

PROPERTY RIGHTS AND DECENTRALIZATION OF FOREST MANAGEMENT IN INDIA

Introduction

In recent years, decentralization has emerged as an important means of institutionalizing participatory natural resource management. Proponents suggest that decentralizing natural resource management leads to enhanced efficiency, equity and sustainability (Ribot, 2002). In addition, decentralization tends to achieve democratization through giving people a greater say in their own affairs. (Agrawal and Ostrom, 2001). It is thus not surprising that decentralization has been adopted as a major strategy to achieve environmental conservation while meeting development goals. In 1994, the World Bank reported that “Of seventy-five developing and transitional countries with populations greater than five million, all but twelve claim to be embarked on some form of transfer of political power to local units of governments.” (Dillinger, 1994)

Devolution of property rights to users is the most commonly used instrument for decentralizing natural resource management. This paper attempts to determine the conditions under which decentralization through devolution of property rights leads to enhanced equity, ecological sustainability and livelihood security. It then studies a proposed legislation in India that seeks to use property rights to achieve forest

management goals, and analyzes it to determine whether it can lead to effective decentralization.

The paper is divided into two main sections. In the first section, I draw on existing literature to develop an analytic framework that may be applied to determine whether a proposed devolution of property rights will lead to effective decentralization. Here, effectiveness is defined in terms of positive impacts on outcomes and activities – enhanced equity, ecological sustainability and livelihood security.

In the second section, I apply this framework to forest management in India. Specifically, I examine the proposed Tribal Rights Bill that has generated considerable controversy in India. The Bill seeks to award certain forest dwellers inalienable property rights in forest, with dual aims of enhancing livelihood security by righting a historical injustice, and encouraging conservation.

SECTION I: WHEN IS DECENTRALIZATION EFFECTIVE?

In this section, I begin by defining ‘decentralization’ and ‘property rights’ clearly. I then identify four factors that determine whether decentralization of natural resource management through devolution of property rights can be effective in enhancing equity, ecological sustainability and livelihood security: (i) extent of property rights; (ii) security of property rights; (iii) accountability and representation and (iv) local capacity.

Decentralization may be defined as any act in which a central government formally cedes powers to actors and institutions at lower levels in a political-administrative and territorial hierarchy (Ribot, 2002). In the context of the management of natural resources, the ‘powers’ ceded are the rights to make decisions over resources. Agrawal and Ostrom (2001) define decentralization more simply as a ‘strategy of governance, prompted by external or domestic pressures to facilitate transfers of power closer to those who are most affected by the exercise of power’. Behind these definitions lies the broad principle of subsidiarity, i.e. that decision making should be devolved to the lowest appropriate level (Meinzen-Dick et al., 1999).

The driving force for the strong trend towards decentralization in recent years is the belief that decentralized solutions deliver superior equity, efficiency and sustainability (Ribot, 2002; Agrawal and Ostrom, 2001; Manor 1998 ; Ascher 1999). Another recurring theme in decentralization is the recognition of the limited effectiveness of the state in managing natural resources, especially at the local level. Many governments lack the resources to monitor usage and enforce rules. Financial crises, environmental degradation and pressure from international donors have all driven governments to decentralize natural management. (Meinzen-Dick et al., 1999; Agrawal and Ostrom, 2001).

Decentralization of natural resources usually entails empowering local actors and institutions through changes in property rights. Property rights may be defined as “relationships among actors with respect to things such as natural resources” (Agrawal

and Ostrom, 2001), or as “the capacity to call upon the collective to stand behind one’s claim to a benefit stream” (Bromley, 1991).

Property rights offer incentives for management, give necessary authorization and control over resources and demonstrate the commitment of government to decentralization (Meinzen-Dick et al., 1999)

(i) Extent of Property Rights

Property rights are usually broadly classified as private rights, public rights, open-access and commons rights. For the purpose of this article, however, it is necessary to distinguish more explicitly between different levels or extents of common-pool resource property rights. Existing literature (Schlager and Ostrom, 1992; Agrawal and Ostrom, 2001) suggests four distinct levels of property rights:

Level 1: Withdrawal Rights – the right to enter a defined physical area and obtain resources (e.g., gathering firewood, collecting water etc.). An actor with rights up to level 1 is considered an *authorized user*.

Level 2: Management Rights - the right to regulate internal use patterns and transform the resource by making improvements (e.g., planting seedlings and thinning trees). An actor with rights up to level 2 is considered a *claimant*.

Level 3: Exclusion Rights – the right to determine who may use the resource. An actor with rights up to level 3 is considered a *proprietor*.

Level 4: Alienation Rights - the right to sell or lease withdrawal, management, and exclusion rights. An actor with rights up to Level 4 is considered an *owner*.

Table 1: Bundles of property rights associated with positions

Rights →	Withdrawal	Management	Exclusion	Alienation
Authorised User	X			
Claimant	X	X		
Proprietor	X	X	X	
Owner	X	X	X	X

Source: Agrawal and Ostrom (2001)

Most decentralization programs in place today have devolved Level 1 (User) and occasionally Level 2 (Claimant) rights to local actors (Agrawal and Ostrom, 2001; Ribot, 2002). Usually, exclusion and alienation rights remain with central governments. This level of devolution of property rights is not, in general, sufficient to stimulate ‘long-term thinking’ in users. Meinzen-Dick et al. (1999) suggest that user groups’ rights should be commensurate with their responsibilities in managing the resources.

Empirical studies have repeatedly found that proprietorship rights can be sufficient for holders to make decisions that promote long-term investment and harvesting from a resource. (Agrawal and Ostrom, 2001; Place and Hazell, 1993; Adholla et al., 1991; Bruce and Adholla, 1994). Those who jointly hold proprietorship rights can manage a resource and also exclude those who are unwilling to contribute to the costs of management.

Existing scholarship thus leads us to expect that decentralization programs empowering local users to be proprietors—even without the right to sell these rights to others—are likely to generate sufficient incentives to improve outcomes over time.

(ii) Security of Rights

Even when sufficient property rights are transferred to local users, improved outcomes may not result if the transfer of powers is not secure. Even small rates of eviction discourage ‘squatters’ from maintaining productive forests. The possibility of eviction leads users with insecure rights to choose short-term destructive land uses with lower present values (Mendelsohn, 1994). The outcomes associated with the decentralization of different levels of property rights depend in significant measure on the certainty of users about their rights and the nature of governance arrangements to protect users’ rights. (Agrawal and Ostrom, 2001)

Most power transfers being made at present are insecure. When powers are awarded and taken away at the whim of central agents, local representatives remain accountable only to central authorities. For effective decentralization, a domain of secure rights must be established in law and protected (Ribot, 2002).

(iii) Accountability and Representation

When rights are devolved to local actors, it is crucial that they be accountable and representative. Ribot (2002) suggests that downward accountability and representation are the keys to achieving greater equity and efficiency in management of natural resources. Failure to secure these characteristics leads to increased likelihood of elite capture and externalization of costs.

(iv) Local Capacity

Three aspects of capacity that are likely to affect the ability of local users to take advantage of decentralization are the availability of finance, technical skills and extent of local mobilization. If deficiencies exist in one or more of these areas, other institutions (such as the central government or NGO's) may be required to supplement capacity.

A prominent assumption in the literature advocating community-based resource management is that sufficient local knowledge exists for managing resources sustainably

(Meinzen-Dick et al., 1999). This is not always the case. For example, migration can deprive an area of knowledgeable individuals, or bring in those who are unfamiliar with the resource base. In such situations, central government or NGO's can play a crucial role in providing technical support (Gadgil and Guha, 1995).

Empirical research shows that while local mobilization is not necessary for the *initiation* of decentralization, it is necessary for its success in the long term. (Agrawal and Ostrom, 2001). In the absence of such mobilization, decentralization is often gradually reversed by central authorities.

Thus, I have identified four factors that influence the effectiveness of decentralization through property rights:

- (i) Extent of property rights;
- (ii) Security of property rights;
- (iii) Accountability and representation, and
- (iv) Local Capacity

SECTION II. THE TRIBAL RIGHTS BILL

In this section I apply the analytic framework developed in the previous section to consider decentralized forest management in India. Specifically, I examine the proposed Tribal Rights Bill that has generated considerable controversy in India. The Bill seeks to award certain forest dwellers inalienable property rights in forest, with dual aims of enhancing livelihood security by righting a historical injustice, and encouraging conservation. The section begins with some background information on forests and forest policy in India, moves on to describe the proposed legislation, and ends with the analysis of the legislation using the framework previously developed.

Background

Forests

India is the seventh largest nation in the world, with a surface area of 329 million hectares. In 2002, forests covered 67.8 million hectares of land, or about 20.6% of India's surface (FSI, 2003). Only about 57% of these forests are considered 'dense forests' – the rest are severely ecologically degraded. Total forest area has been relatively static over since 1990. Dense forest cover has tended to decrease over time.

Forest cover is far from evenly distributed. Out of 593 districts (administrative units) in the country, 199 districts have less than 5% of their geographic area under forest cover.

In 146 districts, forest cover is over 33% of geographic area. (FSI, 2003)

Almost all forest land in India is owned by the Government, through the state Forest Departments (FD). In 2000, only about 1.7 % of forest land was privately owned. (FAO, 2003)

Per capita forest land in the country is 0.08 ha, against an estimated requirement of 0.47 ha to meet basic lands. This gap has resulted in an unsustainable rate of extraction of timber, firewood and fodder (TERI, 2001).

In 1996, for example, total demand for timber was 64.4 million cu.m., as against a sustainable yield of 12 million cu.m. This is largely driven by the needs of industries - paper and pulp, furniture, housing, plywood, packaging and the railways.

Firewood extraction from forests has also far exceeded sustainable yields, and is believed to be an important contributor to forest degradation. Fuel wood consumption was estimated at 260 million cum in 1997 as against a sustainable supply of 52.6 million cum. (TERI, 2001).

Cattle grazing affect approximately 78% of India's forests. (FSI, 1999). Nearly a third of total fodder requirement is met from forests. An estimated 100 million units of large cattle (cows, buffalo) graze in forests as against a sustainable level of 31 million per annum (TERI, 2001).

Shifting cultivation is practiced by in 13 states, particularly by tribals in the northeastern states, Orissa and the Eastern Ghats, on an estimated forest area of about 4.35 million ha. (TERI, 2001) With the progressive reduction in the land to population ratio, the fallow period between cultivations has fallen from 30 years to about 2 to 3 years, resulting in a decline of soil fertility. This contributes significantly to forest degradation.

Forest Dwellers

India is the second most populous country in the world, with an estimated population of 1027 million in 2001. It is estimated that a total of 147 million people live in about 170,000 villages within or proximal to forest areas. (FSI, 1999) Of these, about 70 million people are believed to actually live on land owned by the Forest Departments. (Jayakrishnan, 2005) A 1989 survey indicates that 72% of wildlife sanctuaries and 56% of national parks have human settlements within their boundaries. (Jayakrishnan, 2005)

Scheduled Tribes are distinct communities who are often described as ‘indigenous peoples’. They are not a part of the mainstream Hindu Brahminical hierarchy (the caste system), and historically dwelled mostly in forests. At the time of independence, they were considered ‘historically disadvantaged’ and ‘backward’, and were thus provided certain constitutional benefits and privileges. In 2001, Scheduled Tribes had a population of 84.3 million, and constituted 8.4% of India’s population. Over half of the rural

Scheduled Tribe population is officially estimated to live below the poverty line. (Planning Commission of India, 1994)

Scheduled Tribes constitute about 80% of India's forest dwellers. (Jayakrishnan, 2005)
187 tribal districts (districts with a preponderance of tribal population) contain about 60% of all forest cover.

The remaining 20% of forest dwellers largely consist of people of Scheduled Castes (historically disadvantaged people from within the mainstream caste system, also known as Dalits). Rural Dalits suffer from levels of poverty similar to those of Scheduled Tribes.

A majority of forest dwellers are considered illegal occupants, and thus do not have secure tenurial rights to the forest land they occupy. The Ministry of Forests and Environment estimates 'encroachment' on forest land to be about 1.25 million ha (FSI 2003), as opposed to only 0.24 million ha under legal forest villages set up by the FD for the provision of labor in inaccessible areas. (Jayakrishnan 2005)

Forest dwellers and people who live on the peripheries of forests are directly linked to three of the most serious threats to Indian forests – over-extraction of firewood, overgrazing and shifting agriculture, and are often also actors (whether beneficiaries or victims) in extraction of timber for commercial purposes. Naturally, then, forest dwellers are prominent subjects of discourse on conservation in India, and their interests are most strongly affected by conservation policies and measures.

The Evolution of Forestry Policy and Law in India

Prior to the arrival of the British in India, forests were typically owned by kings and local chiefs, but local communities enjoyed unconditional access to forests for their own uses. Community management of forests was common. (Gadgil and Guha, 1995) With the growing importance of timber, the East India Company claimed royalty rights over all teak in 1807. The colonial government later enacted the Forest Act of 1878, and the Indian Forest Act of 1927, invoked the principle of *res nullius* to take possession of all forest lands. The rights of people to access forests, including the rights of tribals, were terminated in most places.

After independence, forests became subjects of jurisdiction for both central and state governments. The Ministry of Environment and Forest (MoEF) functions at a central level, shaping policy, formulating law and making decisions on certain projects (typically environmental clearance for big-budget industrial projects), while State Forest Departments, affiliated to both the MoEF and state governments, manage forests in states.

Post independence, focus shifted to the production of industrial wood, and this was the paramount goal of the National Forest Policy, 1952.(Balaji, 2002) The MoEF continued

to function on the premise that any human interference in a forest ecosystem would lead to its destruction. (Gadgil and Guha, 1995; Seminarist, 2005).

The National Forest Policy, 1988, challenged the traditional view of human-forest interaction as being necessarily harmful to forests. Instead, it recognized forest-dwelling communities as primary stakeholders in forests, and suggested that 'The holders of customary rights and concessions in forest areas should be motivated to identify themselves with the protection and development of forests from which they derive benefits. The rights and concessions from forests should primarily be for the bona fide use of the communities living within and around forest areas, specially the tribals'. It also emphasizes the need to strengthen the tribal economy, make alternative provisions for subsidized energy.

Consequently, in 1990, the MoEF issued six circulars to state governments regarding criteria for regularization of 'encroachments' on forest lands (encroachments made prior to 1980 were to be regularized), the elimination of intermediaries and payment of fair wages to forest dwellers for forestry work, and the conversion of forest villages (administered by FD) to revenue villages (administered by district administration, and thus eligible for greater developmental activities). Implementation of these decisions was left to the state governments.

Since then, however only about 0.36 million hectares of encroachments on forest land have been regularized. 1.25 million hectares of encroachments remain. In the central state

of Madhya Pradesh, for example, 82.9% of forest areas had not yet undergone evaluations of eligibility for regularization by 2001. (Prabhu, 2005) Even in areas in which evaluations were conducted, dwellers were required to prove their tenure by furnishing evidence in the form of a First Offence Report dated before 1980 – an official document that was rarely possessed by dwellers. The process was brought to a complete halt in 2001 by the Supreme Court, which imposed a stay order on all further regularizations.

The MoEF lays the blame for the failure of these attempts entirely at the doorstep of the state governments, claiming that they ‘have failed to give any response’ and ‘have shown no progress’.

II. THE SCHEDULED TRIBES (PROTECTION OF FOREST RIGHTS) BILL

It is in this context that the Tribal Rights Bill was drafted in February-March 2005. (MoTA, 2005) The bill was drafted by a group constituted by representatives of the Ministries of Tribal Affairs, Environment and Forests, Law and Legislative Affairs, Social Justice and Empowerment, *Panchayati Raj*, Rural Development and representatives of civil society consisting of two environmental activists, two tribal rights activists and two legal specialists. It was then circulated amongst the relevant ministries,

and was largely accepted by all but the MoEF. The bill was then put up for public debate, the volume and nature of which has resulted in a delay in its introduction to Parliament.

The stated purpose of the bill, in a preamble to the draft, is “to undo the historical injustice” to forest dwelling Scheduled Tribes, and to “utilize their rich conservation ethos and knowledge” by recognizing their right to occupy forest land, and their right to certain forest products. Also explicitly mentioned is the belief that forest dwelling Scheduled Tribes are “integral to the very survival and sustainability of the forest ecosystem, including wildlife”.

Eligibility:

The bill proposes to vest certain rights in those forest dwelling tribals who fulfill both the following criteria:

- (i) Occupation of the land they dwell in before a certain date (October 25, 1980).
- (ii) Reside in scheduled areas (dominantly tribal areas)

The rights proposed to be vested in qualified forest dwelling scheduled tribes are:

- (i) To hold and live in the forest land occupied, not exceeding 2.5 hectares per nuclear family, for habitation or for self-cultivation for livelihood.
- (ii) To use minor forest produce, graze cattle, and to cultivate land.

- (iii) Right to access to biodiversity, and the protection of intellectual property relating to traditional knowledge.

Safeguards:

The bill includes the following safeguards

- (i) Fines and loss of rights – both to be determined by the Village Assembly, a body comprised of all adult villagers.
- (ii) The land is to be heritable but not alienable or transferable.

Authorities:

The Village Assembly (*Gram Sabha*) has the authority to initiate the process of the recognition of and vesting of forest rights in the forest dweller. Committees made up of Forest, Revenue, Tribal Welfare Department officials as well as NGO's and 'reputed members of civil society' will examine the findings of the Village Assembly.

Responses to the Tribal Bill:

The proposed bill has elicited strong and divergent opinions from tribal rights activists, Dalit activists, the MoEF, wildlife conservation experts and NGO's. In addition to being related to the emotive issue of tribal rights, it was proposed in the context of a crisis in the Project Tiger program, with systemic failures becoming evident in the program to conserve the Bengal Tiger. (TTF, 2005)

Tribal rights activists have ranged from being cynical (Modi, 2005), to strongly welcoming (Prabhu, 2005). Dalit activists have strongly opposed the bill in its present form, as it prevents Dalit forest rights from being recognized. The MoEF opposes the bill, claiming that it will lead to 60% of India's forests being handed over 8.2% of India's population (Ganapathy, 2005). This is slightly surprising, considering that the bill largely attempts to build on and implement existing MoEF policy. NGO's appear to be polarized, with 'progressive' development-oriented NGO's supporting the move (Narain, 2005), and wildlife-conservation oriented NGO's strongly opposing the move (Rathore, 2005; Sahgal et al, 2005). Opponents of the bill cite redistribution of forest land and destruction of forests (Goenka, 2005; Mohanty, 2005) and inequity (Modi, 2005) as causes for concern, while supporters cite the righting of historical injustices (Prabhu, 2005) and decentralization and community-based management of resources as positive impacts (Narain, 2005).

Analysis

(i) Extent of property rights:

Right holders will have the right to withdraw all resources except timber, and the right to manage resources. For example, shade agriculture and cattle rearing are permitted. In addition, right holders will have the right to exclude others from the resources. Thus, *Level 3* property rights are proposed in the Bill. i.e. those who are eligible for property rights will receive proprietorship rights, but not alienation rights. This satisfies the first condition for effective decentralization of natural resource management.

(ii) Security of property rights:

The rights, once transferred, will be entirely legally secure. Holders of property rights will be issued deeds to the land, and the land or their rights cannot be withdrawn once granted. This satisfies the second condition for effective decentralization of natural resource management.

(iii) Representation and Accountability:

The bill, in its present form, is extremely non-representative. It ignores the rights of non-Scheduled Tribe occupiers, who form some 20% of all forest dwellers, and consist primarily of the 'backward caste' Dalits. It thus raises serious equity concerns, and fails to satisfy the third condition for effective decentralization of natural resource management.

(iv) Capacity

At present, both technical and financial support services to forest dwelling communities are negligible. However, financial support services can be expected to become available when land holders come to possess deeds to their land (Prabhu, 2005). The absence of such documentation at present makes forest dwellers ineligible for credit facilities from nationalized banks and *grameen banks* (village banks). Mobilization of local forest dwellers is reasonable, with over 270 registered CBO's and NGO's working with forest dwellers (Gadgil and Guha, 1995). Thus, if the Forest Department, in particular, were to extend technical support to right holders, the avenues of forestry and shade agriculture would become available to them. (Goenka, 2005).

IV. CONCLUSIONS

The paper has identified four factors that influence the effectiveness of decentralization through property rights:

- (i) Extent of property rights;
- (ii) Security of property rights;
- (iii) Accountability and representation, and
- (iv) Local Capacity

The paper has also analyzed the Tribal Rights Bill in India, and finds that the proposed legislation can lead to effective decentralization of forest management in India only if:

- (i) The non-representative nature of the Bill is rectified by including non-Scheduled Tribe forest dwellers in its purview.
- (ii) The support of the Forest Department in providing technical services can be ensured.

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