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DECENTRALIZING FOREST MANAGEMENT: PRETENSE OR REALITY?

In the context of Forest Rights Act in India

- Rucha Ghate

SHODH, Nagpur

ABSTRACT

Decentralization of forest management in India has taken a leap forward with declaration of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights on Forest) Act (also known as FRA), 2006. After more than a century of centralization, the Forest Policy of 1988 was the first step towards decentralized management. The Act is presented as an effort to set right the injustice inflicted on forest dwellers by handing over ownership of local resources to the local communities. However, the process of formulation of the act witnessed extreme polarization of 'conservationists' and 'human rightists', and also conflict of interest between the ministry of Tribal Affairs and Ministry of Environment and Forest. The elaborate process specified in the Act for each community to stake its claim on the resource, both for settlement of individual claims on cultivated land as well as on commons, provides ample space for the state authorities to make it difficult for communities to actually benefit from the Act. Previous experience regarding the provision of 'Village Forest' in the Indian Forest Act of 1927, and JFM program based on the liberal Forest Policy, 1988, is not encouraging enough for the communities to believe that 'production of local authority' will eventually take place.

The paper begins with some discussion on the concept of decentralization and devolution, followed by a brief review of the legislative provisions for decentralization of forest management in India. After discussing the present status of the Forest Rights Act (FRA) in Maharashtra state, the paper draws some insights in implementation of the act from an informal study of 5 villages in Chandrapur district of Maharashtra state, and a study of 8 villages located in different forest areas in the state of Maharashtra, India. The study then concludes by highlighting the need to go beyond granting of recognition to 'cultivated areas on forestland', attempted through the Forest Rights Act, to make the access and control over natural resources more meaningful.

Key words: decentralization, Forest Rights Act, policy implementation, India.

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Decentralization, in theory, can lead to better resource management because it promotes local participation, accountability at the level of resource users, and empowerment of communities. Similarly, in practice, there is increasing evidence of 'sharing of authority' world over, between formal administrative institutions and local people in the public decision-making and resource management (Meinzen-Dick and Knox, 1999; Edmund and Wollenburge 2001). 'Decentralization', in this context, is broadly referred to as a group of similar policies, leading to 'administrative deconcentration', 'delegation', 'deregulation', 'devolution', and 'privatization'. But more specifically, decentralization includes transfer of administrative and financial responsibility to lower levels of government, or devolution of power within state bureaucracies, and increased political power to local authorities (Knox and Meinzen-Dick, 2000; Shyamsundar, 2008). Devolution also means transfer of rights and responsibilities to user groups at the local level leading to transfer of power from central government to local people (Nguyen, 2005; Fisher, 1999)¹. Decentralization in forest management has been introduced in many developing countries. It presumes that communities living close to the resource are in a position to take informed decisions regarding its use; since they benefit from forest, conserving it would be to their advantage; and living together in small groups would ensure equitable benefit distribution within and amongst local communities.

In recent years there have been several studies looking at decentralization in case of natural resource management. Decentralization, initially prompted by external or domestic pressures, is seen as a strategy of governance to facilitate transfer of power closer to those who are affected by the exercise of power (Agrawal and Ostrom, 2001). It is also seen as a tool for achieving development goals in the ways that responds to the needs of local communities (World Bank, 2000: 106). The underlying argument promoting devolution as transfer of power, accompanied by 'downward accountability', is that it would ensure economic efficiency, sustainability of the resource, and improve social and economic equity (Agrawal and Ostrom, 1999; Fisher, 1999; Ribot, 2002, 2003). Devolution in case of natural resources is seen as a tool to achieve political as well as economic (distributional) equities at local level. While political equity is about who gains influence in the decision-making, economic equity is more concerned about who gets what benefits (Poteete, 2004). The

¹ Forestry related provisions in India are a combination of decentralization and devolution, hence the two terms have been used in this paper synonymously.

basic belief is that local institutions have better knowledge of local needs and aspirations, and decentralization would provide incentives for local communities to own decisions, resulting in environmentally sustainable development (Ribot, Agrawal, and Larsen, 2005).

Ever since the Forest Conservation Act, 1980, no other piece of legislation in India has received as much attention as the Forest Rights Act (FRA), 2006². While the former severely restricted altering forestland for any use, the Forest Rights Act (FRA) has extended rights over the forestland that has been under cultivation for long. In both the cases 'forest land' has been the contentious issue. Although the Lok Sabha (lower house) as well as the Rajya Sabha (upper house) almost unanimously passed the act, the Ministry of Environment and Forest (MoEF) and the wildlife conservationists had vehemently opposed it as a bill. Tribal rightists called the passing of the bill as a 'watershed event' because through it the forest dwelling communities would get a political space in forest management for the first time in the history of Indian forests (Ghosh, 2006), Ministry of Environment and Forest (MoEF) and other conservationists termed it as 'ideal recipe' to ensure the destruction of India's forests and wildlife by 'legalizing encroachments' (Krishnan, 2007). The reality is likely to be somewhat between these two positions.

Starting from Forest Policy 1988, to FRA, 2006 forest resource management in India has followed the continuous process of decentralization. In the light of optimism expressed by one part of society on the one hand and the grave concerns expressed by the other, it is pertinent to ask what is the ground reality. FRA has thus once again raised several issues questioning the likelihood of theory getting translated into practice in the light of the experiences of previous decentralization attempts. While the earlier policy changes had impacted access and use of mainly non-timber forest products, the Forest Rights Act has gone a step further by transfer of ownership as well as authority for managing the resource. Therefore, after one year of its enactment, it would be interesting to see where the things stand as far as its implementation is concerned. Is the Forest Department, the sole owner and manager of large tracks of forestland in the country, willing to share its ownership and authority? How many community-level claims have been made for managing forests as against the individual claims for cultivation on forestland? Are the communities aware that they are now 'empowered' to manage their forest? Are the liberal provisions made for legalizing the land under cultivation for individuals dependent on it for subsistence alone being genuinely claimed? The raised expectations from FRA in achieving equity, efficiency

² Complete title of the act is 'The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

and sustainability would depend on many things including the spirit with which it is implemented, and preparedness of the communities to understand its implications.

In this paper we first briefly discuss some international experiences in decentralization, and then review of decentralization attempts in India. Although Indian forestry has its roots embedded in the century and half long colonial rule, the focus here is on the post independence period. Divulging some of the provisions of the Forest Rights Act follows it. The last section presents some observations from the field³, confined to the state of Maharashtra, and is followed by discussion on some issues that fall-out from the study.

Decentralization policy and implementation

Despite the theoretical virtues of decentralization, the experiences in different countries have been varied. There have been some lacunae in the structure of a decentralization program, or in implementation. Scholars have shown through their studies conducted all over the world that most decentralization reforms are either flawed in their design, or encounter strong resistance from variety of actors that erode its effectiveness (Ribot, Agrawal, and Larsen, 2005). There is evidence that in forest devolution, economic benefits are often captured by the local elite (Fisher, 1999; Edmunds and Wollenberg, 2001); and vested groups can often manipulate the institutions and opportunities created by decentralization for their own benefit (Francis, and James, 2003). A study in Vietnam shows that devolution is not necessarily inclusive, because “the changes in rights, responsibilities, and governance relations sought by devolution are directly connected with power and authority relations” (Sikor and Thanh, 2006: 652). Another study from Vietnam shows it is difficult to simultaneously achieve the twin objectives of protection of local forest and improve local livelihoods through devolution. Achieving neither of the two is more likely (Nguyen, 2005). Tacconi *et al.* (2006), based on their study in Indonesia, express “...significant doubt on the expectation that decentralization can lead to sustainable forest management because rural livelihoods do not necessarily benefit from forests more than from alternative land uses”.

Even if conditions are created in favor of decentralization, and programs are initiated to pursue decentralization, setbacks and retreat may be possible in the process of implementation. If local mobilization is neglected, and the communities are not fully aware of

³ The paper partially draws from a study on decentralization in India, funded by the South Asian Network for Development and Environmental Economics (SANDEE) www.sandeeonline.org

their rights as well as responsibilities, the users cannot “exercise significant control over collective and constitutional-level choices related to rule design, management, and enforcement, and thus the impact of decentralization is limited (Agrawal and Ostrom, 2001: 508)”. According to Fisher (2000), in addition to basic problem of devolving true power responsibility to implement policies, there are three major ways in which decentralization and devolution have been misapplied: devolution of responsibility without authority, devolution of authority to wrong people, and applying socially naïve, standard organizational models of devolution. In the context of forestry, wherever Forest Department has had monopoly over rule formation, implementation and sanctioning, it is not likely to accede to demands for giving up its control over forestland easily. The differences between national and local objectives over use of natural resource and capacities of management are more likely to discourage transfer of authority from national to local actors (Ribot, 2003). And if this is accompanied with poor implementation, decentralization is likely to give poor results. An analysis of six most innovative experiences of decentralization in forestry sector suggests, “...fundamental aspects of decentralization, including discretionary powers and downwardly accountable representative authorities, are missing in practice (Ribot, Agrawal and Larson, 2005)”. In the Indian context, due to poor experience of devolution attempted through various programs in forestry sector, Sundar (2001: 2008) has even argued that “more, rather than less, direct government intervention – in the form of enforcing the rule of law, or providing a countervailing power to local elites – may in fact have more democratic consequences than formal devolution”.

Decentralization is, thus, not viewed as *the* solution to forest degradation. Scholars argue that communities do not always live in harmony with natural resources, and their priorities may be different and their resource use may not be always sustainable (Tacconi, 2000). The romantic view of the ‘symbiotic relationship’ between forest and forest dwellers being a rule, is disputed by environmentalists and Forest Department officials through arguments like – local communities neither have skills nor understanding regarding importance of forest; forest management needs technical expertise; given an alternative communities would move away from forest; the new generation is impatient and does not want to wait for many years that tree needs to mature; and the like.

To sum it up, arguments made against decentralization are not necessarily against the concept of sharing of authority and responsibility, but against the design or the structure of a particular policy/program, or against the attitudes of the implementers or of those who are affected; and against the process – implementation. Therefore, it is difficult to conclusively

comment on 'decentralization' *per se* because the experiences of the countries that have already experimented with devolution are varied, not only in terms of their impacts but also in the reasons associated with trying out of inclusive approaches (Sikor and Thanh, 2006). On the basis of different experiences so far it would not be advisable to dump experimenting with decentralization, on the contrary, taking risks in transferring power to the communities, ahead of capacity building, would be justified (Ribot, 2003).

In the Indian context, critiques of Forest Rights Act use the failure of JFM like programs to assert that people do not want to participate. Instead of generalizing on the basis of any one program, it would be rather appropriate to look into the aspects of attitudes and incentives that exist for communities as well as the implementing agency, in a particular program. Apart from other reasons, one reason that our earlier study on JFM indicates that, even after almost two decades of introduction of the JFM program, majority of the communities are not even aware of its provisions (Ghate and Mehra, 2008). Could that be true in case of FRA too?

Before turning to the Act, a brief history of forest regulations in India is presented here.

Forests in India

Around 20 percent of India's land is classified as forest, which is around 64 million hectares. Of this total forest area, 50 percent is dense, 40 percent is open and 1 percent is coastal (mangroves). Ownership and management of 92 percent of the forest is with the government, of which government and communities under Joint Forest Management Program jointly govern 27 percent, and only 8 percent is under private ownership. Although forestry and logging contribute just about 1.1 percent of India's GDP (in 2001), according to one estimate, the value of India's forest is INR 59,20,190.2 crore for its environmental functions, (the Net Present Value assigned by the Supreme Court of India⁴ (Report from Down to Earth 2005). Taking into consideration the rich biodiversity of the country, even this can be considered a gross under estimate. Moreover, if one is to include the economic function – in the form of providing subsistence needs of the forest dwelling population – the forests perform, its value is likely to increase manifold.

⁴ The rates assigned to different categories of forest are: INR 5.8 lakh per hectare of scrub forest, 7 lakh for open forest and 9.2 lakh for dense forest.

Such a valuable resource was under the state monopoly for a long time. The recent trend of decentralization in forestry sector has come after almost 150 years of systematic centralization and consolidation of authority for commercial gains by the British and then by the government of independent India as well (Guha 1983). To mention that until the end of the nineteenth century, at least 80 percent of India's natural resources were common property (Singh 1986) is important here to drive home the point that polycentric ownership and decentralised management are not completely new concepts in Indian context. The perception that the decentralization effort has a chance to succeed is supported by the fact that despite the existence of vast tracts of seemingly inexhaustible forests with low population pressure, restrictions on reckless and indiscriminate exploitation have always been the foundation of the social and cultural institutions developed by people in various forest areas of India (Gadgil and Berkes, 1991, Gadgil and Subhash Chandra, 1992, Sarin, 1996, Ghate, 2004). This reality was ignored, as reflected in the very first policy statement in 1894, which termed forest communities as 'intruders' and 'aliens over the state property'. Forestlands were transformed into mere sources of revenue for the British Government (Rangarajan, 1996) even at the expense of forest areas allocated to villagers' use (Guha and Gadgil, 1989; Ghate, 1992), resulting in erosion of localized institutions. Concentrating on situation in central India during the British rule, Satya (2004: 3) notes, "colonial capital and technology worked hand in glove to exploit the rich resources of Berar.....the colonial state constantly strove to devise more and more sophisticated and efficient ways of not only extending its control but also of extracting revenues, resources, and labour".

This situation started changing after Government of independent India realized that unless the biomass-dependent communities are accepted as stakeholders of the forest resource, its protection would be extremely difficult.

Decentralization initiatives in forest management

Decentralization of forest management began with the acceptance of people oriented forest policy in 1988, which gave priority to villagers' needs and accepted their first 'claim' on the resource. Joint Forest Management (JFM), the most common operational form of this major devolution policy for the 'inclusive' decentralized management of forests in India, instituted a mechanism for sharing of benefits as well as responsibilities between the communities and the Forest Department. It was introduced in 1990, and it became operational in 1992. Usufruct rights on forest products for subsistence, restoration of degraded as well as

preservation of well-stocked forest lands, sharing of benefits flowing in the long term, and making available other development funds for poverty alleviation by establishing Forest Development Agencies (FDA) in each state at forest division level in the year 2000, for federating JFM committees, are some of the steps that gave strength to the program. However, JFM has been criticized for its typically top-down approach; asymmetric power relationships between the state functionaries and the people; power imbalances within communities, inadequate benefit-sharing provisions (Sundar 2001, Conroy et al. 2000), and its weak legal footing as it fails to grant security of rights (Upadhyay, 2003). Most importantly, it bypassed village *panchayats*, which are the existing village-level governmental structure, and became an example of failed local institutions, though created through a 'perfect' decentralization policy, due to "disarticulated political context" (Chhatre, 2008).

The *Panchayat Extension to Scheduled Areas Act (PESA)* of 1996 gave power to the *gram sabha* (village assemblies) in scheduled areas over community resources, especially over minor forest products. PESA took the decentralization of management and ownership of forest resources in areas beyond the Forest Department managed territory. It made *gram sabha* (village assembly) 'competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution'. However, the ground reality is that implications of PESA are not evident, and the act is not yet understood by politicians, administrators or villagers (Sundar, 2001). Moreover, it excluded the two most remunerative minor forest products (bamboo and tendu) from the list of forest products that the communities could manage. From our informal survey of more than 150 villages in Maharashtra, we can confirm that PESA's provisions are considered vague (Pal 2000), and for all practical purposes it remains an act more or less to show off government's intention of devolution.

Another act that followed PESA, and which gives authority to local communities to manage their own natural resources as well as distribute profits equitably, is the Biodiversity Conservation Act, 2002. The act takes in its purview all the forms of local governance like *gram panchayat* (village level), *panchayat samiti* (sub-district level), *zilla parishad* (district level), and even municipal corporations in urban areas. These local level institutions have been authorized to grant or refuse permission to outsiders to use products of biotic resources, and even charge fees for use. However, this act has been plagued with problems like - The National Biodiversity Authority is yet to finalize rules that would aid communities to

implement the rights devolved to communities; and it is not clear whether the communities will have authority on the forest land managed by the Forest Department (Gadgil, 2008: 42).

Even though these legislations indicated government's commitment towards continuation and expansion of the decentralization initiative, these were adopted with different objectives. While JFM was expected to improve forest cover as well as livelihoods, PESA was an attempt to recognize rights of communities to product use. Biodiversity Conservation Act added management rights and recognition of traditional knowledge, to the right of product use. Despite these, the indigenous population and the activists working amongst tribal population, experienced continuation of centralized authority of the Forest Department resulting in limiting access to the resource. The recent passing of 'Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006' (STOTFDA) in Indian parliament on 15th December 2006, can be principally considered as one that has the necessary ingredients to make devolution meaningful. It is seen as a major step in the process of recognizing and re-establishing indigenous people's symbiotic relation with forest. Although it may not have happened consciously or by design, the progression of decentralization measures – JFM-PESA-BCA - and now handing over complete access and management of forests, both traditionally used as well as within village jurisdiction - is theoretically almost perfect. What is falling short is the matching efficiency in its implementation.

Transfer of ownership through the Forest Rights Act

Recognizing that 'the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India' in the Forest Rights Act, is something that would not have been thought of even a decade ago. Earlier attempts at inclusive management of forest were not recognized as a 'right' of the community members, but merely 'privileges' given away by the implementing agency – the Forest Department. A bill, which became Forest Rights Act, 2006, was first moved in the parliament in December 2006, and was notified on December 31, 2007. Rules were framed and the Act came into vogue from 1st January 2008. It was hailed as a welcome opportunity to "...put our forests and biodiversity resource management on a sounder footing; to devise flexible, knowledge intensive and participatory systems of management" (Gadgil, 2007).

The Act was brought essentially to circumvent the Supreme Court's order in the case of *Godavarman Thirumalpad vs Union of India*, which banned regularization of tribal revenue villages. When the Government of India passed the Forest Conservation Act, on the mid-night of 25 October 1980, hundreds of thousands of indigenous/tribal peoples became illegal residents on land over which they had been living for generations (Anonymous, 2006). The act basically recognizes the rights of those residing on forestland and forest villages or old habitation, un-surveyed villages and other villages in forests, including those not recorded and not notified. After independence, large areas of forests that were managed by princely states and *Zamindars* (land lords), were taken over by the state based through blanket notifications without surveying their vegetation/ecological status or recognizing the rights of pre-existing occupants and users as required by law. The basic argument of the pro-FRA lobby was that if, even after six decades of independence, the government could not survey the land to set the land records right for the most vulnerable section of the rural poor, it only reflects the poor state of country's governance (Sarin, 2005). The Forest Rights Act was seen by tribal activists as an attempt to "undo the historical injustice" done to scheduled tribes and other traditional forest dwellers.

FRA ensures that tribal communities and other traditional forest dwellers will have the legal right to live in forest land under the individual or common occupation for habitation of self-cultivation for livelihood; own, collect, use and dispose of all minor forest produce (including bamboo and tendu, excluding timber); have traditional seasonal resource access for nomadic and pastoralist communities; rights to disputed lands; rights of access to biodiversity and community rights to intellectual property and traditional knowledge etc (Chapter II, section 3). Along with rights, FRA also empowers communities to protect wild life, forest and biodiversity. It fixes responsibility of protecting catchment areas, water sources and other ecological sensitive areas (Chapter III, section 5), thus creating a new democratic system of forest governance, which included rights with responsibilities (Sahu, 2008).

It is important to understand what makes this act special for the communities. If it gives anything to the communities that they did not have earlier. The Indian Forest Act, 1927 always had a provision for 'Village Forest' area of forest earmarked for meeting the forest related subsistence use of the villagers. But these areas never got notified; their management was never handed over to the respective communities. Forest Department neglected these forests, did not invest in their management and gradually village forestlands come under cultivation due to increased population pressure. Post independence, as has

been mentioned earlier, rights on forest products were given through PESA and Biodiversity Conservation act, but both have not become operational on the ground because either rules are not formed, or the accountability is not yet fixed. Regularization of cultivated forestlands, thereby transferring the ownership to the tiller, too has taken place quite frequently after independence. Similarly, legislative provisions have been made to convert 'forest villages' into 'revenue villages', except for the villages that are still not surveyed. Thus, what has been lacking in all these cases is 'implementation', in spirit as in reality. There is skepticism about FRA as well. Multiplicity of agencies involved in its implementation, confusion is inherent in fixing accountability. While the land belongs to forest, Tribal Ministry has been instrumental in bringing in the legislation, while implementation is to be executed by the Revenue Department along with officials from Tribal and Forest departments. Who is responsible for informing the communities regarding this act? Who is to ensure that along with the rights, responsibilities are also communicated to the communities?

The procedure has been clearly laid down in the act and rules thereafter. It is an elaborate procedure. *Gram Sevak*, a Revenue Department employee is to make the claim-forms available and inform village *panchayats* to form a Forest Rights Committee in their villages. Individuals are to fill and submit their claim forms, within a stipulated time to this committee. The committee is then expected to verify the claims on the spot along with witnesses, prepare the maps identifying the land, and submit the authentic/verified claim forms with the *panchayat*. *Panchayat* is then supposed to hold *gram sabha* (village assembly) and confirm that no one counters the claims made by individuals, and then submit the forms to Sub-divisional level committee. This sub-divisional level committee consists of members from the Department of Tribal Development and Forest Department, along with the Revenue Department. The claims that are found satisfactory are sent forward to the District level committee, or if not found satisfactory are sent back to the Forest Rights Committee. The district level committee is chaired by the District Collector and has members from other departments as well. Similar procedure is laid for claiming community rights over forest too. The multiplicity of government departments makes fixing of the accountability for dealing with various ground level issues ambiguous. Also, the inter departmental rivalry, both for claiming credit and creating hurdles, has ample scope to be explicit in the process of accepting claims. While the officials for Forest Department are not happy with de-foresting any land, Tribal Department and Revenue Departments, who have had grudge against the Forest Department for having exclusive ownership over forestlands, are in favor of accepting claims by indigenous communities. These subtle under-currents are not obvious but are already proving to be strong enough to impact decisions under this act.

Early criticism

The Forest Rights Act, though lauded by tribal rights activists and politicians and scholars, it has been criticized on several accounts not only by hard-core conservationists but also by others. The major arguments can be categorized into three – structure related, intention related, and impact related. We discuss these in the following paragraphs.

As has been mentioned earlier, before becoming the act, this bill was debated inside and outside the parliament, it was put in the public domain for people to comment on. Later it was sent to the Joint Parliamentary Committee to look into various issues brought up during the discussions, and come up with a modified draft. This draft was primarily criticized for watering down of the original bill. Even after becoming an act, it is said that the spirit of the bill is lost because of the inclusion of the 'other traditional forest dwellers'. While tribal society and its culture is completely in harmony with forest, this is not so in case of 'other forest dwellers'. They do not take livelihood activities in the forest by choice, and do not necessarily have symbiotic relationship with forest. Second criticism, in this regard is for extending the cut off date from October 25, 1980 to December 13, 2005, for regularization of cultivation on forestland. It is being feared that it will basically benefit the other traditional forest dwellers that are required to prove that they have been occupying the forestland for three generations under the clause (o) of the Section 2 of the Act. By extending the date, from October 25, 1980 to December 13, 2005, one generation gets covered automatically (Anonymous, 2006). This action is clearly to the benefit of those who have started cultivation on forestland only recently, and have not been traditionally dependent on forest. Moreover, it would act as an encouragement for fresh encroachments hopeful of getting regularized eventually. Some believe that the act has failed in creating a watertight case of securing land rights to forest dwellers, and has, in fact, "left the door wide open for takeover of forests by mining corporates, timber mafia and the like" (Krishnan, 2007).

The act is also condemned for its 'quick-fix' approach to larger issues such as environmental conservation and tribal rights. Through the act, the government could be actually distancing itself from responsibility of conserving forests (Hebbar, 2006). Just as the JFM program was looked at state's ploy to shift its responsibility of forest protection to communities, this act by transferring the responsibility of management of the resource could be washing its hand off the difficult job. The fear is that it would lead to marginalization of both the forest dwellers and environmental concerns. There are several petitions admitted in the Supreme Court

against the FRA. Better-known petitioners are Bombay Natural History Society, Wildlife First, Natural Conservation Society, and Tiger Research And Conservation Trust. Some of the arguments that these petitions make are - union government does not have right to make such laws because forests are a state subject; by converting land use from forest to non-forest, the Act stands against the principle of sustainable development; and that the Act invades the power of the *gram sabha*. The act also seems to be oblivious to the fact that tribal population has undergone major changes in occupations, customs and traditional ways of living. By accepting rights on 'customary boundary' of the village in the act, it is not only introducing vague boundaries, but is also a creating likely situation for potential inter-community conflicts.

The early impacts of the act, of communities misinterpreting some provisions and cutting down forest, were reported from several parts of the country. Reportedly people were encouraged by political interests to encroach upon forestland with the assurance that it would get regularized under the Act (Kothari, 2006). For example, in Khorikashule village in west Mednagpur village in West Bengal, villagers cut down trees to claim or reclaim forestland just before and after 1st January, 2008 (Mitra, 2008: 15). Similarly, in Gadchiroli district of Maharashtra, villagers of Kudawahi cleared 20 hectare of forest area, despite Forest Department staff pleading with them to stop (Deshpande, 2008). The MoEF's opposition was based on the fact that over 60% of the country's forest cover is found in 187 tribal districts where around 8% of national population lives, and accepting rights to the cultivated land, would affect 16% of the country's forest cover.

Unfortunately the act has been confined in relevance, by treating it as an 'encroachment regularization' mechanism. The wider context of devolution of authority to manage forests as resource for the benefit of local communities is over shadowed. This is apparent from the number of claims made for collective/community ownership against claims made for personal land ownership. Also, there are serious shortcomings with the implementation. All over India the process of implementing FRA is affected by the fact that those who wish to claim rights have been given just three months to do so, while there is no such time bound commitment for settlement of claims. "That's how the government works: make a good law, and then create a procedure that the law becomes a paper tiger (Down to Earth, 2009)". Hitches in implementation, non-availability of forms, insufficient training, lack of complete understanding, are some of the practical problems impeding implementation, that have been reported from all over (Misra, 2008).

Regardless of these criticisms, the act has been welcomed by some activists and forest dwellers. Those who had criticized quasi-legal programs like JFM are now satisfied that FRA rightly accepts prior claims of the original forest dwellers (Menon, 2007), and some even advocate that “so-called participatory structures created by the Forest Department like Joint Forest Management need to be smashed, so that neither state nor private capital aided by international finance institutions find further foothold in forests (Ghosh, 2006)”. On the criticism that forest dwellers will not be able to manage the resource, Upadhyay (2009) comes heavily to defend - “Why are we reluctant to rely on the wisdom of ordinary *Gram Sabha*? Aren’t the daily wagers in forestry, the guides, informers, knowledge holders, village boy who shows tigers to urban enthusiast, members of the same forest dwelling communities? This Act is about their security of tenure.” There still are many myths/misconceptions regarding the act, which were either spread on purpose, or exist due to misinterpretation. Some of the myths are - the act will distribute 4 hectares of land to every tribal family; the act allows people to take over and destroy forests; it will help land grabbing; the act removes all protection from forests by allowing people to stay in national parks and sanctuaries, the act will make it impossible to protect wildlife – especially tigers, and the like. However, these rumors have the potential of harming forests if the implementing agency is not careful.

FRA in Maharashtra

Forest Department in Maharashtra, as in case of other states, too views the Forest Rights Act as a threat to its standing forest. Notwithstanding the provision of the act that specifically mentions that only the lands under cultivation are to be regularized, and no new forests are to be cut down for the purpose, comments submitted by the office of the Principal Chief Conservator of Forest (Maharashtra State), before the rules under the Forest Rights Act, 2006 were framed, plea to the MoEF to urge the Ministry of Tribal Affairs not to rush through the process of framing rules, possibly to delay implementation of the act as much as possible. The Department firmly believes that the act has the potential to damage forests in the country. No wonder that 86.6 % of the forest officials interviewed for our study (mentioned later in the paper) felt that FRA would adversely affect forests since it would encourage further encroachments. On the issue of ‘other traditional forest dwellers’, the note advocates caution that needs to be exercised in dealing with them ‘...as they may form the bulk of beneficiaries’. The note brings out the fact that about 24 million people inhabit forested villages in the state, and there are only 9.1million tribals in the state, not all of who dwell in forests. Highlighting the tremendous biotic pressure on existing forests, the comment emphasizes that “we are a country of over one billion people, who occupy barely

2.4% of the earth's landmass and 1% of the earth's forest cover 17% of global livestock that mainly grazes in the forest and our rivers carry 35% of global silt load". The comment ends by saying that "the existing forest laws are quite adequate to act as the framework for the tribal act. There is a need to work for achieving synergy" (Anonymous, 2007).

The perceived threat of losing forest area further is not totally imaginary. The State of Forest report, published by Forest Survey of India, 2001, puts the recorded forest area of Maharashtra at 61,939 sq km, which is 20.1% of the State's and 8.1% of the country's forest area. In the year 1961, when the state came into being, the forest area was 63, 544.3 sq km. Within the first year of its formation 41791.65 ha of forest area was granted on lease to tribals for agri-silvi cultivation. Just before Forest Conservation Act 1980 was enforced, State Government decided to regularize cultivation of forestland between 1972-78 period to the tune of 30,955 hectares. According to the latest statistics, till September 2004, post 1978 encroachments on forestland stand at 82.239 hectare (Sharma, 2005). It is important to note that the percentage of tribal families living below poverty line in the Scheduled Areas of Maharashtra ranges between 87 to 97, as against the state average of 26. It is important because this gives us an indication that development of forest dwelling communities may not really lie in agriculture. At the same time, it would be wrong to presume that communities would always work towards conservation. There are evidences of communities misinterpreting PESA and cutting down forest just to prove that they are the 'owners' or because for them agriculture is more lucrative than forests (Ghate, 2004: 77 & 117).

Data published by the Tribal Research and Training Institute (TRTI), the nodal agency to oversee implementation of FRA, indicates that personal interests of forest dwelling population have clearly overtaken community interests. The number of committees formed in the pyramid structure mentioned earlier in the paper, as on February 4, 2009 is as follows:

Number of district level committees established: 24

Number of SDO level committees established: 73

Number of Forest Rights Committees (village level) established. : 11642

Number of claims received by the Forest Rights Committee at village/*gram sabha* level is:

1. No. of individual claims : 195696
2. Claims on community forests: 1549

Claims received by SDO level committee:

1. No. of individual claims 9127
2. Claims on community forests 13

It is interesting to see that the average individual claim in the state is slightly less than one hectare, while the act allows regularization of private ownership up to 4 hectares. Another important issue that needs to be mentioned is that maximum accepted claims made by individual cultivators have come from Ahmednagar district (159), and the average individual claim here is more than the state average. This district has very little forest area, but the present forest minister hails from this district.

Official website of TRTI gives details of training programs organized to facilitate implementation of FRA. According to its report a training workshop was organized for Collectors of tribal districts, conservators of forests, Additional commissioners, and project officers of Integrated Tribal Development projects. In all 82 officials had participated in the workshop. The institute had also organized Trainers' Training program in the same month wherein 67 sub-divisional (SDO) officials were trained. 31 members from various NGOs working in tribal areas were also trained to help in implementation of the Act. The Institute has developed guidelines and instructions for various implementing agencies. Several district-level capacity building programs have also been undertaken in which 45659 members of Forest Rights committees and 1857 members of district and SDO level committees have participated. However, results of our field study indicates that these training programs have fallen short of raising awareness and capacity building to the desired level.

Fewer claims at community level could be because of various factors, and need not be held as an argument to prove that communities' interest in collective ownership is failing. Despite the tall claims made by TRTI, of holding number of training workshops for officials at all levels, the ground reality is that the training has been faulty at least on two grounds. Firstly, emphasis has been only on the procedure laid down for making claims on individual cultivated land and not on communal land. Secondly, the trainers have been taught that the provision of communal ownership is restricted to land for road construction, land for erecting electricity poles, or for communal burial grounds and the like. Rights of communities to own and manage forest, within revenue boundaries or traditional boundaries, use and dispose off forest products have been subdued in all the training programs in Maharashtra. Moreover, there are many ambiguities and procedural complexities that inhibit claimants at every first

step. There are several practical difficulties that people are facing in putting forth their genuine claims, which we discuss in the following paragraphs.

Results based on field survey

Results being presented here are from a set of two studies. The first one was informal and included meetings and discussions with villagers from five villages⁵ in Sindewahi sub-district of Chandrapur district, in the month of October 2008. At that time the word about the act was spreading and claim forms were being made available at village level. The second study was more broad-based, looking at decentralization in forestry sector as such, and not a systematic study of FRA. One year is relatively a short duration to understand impact of an act that has large magnitude. The results that we discuss here are based on few specific questions that were asked on FRA. Field survey was conducted in 8 villages from 5 forest/tribal rich pockets in the state of Maharashtra⁶, in the first three months of year 2009. Results presented here are based on 112 household surveys conducted in the sample villages. Some of the pertinent issues that emerged from the two studies are being presented here. These need to be considered merely as early impressions and not conclusions of a systematic study. These are mainly the issues of implementation, where various problems result due to incomplete and incorrect information not only at village level but also at higher level. Some issues that came up in the informal studies are -

1. Households that already have agricultural land, have the necessary implements for cultivation, and they are the ones that have encroached on forestland, and will get advantage of getting its legal ownership. Although most of the benefit seekers are small landowners, and have encroached on small patches of land, those who have abided by law and have not cultivated forestland have a feeling of dissatisfaction. "It was wrong to have remained honest, not indulging in illegal activities, those who did something wrong are rewarded...." (Villager from Wasera, October 22, 2008).
2. In case of Piperheti village, the whole village is settled on forest land since it was a forest village (a colony settled by FD before independence to get assured and cheap labor). A villager mentioned "at the time of settling us FD had distributed land arbitrarily. But when it came to settling the claims before converting the village to revenue village, less land was shown on records" (Villager from Piperheti, October 23, 2008).

⁵ Namely, Wasera, Navergaon, Singadzari, Pandharwani and Piparheti.

⁶ Amravati, Chandrapur, Dhule, Gadchiroli and Thane districts.

3. There are instances where some households had cultivated small pieces of land in the nearby forest for many years. Later that area was declared as a wildlife reserve and they were forced to vacate. The question being asked is if they will qualify to get ownership of this land.
4. In Singadzari village, one landless household had encroached a piece of land and was cultivating it for many years, but two years back the land owners in the village decided to alter the land use – convert it into the racing ground of bullocks. Will this case qualify for ownership? There are many questions/situations to which no one - villagers, NGOs, political party members, trainers – have an answer.
5. Villagers were not aware that they are supposed to get the claim form free of cost. Many villagers complained that the forms were made available at a photocopy shop at Sindewahi for a price. The committee constituted at the village level was also reportedly charging money to validate claims made by the cultivators. Therefore only those who could shell out extra money were getting their claims registered.
6. In case of group gram panchayat, which is usually located in a bigger village, and which is more likely to have more heterogeneous population, the panchayat members are not taking any interest in receiving and verifying claims on forestlands. They completely lack interest in this process if they do not directly benefit from it.

At a meeting at Navargaon, organized by an NGO 'Vikalp', where more than 100 men and women had assembled to know more about FRA, main emphasis was on finding ways and means to get the necessary evidence to register the land being tilled in forest. There was no talk of communally owned forestland and making claims on it. During the informal discussions in the four villages, general feeling amongst people was that they should continue encroaching on forestland, because it will eventually get regularized.

Results of the second study being presented here, as has been mentioned earlier, are a sub-set of a larger study on decentralization. Before discussing FRA related findings of this study, it is pertinent to mention that the study found forest dependence of the communities living in forest fringe areas to be substantial. Sale of minor forest products remains the major source of cash. And in every sample village concern over reduction of forest cover was expressed because in all the villages respondents have experienced reduction in forest cover for past one decade. Yet, almost 66% of the respondents feel that forestland should be converted to other land uses (Agriculture – 32%, Industry – 21%, and 10% industry), though 74% of the respondents do not consider forest to be a hindrance in development.

In the context of FRA -

- Almost 92% of the respondents are somewhat aware of the Forest Rights Act, but majority of them only know about regularization of rights on cultivated forestlands.
- Less than 2% respondents know about the right to deforest land up to one hectare (with less than 75 trees) for development purpose, and that the rights granted under the act include harvesting for *bamboo* and *tendu* leaves. Only seven respondents are aware about the rights over all the resources within village boundary. Three of the 112 individuals know that *Gram Sabha/village panchayat* is to be the decision making body.
- When asked about the source of information about the act, around 43% of those who are aware mentioned that they got the information from the *Gram Sevak*, a revenue department official; 20% had heard it from forest department officials. Only 16 respondents had received this information from NGOs and 15 from local leaders.
- When told about the act with details of provisions, all respondents, without any exception, felt that this act would improve the state of forest dwellers. A majority of them were confident that this act would lead to sustainable use of the resource, but 18 respondents did feel that it would encourage encroachments, and commercial exploitation (5 respondents).
- When asked about FD's role after this act, more than 55% felt that FD would have no role to play in their village, while 19 respondents said that the department was needed to provide employment. One respondent even mentioned that FD official could now only "sit and brood".
- In response to a question on why do they want to protect forest, all (100%) mentioned fire wood as the most important reason, 50% wanted it for Non Timber Forest Products, and 45% wanted to do so for employment in forestry sector.
- About half of the respondents felt that the community will be able to protect forest if the department withdraws, but almost the equal number expressed that the department's presence is necessary for forest management.

CONCLUDING REMARKS

Policies and programs, though indicative of government's intentions, are not sufficient to bring in the intended change unless its implementation is carefully monitored. This is one message that is coming out of many studies on decentralization in forest management in the context of developing countries. In one of our earlier studies it was found that JFM program was initially welcomed by communities and some forest protection work had started, but

revisit after five years showed complete absence of the enthusiasm and abandonment of protection work because of withdrawal of support and withering interest of FD staff (Ghate, 2008). Although Forest Rights Act has rightly followed the continuous process of devolution of authority to local communities, the failure of previous steps of decentralization to prepare the capacity and mental set up of the communities to understand the serious implications of empowerment puts FRA's success in great doubts. In case of a resource, as sensitive and as important as forest, failure would have long-term consequences. Therefore, the implementation of the act needs to be such that it does not give wrong message to communities as well as their leaders that may result in encouragement to cultivation at the cost of forest cover. Because if the act fails in either reviving the traditional institutions or empowering communities (and not elite capture), this attempt to bring in 'historic justice' can lead to a historic blunder.

But it is ironic that even after 60 years of independence and planning, and despite making several legislative provisions to improve the state of poor, majority of the forest dwelling communities still rely on marginal agriculture lands for empowerment. The state has failed to come up with non-farm options, despite high level of disguised unemployment in agriculture sector. The act gives rights over the lands that have been cultivated by people for long time. But if one looks at the quality of land, it is a known fact that forestlands are usually bad for agriculture. There are many instances where forestland was brought under cultivation by some but was soon abandoned due to poor returns, resulting in forest cover loss without rise in household income. In a study undertaken by SHODH in the year 2004, it is clearly mentioned that the top priority for tribals for their own development is availability of water for irrigation that would increase productivity of land. In Maharashtra average land ownership of tribals is higher than that of non-tribals. This could indicate that economic empowerment may not really lie in land ownership but in making the land more productive.

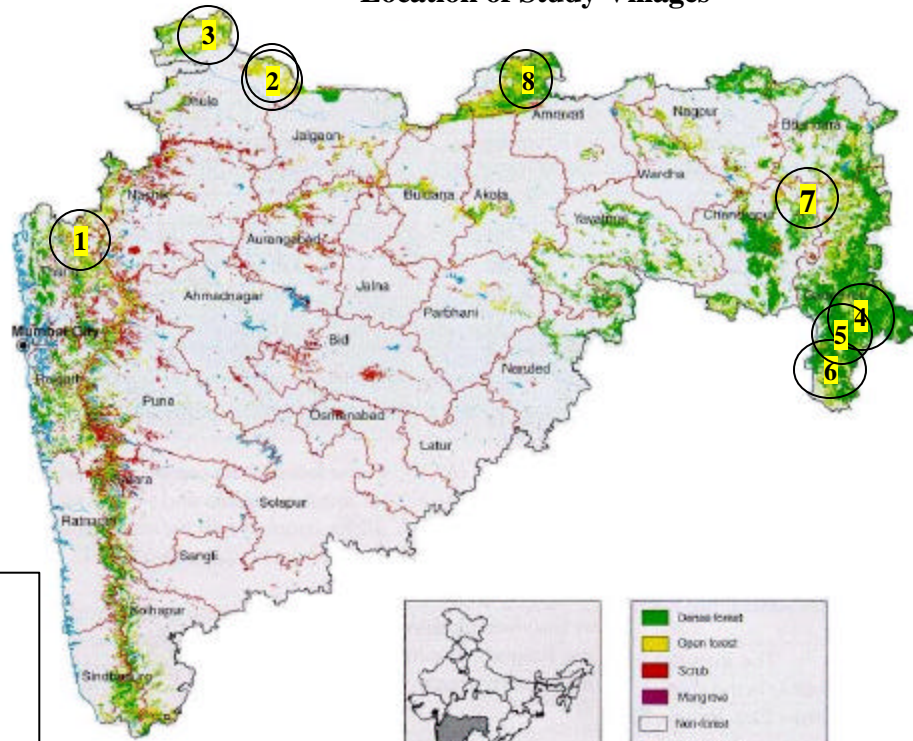
It is important to remember that forest is a precious resource not only for those who depend on it directly, but also for those whose quality of life is indirectly connected with it. A study of *Van Panchayat* forests (managed by communities) as well as State forests in central Himalayas indicates that both categories have experienced severe degradation over the years. It means that lack of authority and tenure may not be the only cause of degradation (Sarkar, 2008). Handing over management of a resource as important as forest, without public education at the village level for enhancing awareness about the ecological aspects and vital intangible functions that forests perform could result in irreparable damage. In fact it is more important that non-farm avenues of employment are generated and options for

forest products (especially fire wood) are made available to empower communities economically. Also, it is necessary to recognize the fact that forest is a renewable resource and that it can supply forest products perpetually if planned accordingly. One need not continue to concentrate on protection and conservation alone.

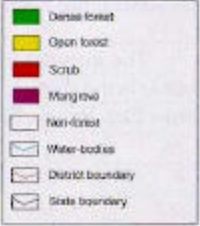
The rural / forest dwelling community has not yet reached a state where 'the state can wither away', without adversely affecting welfare of the larger society. Although increased local control motivates local interest in long-term investments, creates space for local decision-making, and can increase accountability and management performance, there continues to be the need of institutions that can play a coordinating role. For this, right incentives for bureaucracies, households and communities, to counter political and market uncertainties, need to be created (Shyamsundar, 2008). A major prerequisite for meaningful decentralization and devolution is to build levels of trust between foresters and communities, as well as within the communities, for building local capacities (Fisher, 1999).

The Forest Rights Act, as it stands now, is like a tiger without teeth. The act gives authority to the communities to own and manage a resource, but they are not aware of it. Just as '*nistar patrak*', a document recognizing rights of communities over their local forest, is systematically kept away from people's knowledge/access, so are the provisions of community ownership of forest within the revenue boundaries mentioned in the act. Devolution of authority and ownership in its true sense would only come after comprehensive knowledge of the provisions of the act and building of capacity to put the provisions into practice.

Location of Study Villages



- 1 – Aire
- 2 – Gadhadde
- 3 – Bijrigavhan
- 4 – Talwada
- 5 – Zimela
- 6 – Rompalli
- 7 – Kargata
- 8 – Khongda



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