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RIGHTS AND PRIVILEGES ON FOREST LAND IN INDIA:
CHANGING PRACTICES ON THE COMMONS

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Introduction

European property concepts were superimposed on Indian institutions to fulfill colonial revenue and control objectives. They also served as "an expression of the political order of society" (Field 1989, 335). The enclosure of forested lands in the mid- and late nineteenth century was accompanied by the creation of access regulations and restrictions on the use and harvest of certain commercially valuable tree species. These became collectively known as rights, privileges, and concessions. Such demarcations resulted in a devolution of common (or locally administered) rights to the state (Guha 1990; Guha 1983; Gadgil and Guha 1989; Bromley and Chapagain 1984; Commander 1986). Scientific management of the forest land became the dogma of state property that has continued beyond Independence. As healthy forest land has declined in area, however, a deliberate shift has been made to non-forest land for the production of tree crops.

If we accept a simple division of Indian land holdings into private (held by individuals or firms) and state (held by agencies of national or state government), common lands are state lands divided into three categories: forest, other government, and community lands (GOI 1991). "In India generally all the common lands belong to the State governments, and even where lands for common use are vested in Panchayats, in many states the government has the right to resume such lands" (GOI 1991). At times, however, *de jure* land control by the state becomes *de facto* land control by local entities. State lands can also be assigned to or assumed by private individuals or corporations. In such cases, where the state surrenders either voluntarily or by attrition, it is clear that not all state land is state land; not all state land is common land; but under present laws, all common land is state land.

Thus in India, examples of common property resources include:

"community pastures, community forests, waste lands, common dumping and threshing grounds, watershed drainages, village ponds, rivers, rivulets as well as their banks and beds. Even when the legal ownership of some of these resources rests with another agency (e.g., waste lands belonging to the Revenue department of the State), in a *de facto* sense they belong to the village communities" (Jodha 1990, 1).

Colonial forest enclosures, land tenure, and property rights in land and trees

Although India's first written forest management policy appeared around 300 B.C., repeated invasions, internal political divisions, population pressures, clearances for agriculture and human settlements, and lack of administrative stability resulted in a mosaic of management regimes of greater or lesser success across much of India (Padhi 1982). "With the advent of British rule in 1804, very little attention was at first paid to the forests" (Mobbs 1941, 239), tracts of which were more commonly granted for clearance. Timber was initially considered of little value. However deforestation in Britain and increasing naval requirements necessitated finding new sources of timber. Teak from the west coast of southern India provided a solution until overexploitation threatened scarcity. In 1806, teak was reserved as a royal right in parts of south India¹, and eventually a silvicultural system was developed for Indian teak. Until the mid-19th century, only teak, deodar (*Cedrus deodara*), and *sal* (*Shorea robusta*) were logged systematically; "(f)or the rest the natives of the country were allowed to continue in their old way and unchecked felling, burning and grazing was rife in all the forest areas accessible to the population" (Stebbing 1922, 83-84).

Guha has extensively reviewed the spread of the Indian railway system and consequent deforestation beginning in the 1850s and intensifying after the 1857 "mutiny" (Guha 1983, Guha 1989, Guha 1990). In 1856, with the publication of Governor Dalhousie's memorandum on forest conservancy and the employment of Dietrich Brandis to design management plans for the Burmese teak forests, "the day of the ruthless exploitation of the Indian forests had gone by" (Stebbing 1922, 85). In 1865, the Government Forests Act was passed in order to address the urgent demand for railway supplies across British India; its revision in the 1870s culminated in the 1878 Forest Act which is the basis for all current Indian forest law.

During the mid-19th century, according to Guha, three schools of thought had developed with regard to the future treatment of forests and forest land.

"The first, which we call *annexationist* held out for nothing less than *total* state control over all forest areas. The second, which

¹ However, due to local resistance, this was not readily enforceable until about 1823 (Stebbing 1922).

one can call *pragmatic*, argued in favour of state management of ecologically sensitive and strategically valuable forests, allowing other areas to remain under communal systems of management. The third position (a mirror image of the first), we call *populist*. It completely rejected state intervention, holding that tribals and peasants must exercise sovereign rights over woodland" (Guha 1990, 67-68).

Led by B.H. Baden-Powell, the annexationists emphasized that uncultivated or "unowned" land belonged to the state, and that local people's uses of the forest and its products were concessions from the state rather than rights.

The annexationists triumphed. The 1878 Forest Act (and the subsequent 1927 Act) provided for the constitution of three classes of forest:

- 1) Reserved forests (intended for timber production, in which rights were to be recorded and preferably extinguished). Produce obtained can be bartered or sold only with prior permission. Offenses are punishable by fine, imprisonment, or both, plus compensation for damage;
- 2) Protected forests (intended both for timber production and other use, in which existing rights were protected but not formally "settled"). These can be converted to reserved forests. Offenses can be punished, but no compensation demanded;
- 3) Unclassed forests (in which existing rights were protected against trespass or against development of new rights).

A fourth class of village forests is sometimes mentioned, which are managed by panchayats or committees of immediately neighboring villages and in which no individual rights accrue. These are, however, under jurisdiction of the Revenue Department and are not counted in most totals of forest land (Maslekar 1983).

Enclosure of the Gujarat forests

In the Bombay Presidency, under whose administration the Panch Mahals and some of the Surat forests fell, 88% of the total demarcated forest was reserved; there were no unclassified or village forests (Stebbing 1923). Other parts of mainland Gujarat were ruled by princely states that managed their own land, although some sought the assistance of the Bombay Forest Department. Present-day Gujarati forest conditions reflect a mosaic of tenure, usufruct, and management patterns inherited from these previous administrations.

Upon Independence, state forest departments gradually absorbed the forests of princely states and *zamindars*. The 1960 bifurcation of Bombay state into Gujarat and Maharashtra (based on linguistic affinities) allocated

the main portion of the Bombay forest estate to Maharashtra. After 1973, through the acquisition of private forests, more land was added to the total amount of reserved, protected, and unclassified forest lands.

Table 1 describes the progress of forest enclosure between 1960 and 1980, showing the diminution of protected and unclassified (village) forest relative to the increase in reserved (and less legally accessible) forest.²

The reservation of commercially valuable species

As early as 1806 when natural supplies were dwindling, harvest of Malabar teak (*Tectona grandis*) was reserved to the crown. Following the 1921 "transfer" of forestry to the provinces³, each provincial forest administration was empowered to reserve certain commercially valuable species in protected forests (GOI 1927 Ch.IV, §30); in reserved forests, the entire forest flora was reserved (GOI 1927 Ch.II). Today, each state maintains different rules and regulations regarding the felling, use, and transportation of certain species. In Gujarat, at least 24 forest species -- divided into 12 "superior" (Class A) and 12 "secondary timber" species (Class B), are managed by the state (Table 2). Over each of these some harvest and transportation restriction or monopoly right exists. In addition, the Saurashtra Felling of Trees (Infliction of Punishment Act) 1951 provided for the control and regulation of the felling of certain types of reserved trees on privately

² It is important to note that these and almost all land utilization figures are frequent sources of conflict and misunderstanding. In more than one case, both Forest Department and Revenue Department contest control of certain tracts. For example, 1983-84 statistics supplied from district agricultural officials claimed no forest in Sagbara taluka of Bharuch district. However, the Divisional Forest Officer claimed 1,811 hectares reserved and 9,826 hectares unclassified forest. In neighboring Dediapada taluka, the same DFO claimed fewer hectares than indicated by the agricultural official (%Singh and Shukla 1986). According to one official, "it is not the department or office maintaining the records that matters, but it is the persons sitting in the chair who matter for the maintenance of proper and accurate records" (%Singh and Shukla 1986).

³ I.e., decentralization. Forestry remained a "transferred subject" until 1976, when it was brought under the "concurrent list" in order that the central government might exert some control on perceived rampant deforestation.

owned agricultural and non-agricultural areas. With Gujarati statehood, this was reinforced by the Gujarat Agricultural Tree Felling Act of 1961. Under these acts, no person can wilfully fell or damage any reserved tree or part thereof without the permission of a competent authority (GOG 1982-84). As of the late 1980s, prior government approval was required for harvest of teak (*Tectona grandis*), rosewood (*Dalbergia latifolia*), sandalwood (*Santalum album*), mango (*Mangifera indica*), and mahua (*Madhuca* spp.) from private land. *Casuarina equisetifolia* and *Eucalyptus* hybrid were exempted, however, from both felling and transit rules (other exemptions also exist).

Rights, privileges, and concessions granted in forest land and trees

By enclosing forest land in various forms for state management, colonial forest administrations captured most forest production. The 1865 Act set the stage for all subsequent acquisition of both material and amenity rights:

"4. Rules made in pursuance of this Act may provide for the following matters:--

First.--The preservation of all growing trees, shrubs and plants, within Government Forests or of certain kinds only--by prohibiting the marking, girdling, felling and lopping thereof, and all kinds of injury thereto; by prohibiting the kindling of fires so as to endanger such trees, shrubs and plants; by prohibiting the collecting and removing of leaves, fruits, grass, wood-oil, resin, wax, honey, elephants' tusks, horns, skins and hides, stones, lime, or any natural produce of such Forests; by prohibiting the ingress into and the passage through such Forests, except on authorised roads and paths; by prohibiting cultivation and the burning of lime and charcoal, and the grazing of cattle within such Forests" (GOI 1865 Act, I.4., in Stebbing 1923, 9).

The 1865 Act also prohibited and regulated river traffic and the transport of forest produce, established a system of penalties for offenses, and described administrative structures. Local provincial governments were to create other site-specific rules in the demarcation of "reserved forests" and "unreserved forests", developing lists of "reserved" trees, and so on. Such rules were soon formalized by the 1878 Act. Essentially nothing could be done without *prior* permission of forest officers, and "the inhabitants of [the forests] - mostly *adivasi* communities - were deemed to derive their customary usage of the forest and its products not from a right of ownership but from a limited and contingent privilege" (Commander 1986, 6, citing Stebbing).

Working plans as a codification of state property worldview

As the system of working plans for the forests spread throughout British-controlled forest land and certain princely states, rights and privileges were written into the site-specific working plan documents. However, the process of site-specific settlements led to a plethora of differing sets of rights and privileges (which was further complicated when the forests of the princely states and other private holdings were merged after Independence under various land redistribution acts). Some attempts at simplification have been made from time to time.

The publication of working plans expresses the state property worldview, as a

"statement drawn up for a certain area of forest land, laying down and prescribing the whole of the operations which are to be carried out within the area for a definite number of years, i.e., it prescribes the whole management of the area, having in view the objects required from the area and assuming their realisation to the fullest extent possible" (Stebbing 1923, 594).

According to Maslekar, a contemporary working plan is a "written scheme of management aiming at continuity of policy and action and controlling the treatment of forests" (Maslekar 1983, 33). In effect theoretically for a 10-year period, working plans are produced sporadically. However, since 1972, no new working plans for Gujarat forests have been written; in 1987 by central government order the 1972 working plans were abolished as outdated and inapplicable.

Present experiments in revising traditional rights, privileges, and concessions

In a sense, the rejection of the last working plans is a statement of a transformation in the state property worldview. Demographic changes, weakening of the forest administrative structure, and forest protest had increasingly stressed the system of rights, privileges, and concessions. Foresters felt the impact of a vocal democratization that precluded totally authoritarian behavior. On state land, various methods of participatory or joint management have been proposed that devolve considerable accountability and responsibility to forest residents and that expand the share of production beyond that envisioned by colonial and post-Independence restrictions.

In Gujarat, India, where social forestry had a head start beginning in the late 1960s, several new models of forest tenure and usufruct have been developed within the last five to ten years. Of particular interest is a comparison of the ongoing programs in Panch Mahals, Bharuch, and Surat districts, where NGOs and the Gujarat Forest Department (occasionally acting in concert) have been actively engaging *adivasi* (tribals) in rural development forestry.

Table 4 provides a comparative profile of the three focal organizations: the Sadguru Water and Development Foundation (SWDF), the Aga Khan Rural Support Programme (India) (AKRSP), and the Surat Circle of the Gujarat Forest Department (GFD Surat).

One strategy in the introduction of rural development forestry was followed by SWDF in the Panch Mahals district (Figure 1). This was to imitate the successes made in the state social forestry program (which unfortunately bypassed many of the *adivasi* [scheduled tribe] population) by encouraging tree planting on privately owned land. Even with new irrigation potential (a major part of SWDF's program), some portion of a farmer's field was left unirrigated; this could be allocated to trees. Little interest was initially expressed in accessing public land (regardless of administrative authority); for "who would protect it?"⁴

The second NGO, AKRSP, focusing on one of its project areas in Bharuch district, initially attempted to optimize use of all public land. Beginning with land under the jurisdiction of the Revenue Department, it expanded experimentally to protection -- and in several cases, plantation -- of forest department land. Negotiations over new regulations that would clear or sanction the planting, protection, and harvest of forest land by village organizations persisted over a period of about five years, culminating in the publication of government orders and guidelines sanctioning the experimental activities. Prior to this official act, a *modus operandi* had been instituted that allowed the GFD Surat, AKRSP, and several pilot villages to work in tripartite cooperation on forest land. Division of intermediate and final harvest goods and profits reflected advantages to local forest residents that

⁴ With the present strong interest in joint management, SWDF may engage in work on forest department or other public land.

significantly outweighed rights, privileges, and concessions granted in the working plans. Although the land remains essentially state property, production rights and responsibilities are shared among the village organization members. Depending on land jurisdiction (whether Revenue or Forest department), timber products are divided between the village organization and the GFD Surat.

The GFD Surat independently initiated a program in both Surat and Bharuch districts that depended on the organization of villagers into societies for either forest protection, or (especially in more degraded forest areas), forest planting, maintenance, and protection. Of particular note is the about-face in species mix for plantation forest. Although the traditional income-producing species have remained a high priority, greater effort has been made to include species that produce non-timber goods and services in intermediate time periods. These are freely available to the societies, who determine both the distribution of labor and inputs and the distribution of offtake. Working against an historical atmosphere of mistrust and hostility, the GFD Surat has depended on improving public relations, coopting local leadership, and retraining and reorienting its own field staff in order to accomplish a change in property worldview. The tension related to perceptions of "giving up" traditional powers in the forest is still quite evident, however, among many of the professional foresters.

Concepts of participation that have gained momentum and importance since the late 1960s and early 1970s have combined with a resurgence of interest in viable management systems for common property. The use of "state property" in forms of collective action is effectively transforming the historically dominant worldview of forestry in India. The forestry constituency has been enlarged beyond the "state" and industry; new categories of land and trees have become part of many programs; and there are new expressions of social and ecological benefit to be derived from trees, the forest, and forest management. The 19th century restriction on forest access seems to be reverting rapidly, at least in some instances, to a more locally oriented locally managed management of land treated as a common.

Table 1 Increase in Gujarat forest estate by forest demarcation and reclassification, 1961 - 1979 (Source: GOG 1982-84)

	Reserved	Protected	Unclassed	Total
1961	5,773	1,278	8,376	15,427
1966	7,384	2,114	7,664	17,167
1970	7,624	1,874	6,840	16,338
1975	10,860	1,299	6,124	18,283
1979	12,698	1,105	5,732	19,535
% change	+120%	-13.5%	-31.6%	+26.6%

Table 2 Important timber and minor forest product species managed by the Gujarat Forest Department (Source: GOG 1982-84)

Gujarati	Scientific name	Primary and secondary uses
"Superior timber species"		
Sag	<i>Tectona grandis</i>	Timber
Sadad	<i>Terminalia crenulata</i>	Timber
Biyo	<i>Pterocarpus marsupium</i>	Timber, gum
Tiwas	<i>Ougenia oojeinensis</i>	Timber
Mahuda	<i>Madhuca indica</i>	Oilseed, alcohol
Shisam	<i>Dalbergia latifolia</i>	Timber
Sewan	<i>Gmelina arborea</i>	Timber
Bondaro	<i>Lagerstroemia parviflora</i>	Timber
Siris	<i>Albizia lebbeck</i>	Timber
Dhavda	<i>Anogeissus latifolia</i>	Timber, tannin
Babul	<i>Acacia nilotica</i>	Timber, tannin
Timru	<i>Diospyros melanoxylon</i>	<i>Bidi</i> leaves, timber
"Secondary timber species"		
Khair	<i>Acacia catechu</i>	Resin, heartwood, timber
Sawar	<i>Salmalia malabarica</i> (<i>Bombax malabaricum</i>)	Timber, fiber
Haldwan	<i>Adina cordifolia</i>	Timber
Kadamb	<i>Mitragyna parvifolia</i>	Timber
Modad	<i>Lanea coromandelica</i>	Timber
Khakhar	<i>Butea monosperma</i>	Gum, leaves
Gugal	<i>Commiphora wightii</i>	Gum (medicinal)
Kadayo	<i>Sterculia urens</i>	Gum
Baheda	<i>Terminalia bellerica</i>	Tannin
Bor	<i>Zizyphus mauritiana</i>	Fruit
Asitro	<i>Bauhinia racemosa</i>	Leaves
Amla	<i>Phyllanthus emblica</i>	Medicinal fruit

Table 3 Brief comparative profile of SWDF, AKRSP, and SWC

	SWDF	AKRSP	GFD Surat
Organization type	Nongovernmental organization (NGO)	Nongovernmental organization (NGO)	Division of state agency
Primary funding sources	Foreign donors, domestic donors, state and national grants and contracts	Foreign donors, state and national grants and contracts	State budget and some national funds administered by state
"Beneficiaries"	Tribal individual landowners, women	Tribal landless, small and marginal farmers, organized into <i>Gram Vikas Mandals</i>	Tribal farmers, forest settlement villagers, forest labor cooperatives, organized into <i>Van Kalyan Samitis</i>
Inception of rural development forestry program	1982	1985-86	1987 (department established in 19th century)
Organizational goals	Increased access to resources; increased income; integrated rural development	Increased access to resources; increased income; integrated rural development	Reforestation; return to the forests of 50 years ago
Land identification and access	Privately owned by individuals	State "revenue" land; state forest land; privately owned by individuals	State forest land
Species menu	Fast-growing species (exotic and indigenous); fruit trees; bamboo	Fast-growing species (exotic and indigenous); native forest trees; bamboo	Native forest trees; bamboo;
Modus operandi	Plantation	Plantation; protection of natural regeneration; enrichment planting	Protection of natural regeneration; enrichment planting; plantation

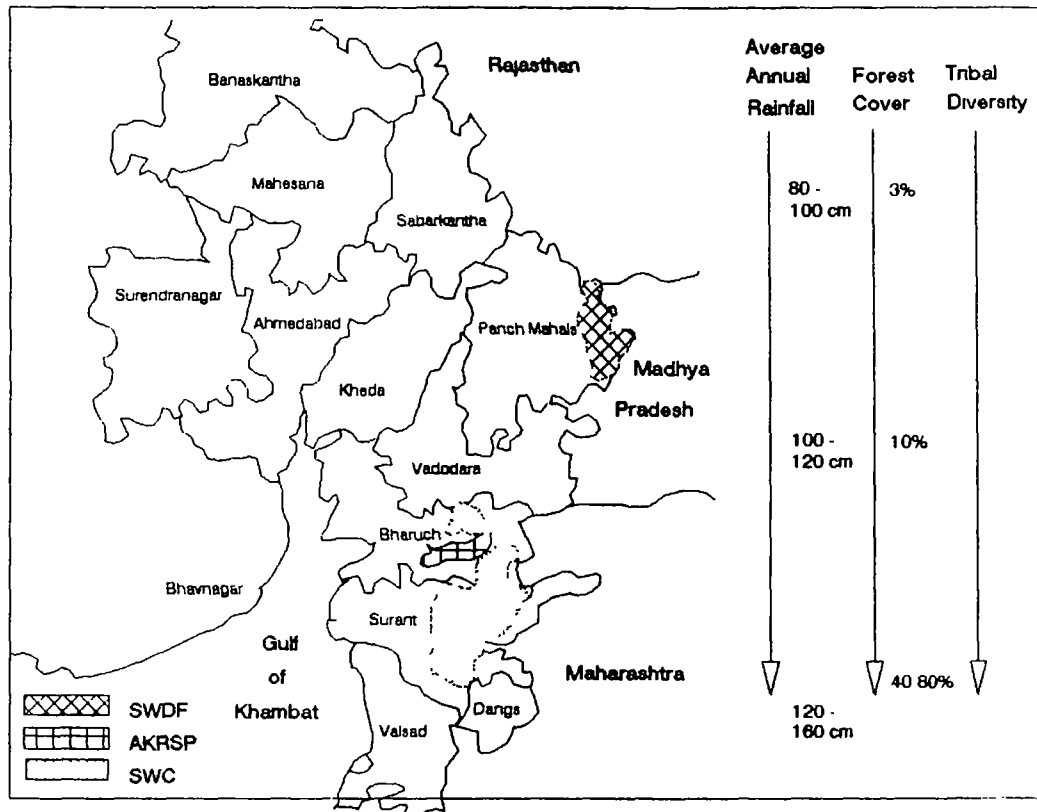


Figure 1 Sketch map of Eastern Gujarat, showing gradients of rainfall, forest cover, and tribal diversity

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