

## STRENGTHENING TRIBAL PANCHAYATS

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### Abstract

*In India the Panchayats (extension to the Scheduled Areas) Act, 1996 (PESA Act 1996) was enacted on 24 December 1996. This act is enacted particularly for scheduled areas. Scheduled Areas are those, which are under the Fifth Schedule of the Constitution of India where the tribal populations are predominant. According to PESA act 'management' of natural resources transferred to the local society.*

*India is famous for its natural resources being one of the 12 mega-diversity countries in the world.(DebnathDeboshish, 2010)The Indian civilization is a primary civilization, known as Indus civilization, which has been described by Rabindranath Tagore as Tapavan civilization, meaning the very civilization grew in forest, was developed by its indigenous people. India's forest dwelling people are known as Vanabasi or Vanyajati as well as 'the Scheduled Tribe' (a constitutional category) as their association with the forest from time immemorial.*

*This paper deals with the problem of climate change and its effects on the human society. It also tries to bring out the importance of an organized and decentralized governance mechanism to manage them. The paper elaborates how the Tribal Panchayats can play a meaningful role in managing climate change through forest management.*

*Climate change will be pivotal in redefining development in the twenty-first century. Nations, societies, communities, and households respond to the impact of climate changes and variability to which the world has already been committed. In many instances, climate change is a determinant factor in the growth, equity, and sustainability of society at large. Given the potential magnitude of impending changes in institutional and social relationships, the gaps in current knowledge about the role of institutions in adapting to climate change is remarkably large. This review focuses on the role of local institutions in adapting to climate change.*



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### Introduction

The relationship between forests and the environment has been recognized for more than a thousand years. Forests play an important role in environmental protection. There is a long history of how forests have been instrumental in protecting mountain areas, preventing soil erosion, landslides and avalanches, and also crucial for maintaining the water quality of rivers draining forested catchments. Special silvicultural methods are required to ensure that these forests are maintained appropriately. Forests also respond to environmental protection. A major issue is air pollution, which is known to have had significant impact on some forests. Air pollutants of concern include sulfur dioxide, hydrogen fluoride, heavy metals, and ozone.

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Control of these pollutants is necessary to preserve the forests. Forests are affected by the pollutants and they can play a significant role in altering the atmospheric composition. Forests have a major role to play in the protection of the global carbon cycle. They represent an important sink for atmospheric carbon dioxide. Conversion of forests to other land uses is one of the causes of the rise of atmospheric carbon dioxide concentrations. Reforestation and afforestation could contribute to reducing atmospheric carbon dioxide concentrations, and the use of bio-fuels could help to reduce demand for fossil fuels. (Innes, J. L., 2007)

Forests and their governance have received increased attention in recent years. One factor that has stimulated this renewed interest is the appreciation of deforestation as a significant contributor to greenhouse gas emissions. According to UN Framework Convention on Climate Change (UNFCCC) and its Bali roadmap, REDD (reducing emissions from deforestation and forest degradation) refers to “Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries” (Report of the Conference of the Parties on Its Thirteenth Session, 2007)

Forests play an important role in the global carbon budget, both as carbon sinks and sources. They preserve soil fertility, harbor clean water, maintain ecological balance and preserve the majority of terrestrial biodiversity. They directly support the livelihoods of more than 1.4 billion of the world’s poor. (Macqueen, D., 2010)

Policy makers have also begun to realize just how much REDD+ success will depend on changes in forest governance at multiple levels. Numerous controversial issues arising from the multiple demands on forests, their uses and their values have spurred interest in knowing more. As a result, the need for research has spiked.

Forests have often been treated as “idle land” to be converted to “productive” uses, and only in the recent past have forests’ multiple functions and values been recognized. Agriculture and ranching, mining and infrastructure developments continue to exert direct and indirect pressures on forested lands, contributing 15% of global greenhouse emissions. (Werf, van der, G.R., Morton, D.C., Defries, R.S., Olivier, J.G.J., kasibhatla, P.S., Jackson, R.B., Collatz, G.J. and Randerson, J.T. (2009). The growth of these sectors is increasingly underpinned by increasing demand from global and domestic markets and policies supporting expansion into forests. These policies almost always benefit relatively small but powerful

groups, which have in the past opposed any revision of the status quo and are likely to continue to do so. The major challenge for research on forest governance today is to analyse how various forest values and uses have been governed, draw lessons regarding the causes of failure and success and identify future options and policy responses for transformational change, if forests and REDD+ are to deliver on their potential.

This paper presents different perspectives on forest governance and decentralization in India and its effect on managing climate change.

### **Adapting Forest Management Practices**

There are three possible approaches for adapting forests to climate change:

1. No intervention;
2. Reactive adaptation; and,
3. Planned adaptation.

Unfortunately, most current management belongs to the first or at best the second category. Better local governance of forest resources and capacity building for monitoring and coping with possible calamities of unprecedented extent. Within the industrial forest sector, planned adaptation may involve the inclusion of bio-energy as a product or the promotion of wood products for their low carbon footprint.

Forest managers might also be increasingly required to weigh global implications of local interventions, as forests are part of global bio-geophysical and bio-geochemical cycles and are increasingly subject to international agreements or certification schemes.

It may be argued that good forest management always involves planned adaptation. However, planning for climate change involves much greater uncertainty, novel risks and systematic risk reduction in response to anticipated events. Planned adaptation also includes exploring new opportunities that arise as a result of climate change, for example planting provenances or species that will grow faster under projected climatic conditions, or reaping the benefits of new products and services such as carbon sequestration and new forms of bio-energy. Planned adaptation may reduce vulnerability and increase resilience, or it may entail diversification at the expense of productivity. It may also help capture added growth from CO<sub>2</sub> fertilization. (Bernier P. and Schoene D., 2007)

### **Community Forest Management in India**

**(a) Beginning of forestry in India:** India was one of the first nations in the world to establish a professional forest service and nationalize its forest cover under the provisions of

the Forest Act of 1865. During the next hundred years much of the country's uncultivated land was demarcated and placed under the management of forest department. The first forest policy of 1894 had upheld the right of the state to exclusive control over forest. The policy also accorded primacy to agriculture. During the colonial time forest were regarded as source of revenue for meeting the requirements of India's vast rail, roads, industrial and navy needs of the British Empire.

This process of consolidation of India's forest had ignored the resource rights of tribal and the communities dwelling in forest. Protests and rebellions by resident people were generally quickly suppressed by the military or police though conflicts persisted over years. After independence, much of the British colonial forest policy and administration was retained. The need for the newly independent nation to develop its own economy led to accelerated exploitation of forest after World War II.

**(b) Beginning of forest conservation:** The principal aim of Indian forest policy of 1952 was to give primacy to industrial use over environmental conservation. It also professed that one-third of geographical area of the country should be brought under forest cover. This was followed by forest policy of 1988 that predominantly stressed environmental stability and maintenance of ecological balance including atmospheric equilibrium, vital for sustenance of all life form, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

Concerns over rapidly disappearing forest cover and wildlife led to the enactment of the Forest (Conservation) Act 1980 placing stringent restrictions on diversion of forest land for non-forestry purpose. The forest policy of 1998 had accorded the rights of the forest based communities.

The mandate of the forest policy has to be implemented by forest legislation. The states within India follow Indian Forest Act 1927 or have their own forest acts.

**(c) Beginning of Joint Forest Management:** By the early 1990 while 23% of India's land area was designated as public forest, only 9% to 11% possessed good forest vegetative cover. State forest lands were under immense pressure from tens of millions of livestock and an estimated 50 to 200 million rural forest users. Planners and forest officials were finding it difficult to protect disappearing forest despite marshalling all resources at their command. It was at this time realized by the Indian forestry establishment that forest cannot be protected without active involvement of the local communities. By early 1990 some case studies

showed how forests were protected and regenerated by the forest officials after enlisting active involvement of the local communities.

It was this realization on the part of the Government of India to adopt a policy of joint forest management for protection and regeneration of India's depleting forest. The official announcement on joint forest management was contained in the communication dated 1st June 1990 of the Secretary (Environment & Forest), Government of India.

**(d) Policy on Joint Forest Management:** The new policy dated 1st June 1990 dealt with the involvement of village communities and voluntary agencies in the regeneration of degraded forest lands. The National Forest Policy 1988 had envisaged people's involvement in the development and protection of forest. The requirements of fuel wood, fodder and small timber such as house building material of the tribals and other villagers living in and near the forest are to be treated as first charge on forest produce. The forest policy envisaged it as one of the essentials of forest management that the forest communities should be motivated to identify themselves with the development and protection of forest from which they derive benefits. This new policy recognized the role of committed voluntary agencies and NGOs in motivating and organizing village communities for protection, afforestation and development of degraded forest land especially in the vicinity of habitations. The beneficiary should be entitled to a share in usufructs to the extent and subject to the conditions prescribed by the State Government in this behalf. Some state governments have issued orders to transfer 25% of the sale proceeds to the village or its protection committee. Village forest protection committees should not be allowed to damage forest or violate the provisions of the Forest (Conservation) Act 1980. The Government of India further issued the guidelines on 21st February 2000 for strengthening of joint forest management in the country. This was followed by further orders on 2nd December 2002 on strengthening of joint forest management programmes in the country. (Sinha G.N., 2006)

#### **Panchayats Extension to Schedule Areas Act, 1996 (PESA)**

During the 1990s, the Eminent Domain of the Government was challenged by activists and human rights movements. Rights of the tribals over local resources were considered sacrosanct and nonnegotiable and a move to secure Constitutional recognition for these rights was initiated. The sustained campaign led first to the 73rd Amendment of the Constitution to give recognition to decentralized governance in rural areas and then the constitution of the Bhuria Committee to look into the issue of tribal rights over resources

through extension of the provisions of this Amendment to the Schedule V areas. Based on the recommendations of the committee, Parliament passed a separate legislation in 1996 as an annexure to the 73rd Amendment specifying special provisions for Panchayats in Schedule V areas. Known as the Panchayats Extension to Schedule Areas (PESA), 1996, it decentralized existing approaches to forest governance by bringing the Gram Sabhacenter stage and recognized the traditional rights of tribals over “community resources”—meaning land, water, and forests. PESA was important not just because it provided for a wide range of rights and privileges, but also because it provided a principle as well as a basis for future law-making concerning the tribals. According to the Central Government law, the states promulgated their own laws supposedly giving rights to tribals over local resources.

It has been almost a decade since PESA came into effect, but the obstacles in enforcing its provisions have remained largely unaddressed. Its avowed objective of power to the people has yet to take shape. The states are struggling to devise definitive procedures to define rights over forests and minor forest produce. Meanwhile, some states like Maharashtra, Gujarat, and Orissa, in an effort to perpetuate State control over forest resources, tried to dilute the provisions of PESA although they had no legal jurisdiction to do so. (Saxena, N.C., 2004).

The Government of Orissa, for example, has circumscribed the provisions of PESA by adding a clause, “... consistent with the relevant laws in force,” while incorporating the constitutional provision concerning the competence of the Gram Sabha to manage community resources and resolve disputes according to the customs and traditions of the people. This clearly implied that tribals could have rights over forests and minor forest produce, only if existing laws allowed it. Instead of changing State laws inconsistent with PESA, the Government of Orissa changed the provisions of the Act, thus negating the rights conferred on the community by the Constitution. The original objective of the Central Act was that state governments should change their laws according to central legislation. But the Government of Orissa, on the contrary, tampered with the central legislation to suit its own ends. The Central Act talked about providing ownership rights over minor forest produce to the Gram Sabha. The MoEF constituted an expert committee to define ownership, which recommended that “ownership means revenue from sale of ‘usufructory rights’, i.e. the right to net revenue after retaining the administrative expenses of the department, and not right to control.” The case of Andhra Pradesh is even more interesting. It gave ownership rights to the

Van Suraksha Samitis (VSS, forest protection committees) with respect to all non-wood forest products (NWFPs) for which Girijan Cooperative Corporation (GCC) did not hold the monopoly rights. Similarly, there is no clarity on the issue of “community resource.” The states have their own interpretations and legislations. While Orissa and Andhra Pradesh are silent about what constitutes community resource, Madhya Pradesh has defined it as land, water, and forest. This implies that the powers given by PESA to exercise rights over community resources are almost non-existent in many states.

Although the Central Act leaves no room for doubt that reserve forests should be considered community resources under the purview of PESA, the official assumption is that reserve forests are out of the PESA domain. For instance, the NTFP Policy of 2000 in Orissa restricts the Panchayat's control over minor forest produce in reserve forests. It says that the Gram Panchayats shall not have any control over minor forest produce collected from the reserve forests whereas the PESA, in its spirit, sought to extend ownership of forests to any forest located in the vicinity of the village that the people had been traditionally accessing. The policy-makers knew very well that it would be foolish to create such a distinction because it was almost impossible to differentiate between produce collected from reserve forests and that from others. Nevertheless, they went ahead with putting in place the proviso that reserve forests cannot come under the purview of PESA because the relevant laws laid down that no rights can exist in the reserve forest area.

*Strengthening Tribal Panchayats for Managing Climate Change through Forest Protection* Dozens of countries have decentralized at least part of their natural resource policies over the last two decades. After developing such an approach, we posit that varying forests conditions depends on the moderating effects that local institutions have on the socioeconomic and biophysical drivers of environmental change. (Andersson, Krister & Gibson Clark C., 2007) Based on the above discussion we can say that there is a requirement of strong tribal panchayats with the rights of forest management at local level.

As the government toys with devolving more powers to gram sabhas, villages are doing their own thing to regain control of resources and manage them, empowered by the Panchayat (Extension to Scheduled Areas) Act. Decentralisation is not just a mantra in these villages that have declared themselves village republics. Gandhi's idea of Gram Swaraj has come true, in part.

The radical PESA (Panchayat Extension to Scheduled Areas) Act, 1996, gives gram sabhas in tribal areas authority to decide the use of natural resources. States have preferred not to but villages like Kamyapeta in Andhra Pradesh and Mendha in Maharashtra have wrested control. (SethiNitin, 2011)

PESA is one Step ahead to Participatory Forest Management (PFM) and Joint Forest Management (JFM)

The Strengthening of Tribal Panchayats and forest protection rights transfer to them have been one step forwarding towards managing climate change through forest protection. The concept of Participatory Forest Management (PFM) matches the philosophy of the new National Forest Policy, 1988, i.e. that the physical goals of managing forest resources must be a means towards achieving the ultimate objective of enhancing the lives of forest dwellers. This can be achieved by involving people in the planning and management of forest resources in order to create a vested interest. (Sharma R. A., 1995)

The need to involve people in forest management was recognised in the 1952 policy itself. The policy stated: "... No forest policy, however well intentioned and meticulously drawn up, has the slightest chance of success without the willing support and co-operation of the people. The recognition of their rights to forest produce at concessional rates, or, free or royalty, is not by itself enough. What is necessary is to instil in the people a direct interest in the utilisation of forests..." (Khosla P. K., 1992)

The policy of Joint Forest Management is being adopted and implemented in various states like Bihar, Gujarat, Haryana, Jammu and Kashmir, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Tripura, West Bengal, etc. The perceptions and intentions of policy-makers in various states are explicitly stated in their policies. The forest departments have failed to maintain forest cover or improve degraded forests. They will be able to do so only if they involve the communities in forest management. Social fencing is more desirable and effective than policing. Protection from thieves requires the co-operation of the people living nearby these forests they can assist the forest departments by providing information. A direct interest in forest development can be instilled in the communities by giving them a share of the forest revenues. (KolavalliShashi, 1995)

Above policies are required to change for proper protection of forest with the involvement of local peoples. There is a strong need to implement PESA Act with its proper sense and uniform structure in entire country.

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