

TRIBAL COMMUNITY, LAND TENURE AND NATURAL RESOURCE CONSERVATION IN HIMALAYAN AND SUB-HIMALAYAN NORTH BENGAL

Govinda Choudhury

The primary economic objective of managing any natural resources is to maximize the long-term economic rent associated with it. The rationale for 'rent capture' is that, it would lead to improvement in social welfare through sharing of the surplus. However, from inception, forest reservation policies in India has been a process of curtailment of community rights and infringement on people's freedom. The importance of local natural resources in rural economy is not just confined in its role for providing livelihood security to rural tribal poor, but its importance lies in the fact that, unlike the rich, the poor are worst affected due to lack of substitution possibilities of such resources. The focus of this study will be the tribal communities living in forest villages in the Himalayan and sub-Himalayan region of North Bengal. These villagers have endured years of exploitation, deprived of basic amenities, limited livelihood opportunities and were isolated from the mainstream. They always lived in fear of eviction as there was no tenure security. The FRA 2006 is the first piece of legislation that recognises the need for tenurial security of the forest communities. However, the manner in which FRA 2006 has been implemented in the study region raises question about its role in protecting the livelihood security of the forest dwellers. This study therefore enquires into the interlinkages between property rights, livelihood security and conservation effort of the forest communities in North Bengal.

Key Words: Property Rights, Conservation, FRA, Tribal Community, North Bengal

There is a general perception that poor depend more on natural resources than the rich. According to FAO study, 80 per cent of the rural population of the developing world use non-timber forest products (NTFPs) for health and nutritional needs. The contribution of NTFP's to household income varies from as low as 10 per

cent to as high as 60 per cent.¹ Different studies from the Indian sub-continent does not show a consistent trend between overall household income and natural resource dependence.² In a seminal study, Jodha (1986) found that resource dependence decreases with increase in income, but it does not convincingly allow us to conclude that the amount of natural resources used by the poor households is more than the relatively richer households (Adhikari, 2005). Studies have also shown that the dependence on high-return forest activities (e.g. timber extraction and charcoal production) increases with increase in income, while the low-return forest activities (e.g. NTFP collection) decreases with increase in income.³

The forest dwellers who mostly belong to the tribal community therefore suffer when local resources are degraded beyond self-regeneration, or when access becomes restricted due to diversion of forest lands for non-forest use or usurpation of resources by the State. These marginalised communities whose livelihood depend on local natural resources, usually do not have any immediate viable alternative employment opportunities, nor migration is an immediate option for them.

Mainstream economists have always assigned less attention to challenges imposed by natural capital scarcity. They are of the opinion that output will continue to grow unhindered because of

¹ Cavendish W, "Empirical Regularities in the Poverty-Environment Relationship of Rural Households: Evidence from Zimbabwe", *World Development* 28(11): 1979-2003, (2000).

Reddy S and S Chakravarty, "Forest dependence and income distribution in a subsistence economy: evidence from India", *World Development*. 27 (7) (1999), 1141-1149.

² Jodha N.S, "Common Property Resources and the Rural Poor in Dry Regions of India". (*Economic and Political Weekly*, 1986) 21 (27): 169-181. Beck T and M Ghosh, "Common Property Resources and the Poor: Findings from West Bengal". (*Economic and Political Weekly*, 2000), 35 (3): 147-153. Adhikari B, "Poverty, Property Rights and Natural Resource: Understanding Distributional Implications of Common Property Resource Management", (*Environment and Development Economics*, 2005) 10: 7-31.

³ Fisher R, 'Forests and Poverty Reduction: A brief history of the Relationship', *Arborvitae* (IUCN/WWF Forest Conservation Newsletter, 2005). Narain U, S Gupta, and K. van't Veld, "Poverty and the Environment: Exploring the Relationship between Household Incomes, Private Assets, and Natural Assets", *Land Economics*, (2008), Vol. 84 No. 1, 148-167.

possibility for unlimited substitutability between natural capital and man-made capital. However, there is a growing recognition to the limit that natural-capital imposes on growth and hence, the relation between natural-capital and man-made capital is considered complementary.⁴ Wrong categorization of the relationship between these two capitals thus undermines the serious implications of declining natural resources.

Deforestation is often associated with denial or weak property rights, especially on public lands. Forests in Eastern Himalayan and Sub-Himalayan region of North Bengal show a similar conflict scenario as only nominal difference in access rights in community and government forests exist. As a result the region has witnessed forcible conversion of reserved forests into common property resource (CPR) forests by the increasing wood demands of the local population, leading also to a rise in the rate of deforestation.

The focus of this study will be the tribal communities living in forest villages of the region. These villagers have endured years of exploitation, deprived of basic amenities, limited livelihood opportunities and were isolated from the mainstream. They always lived in fear of eviction as there was no tenure security. The Forest Right Act 2006 is the first legislation in India which recognises land rights of the forest communities along with community forest rights. However, the manner in which FRA 2006 has been implemented in general and in the study region in particular raises doubt of its role in protecting the livelihood security of the forest dwellers. This study therefore enquires into the interlinkages between property rights, livelihood security and conservation effort of the forest dwelling tribal communities in North Bengal.

Natural Resources and Property Rights

Rural communities depend on natural resources such as land, forests, water and their products, animals and fisheries for living.⁵

⁴ Daly H.E, "From Empty-World Economics to Full-World Economics: Recognizing an Historical Turning Point in Economic Development", in *Population, Technology, and Lifestyle: The Transition to Sustainability*, edited by R Goodland, H.E Daly, and Salah El Serafy, (Washington, DC: Island Press, 1992).

⁵ Singh K, *Managing Common Pool Resources: Principles and Case Studies*, (Delhi: OUP, *Salesian Journal of Humanities and Social Sciences*, IX(2018)1:90-103

Not only do they depend on natural resources and livestock for their livelihood and sustenance, they also spent as much as half of their energy for collection of fuel, wood, fodder, animal care, grazing, and fetching water. The well being of rural community thus depends on their ability to collect free of charge, firewood, crop wastes, cow dung, weeds, dry leaves, poles, straw, herbs, fibres etc., from the neighbourhood repository (WRI, 2005). These resources are either held in common or people have open access to them. The ownership of these natural resources therefore shapes the management and also sustainability of their use. It is therefore important to identify factors that would enable us to suggest how management of natural resources can be improved so as to increase the flow of benefits from such resources to the poor rural dependent communities.

The primary economic objective of managing any natural resources is to maximize the long-term economic rent associated with it. If returns from forest harvest exceed cost then it generates streams of rents over time. Establishing appropriate property rights institutions not only enables to lower transaction costs and acts as a catalyst for collective action but also helps to lower dissipation of resource rent. From inception forest reservation policies in India has been a process of curtailment of community rights and infringement on people's freedom. Commercial interest got priority instead of social welfare under forest management by the State. Thus, the declared objective of all forest policies in India was to maximise the value of the forest under the state.

An asset is a state property when the entitlement to the resource rest entirely with the state, the sole authority to regulate resource use. The state protects its resource from intruders either by "fencing", primarily done by demarcating areas covering natural resources like forest as national parks, reserves, sanctuary etc., or through legislative measures meant to prohibit entry into the property exclusively designated for the state.⁶ Access to state property by

1994).

⁶ Acheson J, Keynote Address for the Meetings of the International Association for the Study of Common Property Resources, (Bloomington-Indiana, *Varieties of Institutional Failure*, 2000).

individuals is not a right but concessions to be enjoyed at the sole discretion of the state. However, many state property rights have in practice turned into open access regime due to poor enforcement and inefficient monitoring system.⁷

Nationalisation of natural resources has been justified because it gives precedence to general welfare as against individual benefits. There is however nothing in State ownership to suggest that it can ensure better management of the natural resources, or at least prevent failure in resource management similar to such failure under a private ownership regime operating in a decentralised market system. Government failure in resource management is associated with the divergence in de jure rights holders to that of de facto users of resources.⁸ Mere enactment of law is not adequate to protect state property when the chance of being detected at the ground level is low. Enforcing property rights is at times costly especially when a large population live in close proximity of the resource. Forced entry into state property may be considered to be a sign of conflict between the State objectives (economic goal) vis-a-vis community priority (conservation goal).

Natural Resources and Community Rights

Increase in demand is likely to culminate in more extraction of the natural resources. This gives rise to externality as the decision of an individual resource use that generally affects the consumption decision of others especially when market for such natural resources are either imperfect or absent. Individual's decision is based on private costs and benefits and does not internalise the externality, as a result, the outcome of a private decision may result in sub-optimal allocation of resources, i.e., a Pareto inefficient outcome.

The inefficient outcome as mentioned above can lead to two different property rights trajectories. First, there may be a general demand for changes in the existing property right structure which

⁷ Bromley D, "The Commons, Common Property, and Environmental Policy", in B. Larson (Ed.), *Property Rights and Environmental Problems* (Burlington: Ashgate Publishing Company, 2003), Volume I, 83 – 99,

⁸ Berkes F, *Common Property Resources: Ecology and Community-Based Sustainable Development*, (London: Belhaven Press, 1989).

may be adhered to by the state. Second, the state may entrust with itself the management of the natural resource as in the case of India. However, there is a third alternative as proposed by Coase (1967) that regardless of the initial distribution of property rights and in the absence of transaction costs the natural resource would always be efficient. Externality is therefore associated with positive transaction costs.⁹

The demand for changes in the existing property rights structure is not automatically guaranteed. This is because property rights are changed or created by political process, and the group that controls such process will agree to such changes only when they are relevant to them.¹⁰ Property right that emerges where controlling group is the entire voting population shall be different from where the control is in the hands of small elite group and would be even more different when the group represents alien minority (eg. colonial rulers).

Forestry in Himalayan and Sub-Himalayan North Bengal

The forest of Himalayan and sub-Himalayan North Bengal covers almost 2994 sq.km¹¹ of Darjeeling and Dooars region of Jalpaiguri & Alipurduar districts. The first reservation of forest land in this region was made in 1865 according to the provisions of Act VII of 1865 under the Waste Land Rules. Rules for management of the forest under the Act were published in the Calcutta Gazette in 1871. These rules clearly recognised two distinct classes of forests viz., open and reserved forest. Under the Act of 1878 the forests were classified as reserved and protected forests. The forest of North Bengal is almost entirely categorised as reserved forest with only few patches of forest land being classified as protected forest. Under reserved forest greatest attrition of community access rights has occurred. Such areas included forests designated for future commercial development. The mode of restriction adopted in this case was to record the community rights hitherto exercised, to transfer some of these to the state forest authority and to commute

⁹ Bromley D.W, *Environment and Economy, Property Rights and Public Policy*, (Blackwell Publication, 1991).

¹⁰ Deacon R. T, "Dictatorship, Democracy, and the Provision of Public Goods," *Working Paper*, Department of Economics, (UCSB, 2003).

¹¹ FSI, *India State of Forest Report 2011*, (Dehra Dun: MoEF, GOI, 2011).

several others, thus greatly reducing allowable rights to a limited subset of the original CPRs. Prohibition in this case was applied on the exercise of any right that had not been explicitly recorded. In protected forests on the other hand, the prohibitions were listed and extensively recorded. Because of these differences, while CPRs were confined in reserved forest to the few recorded access rights, CPRs in protected forests extended to all access rights that were not expressly prohibited.

Once forests were reserved, forestry operations came to be managed by the Forest Department (FD). The FD held the practice of swidden farming by local communities to be a major threat for the success of scientific forestry. However, during the process of forest demarcation the settlements of the swidden cultivators came to be included within forest limits.¹² To prevent any loss of forest from fire, agriculture in forest lands was prohibited; and the forest dependent communities were pushed out of the reserved lands.

This however created a problem in ensuring adequate labour supply for forest work as the region was sparsely populated. Local labourers were not only scarce but also had a demand from the expanding tea estates in the neighbouring areas. On several occasions the FD had to hire additional labourers from adjoining tea gardens especially during the slack season in tea estates. Skilled labourers required for sawing, construction of buildings, bridges and roads were usually hired from Nepal and Bihar.¹³

Forest Dwelling Tribal Community in North Bengal

Tribal cultivators were first allowed to settle in the forest lands of this region under the provision of Taungya Act 1894. Under this system the temporary settlements in the forests were established preferably close to the site being worked. The forest communities were given plot of lands for cultivation and homestead, permission to keep a limited number of draught and milch cattle to produce milk for their children. By 1904 establishment of permanent forest

¹² Roy S, *Transformations on the Bengal Frontier Jalpaiguri (1765-1948)*, (New York: Routledge, 2002), 75.

¹³ *Fourth Working Plan of Reserved Forest of Jalpaiguri Division (1926-27 to 1945-46)*, [I], 25.

villages has become a regular policy, and large number of tribal households was allowed to settle in forest villages. However, in 1912 restrictions were imposed on the size of land for cultivation and number of livestock that a household could keep. Such restriction made life of the poor tribal community miserable and mass exodus from the forest villages took place. This seriously threatened the forest work and new method of labour supply was soon prescribed.

Under the new method of labour supply, a person from the forest village was designated as mandal and could enjoy additional benefits as long as he was able to command the labourers from at least ten registered households from the same village. Each registered household had to sign an agreement with the Forest Department. The title of the agreement was "Agreement for Forest Jagir Villages".¹⁴ Under this agreement a person could cultivate land in area specified by the agreement free of rent as long as he performs the duties and strictly observes certain rules. The tenant with his dependents had to ensure that they were available for a specified number of days for free to undertake forestry work. This system of labour contract is more commonly known as the beggar system. A limited usufructuary right to collect fuel wood, poles, fodder, etc. was allowed to each household for their own consumption under this system. Briefly the provision for forest settlement is given as follows:

1. In the plains the area of wet cultivation and homestead per household [HH] shall not exceed 2.5 acres per HH of which the homestead land shall not be more than 0.5 acres.
2. Each HH can keep not more than 2 plough cattle or draught animals, 2 milch cows or buffaloes and 4 calves; 2 goats or sheep may be allowed provided they are stall-fed always. Grazing for cattle allowed in these rules was permitted free in only designated areas of the reserved forest prescribed by the DFO.
3. In the hills where no wet cultivation is possible the cultivated land was 1.0 acre only and also the land must be terraced for cultivation.

¹⁴ *ibid*, xxiv-xxvi.

4. The size of the livestock allowed was 2 plough cattle, 2 milch cow or buffaloes and 4 calves; 2 goats or sheep may be allowed provided they are stall-fed always.
5. In certain cases a villager may keep more number of cattle than he is allowed provided the average of the whole village does not exceed the maximum given.
6. The Mandal or headman of the village has an additional privilege and is allowed to keep not more than 1.5 times the area of cultivation and the number of cattle allowed to a villager in each case.

A minor difference in settlement conditions existed for lands under wet and dry cultivation. No person was considered for the privileges of a Mandal unless he has settled and had control over at least 10 households of approved villagers. The system of free labour (beggar) was abolished as late as in 1969, but the issue of tenurial security was not resolved and forest villagers continued to live in these settlements as tenant-at-will. Each year the agreement was renewed and any resentment led to eviction from the village.

Two distinct groups of tribal people have settled in the forest villages of North Bengal: First, the native forest dwellers like Mech, Toto, Bhutia, Garo and Rava whose size of the population is small; Second, the more dominant communities who are migrant forest dwellers mainly from Central India and Nepal. The former include adivasi community like Oraon, Santhal, Kheria, Munda, etc. whom the Nepali speaking tribal people also refer as modesia. The forest dwelling janjathi Nepali speaking tribal people who have migrated to this region from Nepal is referred as paharia by the adivasi community. Forest settlements are thus a mix of different groups of people each ethnic group having their own distinct culture and language. While Nepali is the common lingua franca of the paharia, and Sadri is the lingua franca of the adivasi communities. Besides, people also speak Hindi, Bengali, Nepali, Mech, etc., to communicate with each other. The ethnic diversity of the region has its own challenges, young children who speak Mech or Sadri at home has to learn either Bengali or Hindi in school. Multiple languages at an early age are a major impediment to education.

In forest villages, due to lack of irrigation, multiple cropping is not possible. Though the sub-Himalayan watershed region is interspersed with many big and small rivers they cannot use the river for irrigation. This is because canal cannot be built through forest lands. In the hills river irrigation is not possible because of the terrain. The groundwater level is also low and the cost of irrigation is prohibitive. The villagers produce only one crop each year and do not have any surplus to sell in the market. As a result the poor villagers have to raise livestock like cattle, goats, pigs etc., for cash income. Milk produced in small quantity is sold to the milkman at a very low price. Therefore, while agriculture lands were held by individual households, grazing lands were held in common. Also the jhoras and kholas were held in common for water; forest was collectively managed for fuel, fodder, poles, leave litter etc.

Community Participation in Forest Management of North Bengal

The hundred and fifty years of State forestry in India has been a journey of alienation and disengagement of rural community in forest management. Decentralisation of natural resource management is considered to be a major step towards conservation of natural resources. However, decentralisation does not automatically always ensure a favourable conservation outcome. Unequal distribution of benefits from such policy has led to emergence of new elite groups within the marginalised community.¹⁵ Globally decentralisation programmes have mainly emanated from pressure exerted by pro-community lobbyists. Such programmes have therefore mostly been delayed, obstructed and even opposed by the forest officials. Decentralisation has been interpreted in the official circle as delegation of responsibilities and liabilities to the people, while the rights over the produce continue to be firmly vested with the state.

In North Bengal Joint Forest Management (JFM) was introduced in early 1990s as two different programmes. Forest Protection Committee (FPC) was constituted in reserved forest areas and Eco-development Committees (EDC) in Wildlife and National Park areas. While FPC was primarily entrusted with enhancing the

¹⁵ Fisher R. J, *Devolution and Decentralization of Forest Management in Asia and the Pacific*, (Unasylva, 1999) 50: 3-5.

timber value, EDC on the other hand was responsible for protection of wildlife. The JFM programme has been rightly criticised as a top-down approach, a clever ploy to ensure adequate labour supply for forest work, and no room for forest community to participate in conservation decisions.¹⁶ The manner in which JFM was implemented in Dooars of West Bengal had nothing to do with “jointness” of forest conservation. The villagers are unaware of any site specific plan or micro plan which is considered to be very much essential for creating an effective conservation programme with people’s participation.¹⁷ In essence the micro plan proviso under JFM programme not only gave the forest community the right to select the species for plantation and but also make decision on forest land-use. Proper implementation of the programme would have been a step forward in strengthening the forest dwelling communities’ tenure security. The main reason for failure of JFM programme in North Bengal reserved forest is primarily attributed to its inability to provide adequate intergenerational livelihood security. This is akin to a multi-period Prisoners’ Dilemma game, in which the success of the programme is assured only when the community is certain that the game will be continued to be played. This was possible only when security of rights were guaranteed and not through some privileges to the community. Without adequately strengthening the forest dwelling community’s tenure security and providing adequate livelihood opportunities forest conservation programmes will not be successful. This has been exactly addressed in Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Right) Act or simply the Forest Right Act 2006 (FRA).

FRA and Tenurial Security of the Forest Dwelling Tribal Community in North Bengal

In North Bengal the total number of individual and community patta distributed under the FRA from ST and non-ST communities of forest villages is 3944 and 89 respectively till February 2014.

¹⁶ Bhattacharya P. L, Pradhan & G Yadav, “Joint Forest Management in India: Experiences of two decades”, *Resources, Conservation and Recycling*, (2010) 54: 469-480.

¹⁷ Choudhury G, *Common Property Resources & Usufructuary Rights: A Study of Marginalisation of Forests Communities in two Districts of West Bengal* (2012), UGC sponsored MRP project.

This data does not include area under GTA as the process of land distribution under the Act as the process has not been initiated till then. The total area distributed under individual patta is 6178.82 acres and another 191.91 acres has been distributed against community claims. This means the average area per individual household is 1.57 acres and the average size of community holdings is 2.16 acres. The average size of community land distributed is ridiculously low and makes a mockery of the concept of the community rights. The pattas distributed to the community were lands meant for schools and health centres. The official interpretation of community forest right is under sec 3(2) and not under section 3(1) of the FRA. Therefore, no community rights in forest lands have been given to any forest community in the North Bengal. Denial of community rights in forest lands is a violation of section 3(2) of the Act.

Moreover, the villagers were given land user certificates and not a title deed of the land. Such certificates are not acceptable as collateral in banks and therefore the land title have not improved the asset base of the tribal forest villagers. Under section 3(k) of this Act, the villagers also have right of access to biodiversity and community rights; to intellectual property rights on traditional knowledge related to biodiversity and cultural diversity. Denial of community rights in forest land is an obstruction to incorporating traditional knowledge of the communities to increase the local biodiversity. That the forest dwelling tribal community in North Bengal possess adequate skill and knowledge about forest species and forest work has been widely acknowledged even by the professional foresters.¹⁸ The forest communities have acquired their knowledge of the regional biodiversity from their long association with forest as a source of livelihood.

Both land scarcity and low crop yields account for wide prevalence of mixed farming in hills and foot-hills region of the Himalaya. Thus a switch entirely to cash crop cultivation generally proves unsuccessful because of problems of food, fodder and fuel security. As it has evolved, the Himalayan and sub-Himalayan farming system combines cultivation with livestock farming. It is a

¹⁸ *Third Working Plan for the Forest of Jalpaiguri District (Part) Comprising Baikunthapur Forest Division- Northern Circle* [I], 23.

characteristic of such a system that heavy forest-dependence exists for meeting energy and animal husbandry requirements within it.¹⁹ Moreover, the different ethnic communities found in North Bengal forest villages have for many decades lived in close contact with forests, and thus have a well developed knowledge of the utility of local forest usufructs and minor forest product. Because of the closeness of this contact, a strong argument in favour of community ownership of forest land is made. Protection of property rights along with security of land tenure is thus essential for the survival of these communities because it will ensure their livelihood security.

Conclusion

The livelihood security of the forest dwelling tribal communities of North Bengal depend on security of land rights, and also on their ability to access neighbourhood forest for subsistence. But management of forest is not simple because as a renewable resource forests yield additional future returns when preserved. Also forest produces a number of goods and services which are non-tradable, i.e. price mechanisms do not operate to ensure a socially desirable outcome. Difficulties also arise in administering forests under market-based property rights institutions since market trade ignores the transfer and reciprocal externalities between generations, and also does not take into account of the fact that the resources that are preserved (i.e that are not extracted) also yield returns.

The presence of externality results in a gross under-valuation of the benefits from forests. State forestry has evolved on the principle of maximising the value of timber which is a part of the total economic value of the forests. As a consequence, a major area of conflict between the forester and local communities has been on the measurement of benefits that flow out of forests. There is no uniformity in the computation of benefit that flow from forests located in different agro-climatic regions, and also the benefit from natural forest is different from a plantation forest. Moreover, with the increase in scientific knowledge, it is now well known that the benefit from forest is just not limited to timber and NTFPs. Another

¹⁹ Mukherjee S.R, & Choudhury G, "Growing Dilemmas: Fuel & Fodder Access Rights in the Himalaya", *Himalayan Pariyavaran*, (1999), 6: 79 - 94.

aspect in forest benefit valuation is the property right governing the use of the forests.

People living on the forest-fringes with greater livelihood and usufruct dependence on the forest appraise both resource stocks and flows on usufruct principles, while scientific forestry focuses on valuing steady-state flows using market principles. This difference in valuation principles results in non-identical valuations of the same resource and result in non-cooperation of forest communities in forest conservation programmes. Ecological conservation of forests cannot be achieved through statutory regulations but through creation of an appropriate property rights structure with adequate incentives that can help to mitigate ecological losses.

Recognition of community forest rights under FRA will help to protect the livelihood of these communities in two ways. First, community cooperation will be easier to garner when they are assured that benefit will flow to them in all period to come. Second, any diversion of forest land for other uses can only be done after adequately compensating the community for such losses. Also, community ownership of forests will help to resolve the crisis arising from land fragmentation in the future. The community will have adequate security of their livelihood if and only if community rights are also recognised along with individual rights.