like Baden-Powell who argued for the absolute control and ownership right of the state on all common land, whether inhabited or not. All the government forests were brought under the control of the British. According to J.W.Nicholson,1926 *“In Bihar and Orissa, although there are yet vast areas of private forests, the actual area of forest, under the control of the Forest Department, and is only this area whose permanent retention under forest can be assured, is only 2.7 per cent. This means that the existing forest area under the Forest Department should not only be rigidly protected from further clearing but it should be extended if possible.”* The percentage of forests under the British indicates the reach and the Princely States, in most of the cases, did not accept the sovereignty of the British. The Princely States were later influenced to bring in policies to manage the forests within the territory which however had provided rights to the local communities regarding the access to the adjoining forests.

The forest dependent communities across the country revolted against the takeover of the forests by the British and their policy of timber extraction. The Santhal movement in 1857, the Birsa Munda movement in 1900, the protests by the villagers in Kumaon-Gharwal in 1930s, the “Prajameli” and “Kandhameli” (people’s/tribal revolution) in Dhenkanal in 1937 are just some of the documented revolts demanding the peoples right over forests and natural resources. Provisions for the declaration of ‘village forest’ for the benefit of any village community or a group of village communities was made in the Indian Forest Act which was amended in 1927. The revolt in Kumaon-Gharwal forced the British to accept their demands for rights over forests – thereby, the “Van Panchayats” were formed under the provisions of village forests of Indian Forest Act, 1927.

Policies after Independence (1947-70s)

Most policies of the colonial era, especially that of forests were adapted after independence. “Control” over forests and natural resources continued to be with the Government. Forests, as in the past, continued to be managed by the Forest Department with the objectives of revenue maximization; the department was mandated to focus on production function of forests. In the process, they overlooked the dependence of local communities on forest and the role of forests as provider of benefits and services to the vast majority of rural population. More forests³ were brought under the control of the government using the “Private Forest

³ After the Zamindari System was abolished, the forests and revenue wastelands were also brought under the government control.

Acts” that the state governments promulgated, the Nistar⁴ rights provided to the communities were slowly withdrawn, alienating the people further. The commercial extraction of forests resulted in degradation of rich forest lands.

The people realizing the fact that their livelihoods are at stake, opposed the destruction of the forests and the displacement of their forest based livelihoods. In some places the communities even initiated the protection of the forest lands adjoining their villages. There has been constant conflicts between the forest department and the communities dependent on the forests. The Chipko Movement being one of the most referred cases, however there have been many such confrontations between the Forest Department and the communities. The Section 28 regarding the declaration of Village Forests and Section 80 regarding the Joint Management of Forests under the Indian Forest Act, 1927 remained unused.

Era of Global Governance (1970s - till date)

The era of global governance may be considered to begin with the Stockholm Convention on Human Environment, 1972. Since then there have been many such conventions which relates to natural resources and its governance. The countries adhering to/ ratifying these conventions required to bring in certain policies and adjustments to match the decisions of the convention. Lot of changes have occurred in India too.

India has ratified the Convention on International Trade in Endangered Species (CITES), the Convention on Wet Lands of International Importance (The Ramsar Convention), the Convention on Climate Change, the Convention for Conservation of Biological Resources, the Agenda 21 & Rio Declaration on Environment and Development, the Convention for Biodiversity, the Johannesburg Declaration (World Summit for Sustainable Development), etc. With the change currently underway in India, development reforms imply a multitude of contradictions and complexities to a diverse constituency of stakeholders. Such reforms instigate discussions and raise strategic questions related to the role and responsibility of the State and international agencies to marginalized rural communities, and of community access to livelihood resources. The global governance and global aid (especially the World Bank, Asian Development Bank, IMF etc.) brought in structural adjustments in most of the sectors, especially decentralization and devolution of powers to the lower level institutions. The forestry sector reforms started with the Social Forestry program in India.

The National Forest Policy came up in 1988 that admitted the fact that it would be difficult to protect the forests without the cooperation of the local communities,

⁴ Nistar is the forest cess collected from the communities in lieu of the benefits provided. The benefits included collection of fuelwood from the forests, grazing the cattle in the forests, collection of specific timber etc.

and therefore the policy laid importance on *the ecological function of forests and the symbiotic relationship between local people and forests*. In 1990, in order to implement the policy, the Government brought in the first set of guidelines for the implementation of Joint Forest Management in 1990. With the emergence of JFM, a lot of discussion has been instigated and has raised questions on the tenure aspects especially the new form of property regime – “Contractual Property Regime”. There is a considerable divergence of opinion on "right" and the form of "rights" amongst them. While *one stream* of thought strongly feels that local community / village committees should have complete proprietorship (ownership) rights over forests. The claims are based on the proximity to the resource, their role in the protection and conservation of the resource. They also believe that permanent tenure is an essential element for the proper management of the resource. The *other stream* feels that complete ownership rights could be a serious problem, especially given the nature of resource and inequities at the village level and in the society at large. Further, it is being argued that the forests are national property, of late being considered as global commons and cannot be devolved to the local communities as the stakeholders are many and diverse. It requires to be retained as state property and only the stewardship rights can be devolved to the local communities with certain concessions. The conflicting thoughts and interests within the policy-making fraternity have resulted in the half-hearted instrument in the form of Joint Forest Management. It may be argued that this is a first step towards devolution of powers to the communities; but it is far from being a common property resource.

II Joint Forest Management and Commons

Common property resources (CPRs) can be broadly defined as those resources in which groups of people have co-equal rights, specifically rights to exclude those resources by other people. Individuals' membership in the group of co-owners is typically conferred by membership in some other group, generally a group whose central purpose is not the use or administration of the resource (*per se*), such as a village, tribe etc. (Magrath 1986, Bromley and Cernea 1989 in Jodha 1992). Ostrom (1986) suggested that groups emerge to manage common property when the user population lives close to the resource and is relatively small and supply is moderately scarce compared to demand and is subject to multiple uses requiring management and coordination. Groups seem to survive when there are clear-cut rules that are enforced by users and officials, internally adaptive institutional arrangements, the ability to nest into external organizations for dealing with the external environment, and different decision rules for different purposes. And their chances are better if they are subject to slow exogenous change.....Ostrom further in 1990 provided the eight design principles for CPR management.

A framework for describing and analyzing commons developed by Oakerson (1990) uses four sets of attributes or variables – (1) the physical attributes of the specific resource or facility and the technology used to appropriate its yield; (2) the decision making arrangements (organization and rules) that govern relationship among users (and relevant others); (3) the mutual choice of strategies and consequent patterns of interaction among decision makers; and (4) outcomes and consequences. There are many other frameworks to analyze and understand commons, but I find this framework suitable to analyze the Joint Forest Management Policies in the perspective of the larger “understanding of commons”.

Joint Forest Management has been a policy of caution. For many years, governments, international planning agencies (and many conservationists) have viewed commons regimes with deep hostility. They view local control over land, forests, streams and rivers as a recipe for environmental destruction. The only way to secure the environment, they say, is to put a fence around it, police it and give it economic value through development. But over the years there has been a major shift in approach and most of the international agencies are strong proponents of decentralization of power.

The issues related to the *first* attribute of the framework – the physical attribute of the resource that emerge from the guidelines of the MoEF and that of the state government resolutions can be isolated as -‘property and user rights’- The village communities have no rights over the forests and the forest produce to meet their basic needs. The communities would protect the forest areas provided to them and

in return the state would provide 'benefits' to the communities. The lines drawn (revenue boundary) along the boundaries of the villages define the user rights and the user boundaries are seldom considered. The forests provide various benefits to the communities and all commodities may not be available in a single locality or their boundary of protection. It is therefore the communities that require to build linkages with neighbouring communities across the entire stretch of the resource and build in mechanisms to mutually benefit from the entire resource. JFM with its narrow vision fails to address the challenge posed for nestation and the community to join hands towards such an use regime. The “jointness” that Oakerson refers to is skewed against the communities.

The *second* set of attributes is the decision-making arrangements for which the arrangements may be thought of as “organizational” or “institutional”. The designation means a broad set of arrangements that are not confined to any single organization and institution. In such regimes, several discrete institutions and/or organizations are involved in the management of the commons. The decision making arrangements is studied in three subsets: (1) operational rules that regulate use of the commons; (2) rules that establish conditions of collective choice within the group most immediately involved with the commons; and (3) external arrangements - those decision structures outside the immediate group, that impinge on how the commons is organized and used.

In case of Joint Forest Management, the communities would require to come forward to form an institution – usually called JFM committees to get the benefits from the protection and regeneration of the forests. The policy fails to provide conditions for collective choice arrangements, and formation of the operational rules. Most of the decision making takes place at an external level- i.e. at the Forest Department level. The imperfection in the social and institutional arrangements in JFM doesn't allow decision-making by the communities. The benefits to the community may be withdrawn by the forest department if the performance of the JFM committee in respect of either protection or compliance to the approved working scheme are not satisfactory. It is therefore common property arrangements should be distinguished from government ownership that vests control of the commons in the government agencies (forest department in this case), rather than in communities directly whose livelihoods are directly affected. The “contractual property regimes” under JFM cannot be considered as CPRs.

The *third* set of attributes is the patterns of interaction. Given the physical features of the commons and characteristics of the relevant technology as well as the decision-making arrangements available to govern its use, individuals make choices, from which there emerges some pattern of interaction. Patterns of interaction are to look at strategies for relating to one another and to the commons. Collective decision-making arrangements are designed to alter the structure of obstacles and inducements that individuals otherwise would face. However, any

assignment of decision-making capabilities simply sets parameters within which individuals choose strategies.

According to Ostrom (1990) higher authorities have to leave local communities sufficient autonomy to exercise the CPR institutions. The JFM resolutions have rested all the powers related to the physical resource like the tenure of the land, the approval of working scheme, the extraction of the benefits, grant of usufructory benefits to the community and evaluation of community's performance with the forest department. It leaves the local communities with no opportunities to take any decision of significance in the management of the forest lands as commons.

The *fourth and final* attribute of the framework is the outcomes and consequences. Patterns of interaction produce physical outcomes and are based on the resource and the way the resource is used. Aggregate overuse leading to reduction in total yield or resource degradation. There is a need to regularly evaluate in terms of the use versus the value of the resource remaining.

JFM in Orissa

The Government of Orissa was the first state to pass a resolution in 1988, soliciting the inclusion of local communities in protection of Reserve Forest in lieu of certain subsistence requirements from these forests. The resolution stipulated the village as the formal unit of management and the D.F.O was assigned the task of formation of Village Forest Protection Committees (VFPCs) in the villages. These committees would take up the protection of a portion of the Reserve forest allocated. Later in 1990 this scheme was extended to include "Protected Forest" and in many villages across the state the Forest Department went ahead with the formation of the VFPCs. But these resolutions did not have the desired impact in soliciting people's participation in forest protection. The Orissa Government brought another resolution replacing the earlier resolution in 1993. The resolution for the first time included the forest department and the communities as "equal partners" in the task of forest protection and management. The resolution pronounced the rights and duties of the two partners i.e. the Forest Department and the communities in forest protection. The Van Samrakshna Samiti (VSS) is the prescribed institution at the village level for the protection of the forest area adjacent to their village boundary. Again on 30th September 1996, the Government of Orissa came up with another resolution that for the first time accepted that the communities are protecting the forests adjacent to the village for a number of years and that there is a need for tenure to the community protecting the resource. It proposed the declaration of all areas protected by the communities as village forests. The resolution was in agreement to the Section-28 of the Indian Forest Act, 1927 and Section-30 of the Orissa Forest Act, 1972. The forest department declared this resolution as unimplementable. The Forest Department stuck to the 1993 JFM resolution as it provided the department with more leverage and control over the forests.

JFM in India is still in its infancy; the outcomes are in many places are showing positive results especially that in the drier states where the resource is poor. More than 65000 committees are functioning across the country but in most cases where the communities have seen the destruction of the forests by the forest department or the contractors do not yet believe the forest department to be a partner in the protection of the forest resources. They are skeptical about the future and in many places have questioned the concept of JFM and the need for the forest department.

The Forest Department believes in the conventional theory of common-pool resources, which presumes that external authorities are needed to impose rules on the appropriators. But the theory of common pool resources has progressed a lot in the last 2-3 decades. It is now believed and there are instances to show that when the appropriators cannot communicate and have no way of gaining trust through their own efforts or with the help of the macro-institutional system within which they are embedded, the commons are difficult to emerge. "If appropriators can engage in face-to-face bargaining and have autonomy to change their rules, they may attempt to organize themselves. Whether they organize depends on attributes of the resource system and the appropriators themselves that affect the benefits to be achieved and the costs of achieving them" (Ostrom, 1998). In this perspective that it is difficult to say that the mechanisms laid down under the Joint Forest Management programme actually translate into the definition of Common Pool Resources.

III Community Forest Management and Assumed Commons

Community Forest Management has been a spontaneous response of the people, to a perceived crisis, caused by indiscriminate destruction of the forests surrounding their habitats. This left them acutely short of not only fuel, fodder and timber, *but the basic sources of survival* (hundreds of varieties of tubers, roots, fruit, berries and leaves supplement the diet of people living in and around forests). Forest protection initiatives by the communities in Orissa date back to the 1930s and 1940s, but most of the need-based protections began mostly in the late 1970s. An estimated 8000-10000 villages across the state have taken the initiative to protect and regenerate their forests with the apprehension that unless they acted immediately, the crisis would accentuate in the future.

The response of these self initiated groups consists of protection and regeneration, the protection being achieved through various means, independent of the forest department, with an underlying philosophy *to conserve, so that the local needs can be met, not only today but tomorrow too*. The management strategy too had one common element -- *do not prohibit access totally (may be seen for temporary period in some cases), but rather control it, regulate it*. These village institutions over the period of years have developed their own operational rules and regulations regarding protection and use and it varies from village to village corresponding to the social and environmental conditions.

Unlike JFM, the customary system of rights to forests, access to fuel wood and timber, rights to grazing prevail in community forest management. The system is very diverse with various types of institutional structures; each designed uniquely to suit the socio-political situation of the village. The state's inability to control the state property regimes, which historically were common property regimes/open access in the pre-colonial era, has resulted in a vacuum leaving the local communities to assume control of the depleting resource, to regenerate and manage the resources to their advantage. The commons, therefore, in such policy environment are "**assumed commons**" and not commons in reality as the lands still lie as state property. The local communities have taken up sufficient autonomy to exercise such institutions neglecting the presence of the state, as the state remained inactive during the period as it did not know whether to support or to oppose the initiative of the community.

These institutions are examples to show how the natural resources are managed as "**assumed commons**". The Community Forest Management, other than a secured tenure, lives up to the definition of Common Property Resources laid down by Oakerson. The negotiations with the neighbouring villages on the boundary, the operation rules by the communities, conflict resolutions by the village committee etc have no weight of law at all, but they usually represent strong consensus of the

participants and thus generate appropriate action. The outcomes have been quite encouraging as one after the other villages have taken up protection of the forests leading to a movement. By debasing the fact that the resources are being used as commons and the government trying to re-establish their claim over the resources only led to protests/conflicts against the control of the resource by the communities. A study of twelve villages in Orissa has shown that the villages where JFM institutions have been successful in protecting the resource are not due to the JFM policy and support of Forest Department alone. But wherever the communities have rested control in their own hands and have managed the institutions independently have been successful.

The 'space' provided by JFM resolutions have been limiting for the self-initiated forest protecting groups⁵. JFM has been used as a means of co-opting the struggle for decentralized management of resources by the forest department. Joint management has faced immediate rejection in many villages from the local communities who had taken control of the depleting resource, to regenerate and manage the resources to their advantage. The interests of meeting the basic needs from the natural resources has resulted in the protection of forests by the communities; the protection over the years has been translated into claims forcing the government to think of alternatives. The half-hearted alternative of JFM by the state has led to the strengthening of their claims which are transforming into the demand for the recognition of Community Forest Management and thereby entitlements over the resource.

Despite having demonstrated the viability of community based forest management systems as a potentially cost effective, collective, local management regime enforced by informal social pressures and drawing on the local knowledge of ecological dynamics for more than three decades, and some for more than 50-60 years, the community forest management groups are still vulnerable. The "*assumed commons*" regime cannot function in the long term without adequate legislation and that makes community control over common property resources more vulnerable. Unless policies on tenure and natural resource management supports community based resource management regimes with arrangements favouring the community, the desired goals of decentralisation would fail. Section 28 of the Indian Forest Act 1927 and Section 30 of the Orissa Forest Act 1972 provide opportunities for tenurial security under village forests with local communities empowered to manage them. The establishment of common property regimes by defined groups in defined areas and with rights of inclusion or exclusion of users is needed to ensure the stability and sustainability of Community Forest Management. In the absence of proper tenurial arrangements, there is uncertainty in the minds of communities managing their resources and thereby one

⁵ Self-initiated Forest Protection Groups and Community Forest Management mean the same and the words have been used interchangeably in the paper.

observes short term objectives of forest management by people and gradual destruction of reserved forests as against forests nearer to the settlements.

The tenure of forest lands to the communities may not be enough, it requires the state to build in rules to accommodate a range of village institutions within a broad policy framework. The powers of the village institution is limited to sheer negotiations, any sanctions by such institutions is beyond law. Therefore the rules and regulations framed by the institutions require legitimacy and recognition. The devolution of power to the decentralized units is not complete without the acceptance of the rules and regulations. However, it may be attempted by the state to bring in a detailed land use policy and broad principles for management of such resources.

Conclusion

The legitimization of community forest management has been a long drawn discussion and struggle over many years for the communities to get legal rights over the forests. As an intermediary tenurial arrangements, the concept of Joint Forest Management has been introduced more than a decade back – a new form of tenure or property regimes referred to as contractual property regimes. Though JFM has been able to stall / reduce the scale of degradation of the forests, the policy has failed to bring in CPR governance, a basic idea behind devolution of resource management to communities. The policy lacked well articulated legal strategies for changing the legal position to provide a firmer legal base for the common property institution, or devise coping strategies to minimize the risk created by legal immunity. In such a context, the management of CPRs would therefore require :

- (1) to have a solid legal provisions for CPRs in national and state law relating to organisational form and property rights;
- (2) to accept the claims of rights for local communities by dissolving the state's own claim to the vast areas of rural land resource, including forests; and
- (3) to integrate national systems of statutes and custom, often conflicting, within which secured common property can be maintained.

Sailing through the process of colonisation of the forests to that of the process of devolution of rights to the community through JFM, it is evident that community institutions have played a major role in protection of the (*assumed*)commons. The structure therefore requires to be more open so as to accommodate flexible institutions and innovative ways of tapping healthy cross-level linkages between the higher level bureaucracy and local community. The current system of JFM has been facing resistance and even rejection as these institutions are (a) not compatible with existing institution (b) complex (c) more control by the forest department in decision making, and (d) sharing of the resource between the forest department and the community.

To put it more clearly, the contractual property regime introduced through JFM requires to logically progress towards common property regimes and therefore there is a need for a broad framework to accommodate the self-initiated forest management structures that have evolved over the years along with the other institutions being crafted under JFM. There are provisions under the legal system like the formation of village forests, which has rarely been done. There has been a reassurance from the government in the JFM guidelines issued in 2000 which provides for special provisions for the self-initiated forest protection groups. It is being felt that putting the provisions into practice and providing tenurial security through the declaration of village forests.

Commons institutions are functional, complex and unique. They are deeply embedded in the cultures and have an evolutionary history. They have well developed rules and regulations created through a long history of association with the forests. This has often stood the test of time and though not recognized by any law, the strong consensus among the communities generate appropriate action. The neglect of such evolutionary history and the indifference to the local rules in the process of policy making has led to situation of conflicts. The policies for common property resource management should in fact be a set of broad guidelines to be able to incorporate various forms of institutional arrangements and the local specificities yet addressing the larger concerns at the national and global level.

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