

### 3. Evolving Legal and Policy Environment

#### National Legal and Policy Framework

**Under the Indian Constitution, national and state governments share jurisdiction for forestry.**<sup>13</sup> The center generally sets the broad national policy and legal framework and supporting statutes. Three major national laws governing forestry have been promulgated over the past 127 years: the Indian Forest Act of 1878, the Indian Forest Act of 1927, and the Forest Conservation Act of 1980.<sup>14</sup> Three key forest policy pronouncements have been made in independent India: the Forest Policy of 1952, the National Commission on Agriculture of 1976, and the 1988 Forest Policy.<sup>15</sup> Another law, the Indian Wildlife (Protection) Act 1972, is also important, since there is interaction and various contradictions between this act and the more traditional forestry acts for communities located in and adjacent to protected areas. A proposed Scheduled Tribes Bill (2005) would recognize historic land rights held by tribal people in scheduled areas to an upper limit of 2.5 hectares per family.

The evolution of the legal and policy framework in India shows a strong initial focus on industrial forestry, a gradual shift to social forestry three decades ago, and a major swing toward conservation and adoption of JFM about 15 years ago. The National Forest Policy of 1988 embodies most elements of sustainable forest management. It concentrates on conservation and strengthening of the role of communities in forestry stewardship, representing a major shift in forest management intentions. The Ministry of Environment and Forests issued a policy circular in June 1990 encouraging state forest departments to involve communities directly in forest management. The 1988 policy has been criticized in some circles for promoting forest conservation, perhaps at some expense to commercial forest use, for not offering practical options for policy implementation, and for sustaining the all-encompassing role of forest departments, including the contradictory functions of being the forest authority and operating as a public enterprise in commercial forest production.

Many of the salient paragraphs governing community-based forestry in national policy have not been reinforced by a new national legislative framework. There are apparent conflicts (in a strict legal sense) between some of the progressive intents of the 1988 policy and the Forest Conservation Act of 1980. In addition, various legal amendments, policy circulars, and guidelines issued by the Ministry of Environment and Forests over the past two decades, while helping support the evolution of JFM at the state level, have added excess complexity and overlaps in the legal framework when interpreted by states. Although many of these minor legal amendments resulted from pressure to follow innovative state practices, there is still a significant gulf between national policy intent and field implementation at the state level.

#### Legal and Policy Framework in Assam, Jharkhand, and Madhya Pradesh

**State forest laws and regulations help implement the national legal framework.** All three of the states examined (Assam, Jharkland, and Madhya Pradesh) apply a suite of state-level laws to govern forests and forest management. A common feature in Jharkhand and Madhya Pradesh is the

---

<sup>13</sup> See appendix 4 for additional material on legal and policy frameworks.

<sup>14</sup> The first Act on Forestry was enacted in 1865.

<sup>15</sup> Although the National Commission on Agriculture is not strictly a policy document, its recommendations are considered important in policy discourse on forest management.

strong influence played by the umbrella Indian Forest Act of 1927 and to a lesser degree the 1980 Forest Conservation Act. Madhya Pradesh formally adopted the Indian Forest Act of 1927 and like other states has followed up with other state-level acts, rules, and regulations to provide for more local flexibility. Assam operates under a unique legal framework, because the Assam Forest Regulation Act of 1891, rather than the Indian Forest Act of 1927, is the umbrella operative law. In many ways however, the legal direction of the Assam Forest Regulation Act of 1891 corresponds to the Indian Forest Act of 1927. Various orders passed by state governments since 1927 have contributed to a more restrictive legal framework, although it is largely the interpretation and implementation of these orders by forest officers that directly affect community rights and responsibilities. The main issues include outdated and narrow forest policies, the uncertain legal status of JFM and registration processes, inadequate recognition of historic forest rights in current policy and law, inefficient tenure systems for communities under JFM, and conflicts with national legislation governing decentralization, especially in scheduled areas.

State forest policies are evolving, but they need further strengthening and legal support. Forest policy should guide development of the forest sector and provide a clear indication of the state's goals for community forestry. All three states have an existing policy (as a separate document or through smaller circulars) or have recently drafted a new policy. States have also drafted forward-looking "vision" papers. While many of the articles in these new forest policies and vision statements represent a positive step forward, they are still based on the existing legal framework. Some policy goals still reflect the existing JFM model, with little recognition of how further reforms could empower communities. The policies of Jharkhand and Madhya Pradesh were not prepared with broad public input; as a result, they tend to be narrower in focus toward conservation and rural livelihood goals. They are also weak in terms of economic analysis and market information. Assam's 2004 policy is more progressive and was developed by a multistakeholder body with broad representation from the forest department, community support organizations, and technical experts. The Assam policy also pays attention to the trade- and market-related aspects of forestry to motivate private sector partnerships. Policy documents from all three states suffer from minor conflicts and contradictions with existing legislation, both at the national and state levels. Yet even if policies are strengthened, without legal reforms and additional financial resources they will be very difficult to implement.

**Forest settlement has eroded historic land and forest tenure rights.** Settlement of reserve forests is a controversial issue, because of the wide powers granted to forest departments and the historical conflict it created over traditional land rights. Following the 1878 Forest Act, large-scale designation of reserve forests took place through the settlement process in many states. Informal systems of land rights and forest use privileges that had existed between rural communities and the government for centuries were often rescinded. State appropriation of forest land often involved the dispossession of *adivasi* communities' ancestral land. As an example, in the Singhbhum District of Bihar (now in Jharkhand), many years ago the state dispossessed the Ho tribe from their villages and surrounds in an attempt to demarcate a large reserve forest.

At the national scale, many of the forests declared as reserved areas were uninhabited; where traditional rights existed, they were often recognized and respected—in principle, if not in practice (N.C. Saxena, personal communication 2005). It was mainly after Independence that the most rapid acquisition of forests by government occurred. This constituted a critical turning point, politically, socially, and ecologically (Gadgil and Guha 1995; Liedtke 2003). Legally, channels to contest the reservation of forests existed, but rural people had little experience with legal procedures, and illiterate villagers were often unaware that a survey and demarcation was in process (Poffenberger and McGean 1998).

The settlement process and expropriation of forests is a significant factor contributing to the deep resentments among many forest-dwellers towards government (and the Forest Department in particular) in states such as Jharkhand and Madhya Pradesh where tribals comprise a large portion of the rural population. At the time, settlement of reserve forests shifted forest management authority and responsibility from people to government, and created a highly inequitable power balance. The state also retained significant power over protected and private forests.

**The JFM process needs to acknowledge historic forest resource rights.** Each state appears to have unique and specific historic rights associated with forest dwellers that existed before enactment of forest legislation both at the national and state levels (table 3.1). In Jharkhand, for example, a rich array of historic rights exists. Where JFM has been introduced into these areas, a legal case could be made in favor of the traditional system of land and resource rights. Assam is slightly different, in that councils governing the autonomous district areas maintain the authority to manage forests outside of reserve forests. But as in other states, most historic forest resource rights have been subsumed over time by various laws, rules, and regulations. Although states were encouraged to acknowledge historic rights in a 2000 circular from the Ministry of Environment and Forests, implementation has been slow. Generally, tenure is a question that appears to be quite vague in umbrella JFM resolutions and specific agreements signed with communities. The notion of clear, secure, and exclusive rights assigned to communities for a defined area of forest (box 3.1) is not present in the JFM agreements examined. The JFM regulatory framework in each of the three states does not bestow efficient resource rights to communities.

**Table 3.1. Historic Forest Tenure Rights in Assam, Jharkhand, and Madhya Pradesh**

<i>State</i>	<i>Right</i>	<i>Description</i>
Assam	Autonomous districts	Excluded area rights in three districts recognized under 1891 Assam Forest Regulations, gave local authorities specific powers over allocation and use of forests outside reserved forests.
	Khaira, Uriam, Patadar tree felling	Gave concessions to tribal people to fell trees in selected areas; many concessions have since been revoked.
	Mikir Hills District Forest Act 1959	Empowered executive committee of the district council to convert any land, to the disposal of the district council, into a “village forest” that will be for the collective benefit of the village community.
Jharkhand	Khunkatti rights	Granted villagers rights to forest produce in village periphery, acknowledged in Chota Nagpur area and Chotanagpur Tenancy Act 1908.
	Landlord-resident	Landlords exercised rights to manage forest and sell produce, subject to rights of residents to take wood for their own purposes.
	Khatian Part II	Recorded rights of resident cultivators and tenants where landlords established exclusive rights.
	Concept of Halthorpe	Trees grown in a cultivator’s land belong to the cultivator.
	Gairmazarua Am lands	Unsettled land is where community traditionally has access rights.
	Santhal Paragnas lands	Granted village headman right to clear and settle selected arable and nonarable wastelands.
Madhya Pradesh	Nistar forest rights	Granted villagers customary right to graze their cattle in the wasteland of the village and to take other forest produce, such as fuel, wood, timber, thorns, and grass, for their domestic use.

Source: Background studies

### Box 3.1. Crafting effective forest resource rights

What makes for efficient forest rights for communities? Global experience suggests the following characteristics:

- Forest resource rights are clearly defined.
- The duration of the rights is spelled out.
- The rights cannot be unilaterally taken away.
- There is certainty over boundaries.
- The government agency entering into the rights agreement with the community must have the legal authority to do so.
- Rights have legal standing.
- There are accessible and fair avenues for seeking legal recourse in disputes.

Source: Molnar, A., Scherr, S., and A. Khare 2004; and background studies

**JFM has an uncertain legal basis in some states.** The concept of JFM is a central feature of the 1988 National Forest Policy. It has been endorsed and initiated by all state and union territories. However, there have been no accompanying changes in the national legal framework for JFM. Instead, JFM is normally operational through administrative orders (government orders) that have little legal underpinning; this is certainly the situation in Jharkhand and Madhya Pradesh. In the event of conflict with the Indian Forest Act of 1927 or the Forest Conservation Act of 1980, the national JFM circular and state-level government orders may be overridden by these national laws. The fact that these government orders are easy to modify lends flexibility, but it deprives these orders of certainty and legally security. Some states such as Assam, Uttaranchal and Uttar Pradesh have linked JFM policy to state legislation. This is a progressive step but it is not followed by most states.

Another issue is the binding instrument concluded between the forest department and the community participating in the JFM program, the Memorandum of Understanding. While the Memorandum of Understanding sets out use rights for communities, it is not a legal and binding contract, and it is heavily weighted in favor of the state. Furthermore, the time period covered is often either too ambiguous (“for all time”) or too short (five years) to provide a meaningful and clear incentive for community investments and support. In addition, under current JFM resolutions in each of the three states, the DFO is usually the competent authority responsible for registering the committee with the forest department. Ministry of Environment and Forests guidelines in 2000 suggest registering JFM committees as societies under the Societies Registration Act of 1860. Registration is a legal process. Although registering committees under this act is a positive step, it is unclear if the DFO, who signs on behalf of the government, has the proper legal authority to do so. Registration by a person without the legal authority to do so may be legally invalid.

**Forest boundaries are often unclear.** Confusion over forest boundaries is a recurring problem for JFM committees. Most committees want their forest tract boundaries to be formally demarcated, which corresponds to one of the criteria for efficient resource rights. Informal agreements between villages over forest boundaries may work when the resource is degraded, but once valuable products are regenerated, conflicts can emerge in the absence of formal notification. Boundary disputes between neighboring committees are likely to increase as harvesting approaches. Up-to-date forest maps at an appropriate scale are usually not available, which limits any formal agreement of boundaries. A complicating factor is that natural, administrative, and customary boundaries rarely coincide. In practice, under existing customary use, different boundaries apply to different products (grazing and fuelwood, for example).

**Different rules exist for different forest-based committees.** In Assam and Jharkhand, two categories of forest-based committees have been established. Eco-Development committees handle

areas within five kilometers of wildlife sanctuaries and national parks (components of protected areas) and reserved forests. A JFM committee is responsible for other forest areas (primarily protected forests and other recorded forests, depending on the state). Madhya Pradesh has created two committee types in addition to Eco-Development committees. Village forest committees are created within five kilometers of degraded forests and where afforestation programs are targeted; forest protection committees are created within five kilometers of good-quality high forests where protection and commercial timber production is the main goal. Eco-Development and JFM Committees have different benefit-sharing schemes. This can cause confusion where protected forests (targeted for JFM Committees) lay within five kilometers of a protected area (where an Eco-Development Committee would normally be established).

The different categorizations among protected areas are legally untenable, because protected forests within wildlife sanctuaries and national parks are elevated to a higher legal category. The legal arrangement governing protected forests within five kilometers of rights holders in reserve forests are not clear. In all cases, the rights, responsibilities, and benefit sharing schemes are slightly different.

**Government rules and restrictions hinder more direct marketing of forest products by communities and farmers.** Certain forest commodities were nationalized in some states in the 1960s and 1970s under national forest legislation, by which listed species can be marketed only to state forestry marketing corporations. One rationale for the policy change was the need to protect the poor against exploitation by private traders and middlemen. Since the state could generate revenues by exercising this monopoly right, the requirement for state marketing was steadily extended beyond key timber species to include several nontimber forest products, such as kendu.

Transit regulations are also applied to listed species, such as sal and teak. These regulations are a primary cause of conflict that has reached the courts and that hinders communities and private farmers from improving forest livelihoods through the production and direct sale of listed forest products from their own land. Transit regulations are specified by state legislation but are strongly guided by the Indian Forest Act of 1927. In general, the export, import, or moving of timber and forest produce is prohibited without a pass from an authorized officer of the forest department. The basis for the law is that unrestricted movement of forest products could lead to illegal harvesting and transport of timber and nontimber forest products. These rules, however, are wide ranging in nature and inconsistently applied in different states. This has given rise to an overregulated framework and often contradictory provisions in different states, which impede smooth interstate transit of many forest products. The transactions costs on the permit seeker are high (box 3.2).

### **Box 3.2. Impact of Transit Rules in Jharkhand**

The marketing of sal logs from private farms is constrained by legal and regulatory requirements. Farmers must first offer the timber to the forest department, which harvests and sells the wood at scheduled prices less a 15 percent marketing commission. Alternatively, the forest department can provide clearance for the landowner to do the harvesting and marketing himself. In either case the farmer must first prove ownership of the land in order to be issued harvesting or transit permits. This process can take several weeks and provides a fertile ground for rent-seeking behavior and middlemen who provide “permit avoidance” services. A number of sawmill owners indicated that without the services of middlemen in the process, it was difficult for private farmers to market their timber.

Source: Background studies - Jharkhand

All three states examined have a long history of transit rules. Earlier laws in Madhya Pradesh listed 13 timber species. In Jharkhand the Bihar Forest Produce (Regulation of Trade) Act of 1984 and the

Bihar Timber and Other Forest Products (Control of Transit Rules) of 1973 listed eight timber species. In Assam similar laws pertain to important species, such as teak and sal. States have a legislated marketing monopoly over main commercial nontimber forest products, such as kendu leaves. The situation is slowly changing' states such as Madhya Pradesh are gradually easing transit requirements on various nontimber forest products. Assam has eased the restrictions placed on bamboo by legally defining it and five other species (mostly fruit-bearing trees) as tree species. These are positive developments, which are to be encouraged and supported, but the overall harvesting and marketing system is still quite restrictive for communities and farmers.

**Legal enforcement is weak.** Forestry legislation is enforced mainly by state forest departments. Poor field capacities and weak monitoring systems are constraints in each of the three states examined. Through JFM, communities provide limited forest protection (against small-scale illegal cutting by outsiders, for example), but they lack the legal power to make arrests. Instead, forest department officials, who have this authority, must be summoned. For more serious offenses, such as major illegal encroachment or large-scale illegal harvesting on reserved forests, armed forest officers have been called in to respond with appropriate force.

**State forest departments lack legal expertise.** The web of forest-related legislation across different state agencies that can affect community-based forestry is complex and very difficult even for professionals without legal training to fully grasp. In general, forest department officials have a poor understanding of the legal and regulatory framework surrounding forestry and communities, including linkages with traditional forest rights and laws governing decentralization. Fear of acting outside an uncertain legal framework can limit testing of creative approaches for JFM by progressive forest officers. Knowledge of the penal code and other sectoral legislation is weak, which causes uncertainty over the extent of powers of arrest by forest officers.

## **The Panchayat Extension to Scheduled Areas Act of 1996: Panacea for Community Forestry?**

**The 73rd Constitutional Amendment, passed in 1992, specifies three levels of local institutions: the village level, the block level, and the district level.** The amendment supports the government's goal for decentralization of governance and gives *panchayat raj* institutions a statutory mandate and the potential to raise local finances through taxation.

**Under the Panchayat Extension to Scheduled Areas Act (PESA) of 1996, *gram sabha* (village assemblies) in scheduled areas were endowed with powers over community resources generally and more specifically with ownership of minor forest produce.** The Panchayat Raj Act is based on the Indian Constitution and as such has a stronger legal footing than JFM circulars, government orders, or even legislation that may be in conflict with the act. Where forests within the *panchayat* area are on revenue land, they fall under the purview of the *panchayat*. However, if the communities are growing notified timber or nontimber forest products, the forests are subject to state and national laws governing harvesting and transit. If the forest around the community is designated as a reserved or protected forest, the *panchayat* laws can conflict with forestry legislation.

Each of the three states examined approach the PESA differently. The Assam Panchayat Act 1994 extends to all rural areas except the autonomous districts under the sixth schedule of the constitution (the North Cachar Hills and Karbi Anglong Districts and the Bodoland Territorial Autonomous District). PESA is applicable only to fifth schedule and not sixth schedule areas, which encompasses the autonomous districts of Assam. The JFM resolution does not distinguish

between autonomous districts and other districts. This is bound to create conflict with the district council in the scheduled districts. In Jharkhand *panchayat* elections have yet to take place. In Madhya Pradesh *gram panchayats* are empowered to issue passes for the transit of forest produce, within or outside Madhya Pradesh. While the *gram panchayat* was made responsible for the plantation and preservation of *panchayat* forests, it was subject to the availability of funds within the *gram panchayat*, which in practice have been limited.<sup>16</sup> Under the Madhya Pradesh Act 5 of 1999, the *gram sabha* (the gathering of all villagers within the jurisdiction of a *gram panchayat*) was entrusted with the management of natural resources, including water, land, and forests. In case of a conflict, the specific laws dealing with the natural resource take precedence.

---

<sup>16</sup>Act 3 of 2001 was renamed the MP Panchayati Raj Act as “Madhya Pradesh (Panchayat Raj Avam Gram Swaraj) Adhiniyam, 1993.