



Individual tenure rights, citizenship, and conflicts: Outcomes from tribal India's forest governance [☆]



Purabi Bose ^{*}

Mumbai, India

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ABSTRACT

This paper examines how the new Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 shapes tribal households' claims to forest land rights in tribal India. It analyses the micro-dynamics of the Forest Rights Act using three dimensions: individual tenure rights, citizenship, and conflict to discuss the contested nature of household-level tenure rights to forest land. The arguments are based on data collected using in-depth semi-structured interviews from six Bhil tribal villages in Banswara district, Rajasthan. The findings indicate that the forest tenure reform promoted the individualisation of forest right claims – thereby increasing Bhil tribal inter-household-level conflicts – and that households' forest land tenure claims relate primarily to the formal recognition of their citizenship rights. The paper suggests that one of the priorities for a way forward is to work towards harmonising the government's own contradictory policies, and avoid competition between line departments.

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1. Introduction

The traditional forest tenure rights of indigenous people are increasingly recognised in many developing countries. Forests are an important source of income, and their actual contributions to rural and tribal livelihoods vary considerably (Sunderlin et al., 2003). This depends, in particular, on the interaction between locally specific forest property relations and larger political forces (Sikor, 2006; Larson et al., 2010). Current forest tenure reforms 'range from titling of vast territories to indigenous communities, to the granting of small land areas for forest regeneration or the right to a share in timber revenues' (Larson et al., 2010, p. 4). Different tenure systems exist that are based on exclusive right (of an individual or collective), or for certain time, for example access only during particular seasons, for specific products ranging across dry fuel wood, fodder, timber harvests, and/or for certain type of lease depending on purpose (Larson et al., 2010). Forest tenure reform also creates new contradictions among various institutions that legitimise different tenure rights, and may create competing claims for resources (Fortmann, 1985; Sikor, 2006; Bose and van Dijk, 2012). For example, Couillard et al. (2009) argue, on the basis of their study in five African countries – Burundi, Cameroon, Democratic Republic of Congo, Rwanda, and Uganda – that indigenous people have not benefitted from the legislative changes since the

pre-colonial era, which have continuously influenced contemporary land acquisition with the land being unilaterally declared as state property. The underlying cause of conflicts in forest tenure reform is the creation of a new local institution and authority, often overlapping with the exiting traditional institutions (Bose and van Dijk, 2012). These often contradict customary rights and contemporary formal legislation (Colchester, 2008). These competing claims are common in countries that have been colonised (Peluso and Vandergeest, 2001; Lund, 2008; Bose et al., 2012).

An important argument favouring decentralised forest tenure reform takes a human right perspective which factors in the historical struggles of marginalised indigenous forest-dependent people for traditional rights (White and Martin, 2002; Colchester, 2008; Sunderlin et al., 2008; Sikor and Stahl, 2011). In India, the scheduled tribes'¹ struggle to maintain their forest rights has recently received attention through the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (henceforth cited as the Forest Rights Act or in acronym the FRA) that aims to undo historical injustice by recognising their traditional forest rights. For effective implementation of the Forest Rights Act, to overcome inequalities and to increase people's participation in decision making, citizenship rights are considered important. The scheduled tribes in India legally hold

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^{*} Tel.: +91 317 482860; fax: +91 251 2600478.

E-mail address: purabibose@gmail.com.

¹ The scheduled tribes (henceforth interchangeably used with the term 'tribal people' for marginalised forest-dependent people) discussed in this paper are the so-called *adivasis* or original inhabitants and are India's political administrative category to identify ethnic minority. Whether tribal people can be considered as indigenous is a debatable issue.

full citizenship rights to vote and/or to contest elections. However, citizenship rights are less exercised in many parts of tribal areas as compared to urban areas in relation to basic rights to services such as clean drinking water, shelter, food, sanitation, health, and education. Although the state is obliged to ensure these fundamental rights for its citizens, tribal people's basic needs and rights, particularly in relation to access to natural resources to ensure livelihoods in the form of forest rights, are rarely met (Springate-Baginski and Blaike, 2007; Sundar, 2011; Baviskar, 2012; Bose et al., 2012). Ideally, an individual's citizenship rights should not be related to his/her identity (caste, class, ethnicity, religion), but in India identity to a large extent determines citizenship rights. Sundar (2011, p. 427) explains that the 'Indian Constitution walks a fine line between recognising individual rights in the polity (prohibition of discrimination on the grounds of race, religion, caste, sex, etc.) and legitimising group identity (notably caste and religion).' Identifying the emerging perception of tribal people's citizenship can elucidate their social struggle to claim their traditional belonging to forest land and to fight for tenure rights.

The main objective of this paper is to analyse the current implications of the Forest Rights Act on tribal households' claim to individual forest tenure rights, the way it affects their citizenship rights, and the underlying reasons for conflicts at the household level. The paper is divided in five parts. The next section explains three interrelated dimensions for analysis: forest tenure rights, citizenship, and conflicts. The background of the Bhil tribal people, and the qualitative research methods are described in the third section. The fourth section presents the empirical findings, while the last section draws analytical conclusions.

2. Forest tenure rights, citizenship and conflicts in tribal India

This section explains the logic of choosing the three dimensions – individual forest rights, citizenship, and conflict – to analyse the micro-politics of emerging consequences of decentralised forest tenure reform.

Most state forest land in India is inhabited by scheduled tribes, who use the forest under a variety of local customary arrangements. Almost 75% of tribal people are directly or indirectly dependent on forest resources for subsistence needs (Sunderlin et al., 2008). Historically, centralised state control over land defined as forest led to the establishment of powerful legal institutions and organisations (Forest Departments) of state forest management. Peluso and Vandergeest (2001, p. 763) use the term 'political forests' to show that in the nineteenth century governments in Southeast Asia made several attempts to gain control over what they labelled forest 'through various legal means, through the creation of forest police, and by the disciplining of the population to think and act towards the "forest" in specific ways.' The use of the term 'political forest' denotes the struggle that shapes the conflicting claims based on traditional practices and formal rules. These conflicting claims often occur between different actors (state vs. tribal; men vs. women) that create conflicting ideas about landscape and meaning ascribed to forests with different uses and tenure rights (Bruce et al., 1993).

The Forest Rights Act aims to redress the traditional rights of individual as well as right for collective forest management. At least on paper, this is a major policy shift from traditional centralised forest management towards decentralised reform. The term 'decentralisation' refers to true devolution from central to democratically elected local government that involves transfer of powers, functions, and decision making to citizens themselves (Ribot, 2002; Ribot et al., 2006). The definition of forest in both colonial and post-colonial India served the government's purpose of converting land into forest land, settling tribal people outside this forest territory, annulling their customary rights, and delegitimising their ways of managing and using the forest (see Agrawal and Sivaramakrishnan, 2000; Bose et al., 2012).

The first dimension to consider is individual tenure rights. Forest tenure rights have their colonial historical background in the territorial demarcation of land as forest and in subject-making of the scheduled tribes. Bose et al. (2012), referring to Foucault's notion of *governmentality*, argue that, through the colonial and post-colonial histories of categorisation, recent efforts by the national government to recognise traditional forest tenure rights have reinforced political control over the scheduled tribes through new forms of authority, and rules for inclusion and exclusion. Kidder's (1978, p. 159) essay on Western law in India explains that, although the British Indian legal system was meant to preserve customs, the colonial courts altered processes of expressions of conflict, and litigation; for example, 'the idea of land *ownership* was enforced in place of complex communal relationships as a means of isolating tax revenue responsibility and proprietary privilege with respect to the means of agriculture production' (italics in original).

The post-colonial resistance of tribal people has continued to challenge government power by criticising the violence embedded in the categorisation of tribe, caste, and gender, and in the colonial classification of forests (Baviskar, 2012). The Forest Rights Act emerges out of a rights-based development strategy that challenges duty-bearers (e.g. government officials) to reinstate the rights of marginalised tribal people – the rights holders – and empowers them to claim their rights and responsibilities. Any forest tenure policy reform can function only if it is clearly implemented, with minimum standards with respect to the rights of citizens without any double standard in policy implementation, and particularly with all actors on a level playing field (Larson and Ribot, 2007). Thus, individual forest tenure rights are about rights holders who are entitled to rights, to claim the rights, to hold the duty-bearers accountable, and who have the responsibility to respect the rights of others (Kierkemann Boesen and Martin, 2007).

The next key dimension used for analysis in the study is citizenship. Citizenship is important in the debate on social justice, particularly with respect to ethnic minorities like tribal people. Current national policy focuses on citizenship wherein being a citizen is based either on *jus sanguinis* (right of blood) or on *jus soli* (right to land). Citizenship, as defined by Marshall, is the 'basic human equality associated with the concept of full membership of a community' (1950, p. 8 quoted in Sundar, 2011, p. 421). Other scholars show that citizenship could be understood as the rights and responsibilities of individuals towards the community, other than just the right to vote or hold an identity card (Patterson, 1999). Citizenship is crucial for forest tenure analysis because it encompasses tribal people's sense of belonging and identity (self-identity vis-à-vis state-defined identity), and their idea of social justice. The politics of the social identity of tribal people is closely related to their struggle to secure rights to (forest) land, which has more than just a property or economic value because it holds a cultural significance and a sense of belonging to ancestral land (Colchester, 2008). Highlighting the issue of belonging, Ribot (2007, p. 46) notes: 'In democracy, belonging, which infers citizenship, is residency based – where citizenship is the ability to be politically engaged and shape the fate of the polity in which one is involved. In private groups and NGOs, belonging is based on shared interests. In customary and religious institutions, belonging is often based on identity – such as ethnicity, place of origin, language or religion.' Fraser (2000, p. 27) suggests that recognition is an issue of justice and that misrecognition is morally wrong in that it 'denies some individuals and groups the possibility of participating on a par with others in social interaction.' Although tribal people protest against the government's denial of forest land rights as part of their citizenship rights, they continue to see the government as ultimate guarantor of property rights and other development welfare (Sundar, 2011).

The third dimension, conflict, relates to the struggle for forest tenure rights and citizenship. Conflicts are a common phenomenon in forest tenure due to contradictory, overlapping, competing, or unclear legal frameworks to manage forests at various levels (FAO, 2011). The

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