



The Creation of West Bengal's Forest Underclass An Historical Institutional Analysis of Forest Rights Deprivations*

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**Discussion Paper Series
Number Fifty One
December 2010**

**IPPG Discussion Papers
available at
www.ippg.org.uk**

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* Paper prepared for the DFID-funded research programme, Institutions and Pro-Poor Growth (IPPG). The authors are grateful to DFID for the funding that made this research possible. The views expressed in this paper are entirely those of the authors and in no way represent either the official policy of DFID or the policy of any other part of the UK government.

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Paper prepared for the DFID-funded Research Programme, Institutions and Pro-Poor Growth (IPPG). The authors are grateful to DFID for the funding that made this research possible. The views expressed in this paper are entirely those of the author and in no way represent either the official policy of DFID or the policy of any other part of the UK Government.

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Acknowledgements

This paper is an output of a project entitled *Understanding the Indian Forest Rights Act 2006*, coordinated by Dr. Oliver Springate-Baginski at the School of International Development, University of East Anglia. The project has been funded under DFID's *Improving Institutions for Pro-Poor Growth* Research Programme Consortium. For more information see www.ippg.org.uk.

We are indebted to a wide range of people who have helped us in the completion of the study from which this paper is an output.

We would like thank the 'Institutions for Pro-Poor Growth' (IPPG) Research Programme Consortium managed by Manchester University and funded by DFID UK for supporting the study. Our sincere thanks to Dr Adrian Leftwich of the University of York and Professor Kunal Sen of Manchester University for their very helpful advice and encouragement throughout the life of the project.

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ABBREVIATIONS

CFC	Clear Felling Coupe: <i>Forest areas that are clear-felled to harvest the standing resources and then replanted</i>
DFO	Divisional Forest Officer
DLC	District level Committee formed under FRA
EDC	Eco-Development Committee (Eco-Development Project)
FD	Forest Department
FPC	Forest Protection Committee (of JFM)
FRA	The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act2006
FRC	Forest Rights Committee (at the Gram Sabha Level for the FRA)
FSI	Forest Survey of India located in Dehradun, India
GoI	Government of India
GS	Gram Sabha
IFA	Indian Forest Act 1927
NFFFWC	National Forum of Forest People and Forest Workers
NTFP	Non-timber Forest Produces
OBC	Other Backward Castes
OTFD	Other Traditional Forest Dweller – a category introduced in the Forest Rights Act 2006 to include non-tribal forest dependent rural populations.
PRA	Participatory Rural Appraisal
PTG	Primitive Tribal Groups
SDLC	Sub-divisional Level Committee formed under FRA
SDO	Sub Divisional Officer (<i>Administrative officer of a sub division, which is a part of a District</i>)
ST&OTFD	Scheduled Tribes and Other Traditional Forest Dwellers

Local Terms

<i>Patta</i>	A government tenure document, recognising the stated rights of the holder, in a specified area
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SUMMARY

This paper considers the relationship between the emergence and development of state forestry institutions in forested landscapes of West Bengal and the chronic and acute poverty of citizens living there.

At least 13% of West Bengal's 80 million population (at the lowest estimates) live in forested landscapes and significantly depend on forests. Most live in severely deprived conditions and form what may reasonably be called a forest *underclass*: they have been collectively subjugated and impoverished by the prevailing forestry institutions. One might challenge this argument by contending that forest people's forest livelihoods inherently destine them to a low income level, and so their poverty is latent rather than externally created. In this paper we show, using an historical institutional analytical framework, that regardless of their initial livelihood conditions, they have been gravely impacted by expropriation from control, access and use of the productive private and collective forest and land resources on which they depend and the ecological character of the forest resource has been changed in the states pursuit of timber, drastically cutting the livelihood ecosystem services they provide.

Applying the twin analytical concepts of 'critical junctures' when institutional change occurs, and 'path dependency' when institutional reforms persist and cumulatively unfolded, the paper examines the processes through which the state 'territorialisation' of forests occurred in West Bengal, at the expense of the predominantly tribal populations already resident there.

The people who lived in and near the forests from the earliest times had established complex webs of customary if unrecorded forest use rights. These included residence in the forest, freedom to clear patches for shifting and settled cultivation, collection of timber, firewood and non-timber forest produce (NTFP), grazing of cattle, community hunting and carrying out cultural rituals. Portions of the forests were also used by principalities for their required forest produce.

This situation drastically changed with the British colonial era. During the first half of the 19th century timber traders rapidly expanded their virtually unregulated felling, plundering the forests to supply the burgeoning timber demand from construction, shipbuilding and railways industries, both within India as well as through export to Britain. By around 1850 this had precipitated a 'critical juncture' as the colonial government perceived that strategically important timber supplies were threatened. Administrators therefore sought to create the institutions which could manage the 'orderly exploitation' of timber within sustainable levels.

Deprivation of forest rights in India started significantly at this time, with the creation of the colonial forest service and the passing in 1865 of the Indian Forest Act of (amended in 1878 and 1927 and still in force today). Large areas of forests were declared as government property under the Indian Forest Act and recorded as reserved or protected forests. Through the process most of the rural people's customary forest rights were extinguished they became illegal occupants and/or users of the forests.

The forest areas held by the princely states and the private forest owners within those states escaped the provisions of the Act which applied to directly administered areas of colonial India only. But with the advent of Independence, in West Bengal as in most other states, a second round of large scale rights deprivations occurred. The 'West Bengal Estate Acquisition Act' of 1953 facilitated government acquisition of all remaining forests, from ex-princely states, private owners therein and tea garden forests. Whilst the owners were compensated, the customary forest users were not recognized and they had their rights completely extinguished at a stroke.

Beyond these major rights deprivations scenarios there are a wide range of others which each have had very severe implications for rural peoples in forested landscapes, which are summarised in this paper

Forest Rights Deprivation Scenario 1: Rights deprived through the normal settlement process

Forest Rights Deprivation Scenario 2: Irregularities in the normal settlement process

Forest Rights Deprivation Scenario 3: 'Forest Villages'

Forest Rights Deprivation Scenario 4: Post Independence estate acquisitions

Forest Rights Deprivation Scenario 5: National Parks and Sanctuaries

Forest Rights Deprivation Scenario 9: Destruction of Sacred Groves

Forest Rights Deprivation Scenario 6: State monopolization of forest product marketing

Forest Rights Deprivation Scenario 7: Land acquisition for industry and 'development'

Forest Rights Deprivation Scenario 8: 'Encroachment and Eviction

Forest Rights Deprivation Scenario 10: Joint Forest Management

Forest Rights Deprivation Scenario 11: Afforestation of Degraded Land in SW Bengal

Forest Rights Deprivation Scenario 12: Arbitrary punitive state coercion

These rights deprivations, although begun under colonial era, have shown a high degree of 'path dependent' continuity beyond independence and into the present day. The lack of significantly reform is partly due undoubtedly to the incumbent interest groups, namely the state forestry bureaucracy and particular commercial and private interests, which have continued to benefit, despite the creation of a vast forest underclass.

In a subsequent paper we consider the extent to which the Forest Rights Act 2006 promises to change this *status quo*.

1. UNDERSTANDING THE PROSPECTS FOR INSTITUTIONAL REFORM OF RIGHTS IN WEST BENGAL'S FORESTED LANDSCAPES

1.1 The Problem

In 2006 the Indian Parliament passed the Forest Rights Act¹, finally recognising sixty years after Independence that across the almost one quarter of India's land classified as 'forest':

'... forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice ...'

The Act provides the legislative basis to redress this injustice and thus has major implications for West Bengal, both in promising a more secure basis for forest people's livelihoods, and also the legal provisions necessary to defend them in the future.

The Forest Rights Act 2006 (FRA) process is an important case of apparently pro-poor contemporary institutional reform. However is it realistic to expect that after more than a century of disenfranchisement and oppression of forest peoples by the state, the relationship can be reversed at a stroke of the legislative pen, particularly when the colonial-origin forestry establishment whose estate and powers are largely based on these rights deprivations remains so securely entrenched? Does the FRA really signify a significant improvement in the political position of forest peoples in India?

This paper presents some findings from a study in which we sought to understand the extent to which the FRA can be understood as a pro poor institutional reform for West Bengal. The study focussed on 4 key research questions:

1. Why did the FRA emerge?
2. Do the FRA provisions adequately cover the range of forest rights deprivations?
3. Is implementation of the FRA actually resulting in meaningful pro-poor institutional reform at the local level?
4. Will the FRA lead to poverty alleviation and pro-poor growth, and if so how?

This paper addresses the first question, examining the origins and extent of underlying rights deprivations. A subsequent paper addresses the other research questions.

1.2 Our Research Approach

To answer these questions we conducted extensive research between 2008-2010 at state, district and local levels, using a range of methods. At state and district level we interviewed key stakeholders; concerned officials, NGOs, and various others, to elicit their views, experiences and insights. Secondary data was compiled from reports, appraisal and evaluation documents of the World Bank and the forest department, Government Orders, and so on. We then moved to primary data collection through field surveys at selected study sites using group meetings, household and village questionnaires (applying a standardised format). Geographical Positioning Systems were used to identify and map village locations.

1.3 Applying an Historical Institutional approach

Historical Institutional theory has been used as a analytical approach to help address the question of why forest rights deprivations are so prevalent in forest landscapes of West Bengal and why they have persisted after Independence.

Institutional theory tells us that social political and economic institutions, both formal and informal, shape behaviour and opportunities; define rights and distribute

¹ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights Act), 2006

power. They must therefore have major implications for poverty and its alleviation. Historical Institutionalists (e.g. Harriss 2006, Sanders 2006) hypothesise that institutions (i.e. 'the rules of the game' by North's definition) are inevitably framed in the context of power relations, and hence institutional formation and change is essentially a political process which has far-reaching economic implications. Historical Institutionalists take a politically realist approach to the link between the authorship and distributional outcomes of institutional reforms: those with the power to prevail in negotiations can organise institutions best suited to their interests and can ensure they endure, even if this leads to divisive or dysfunctional outcomes for the wider society or particular sections of it.

The HI approach applies two central analytical concepts: critical junctures and path dependency. The idea of 'critical junctures' suggests that there are moments ('junctures', similar to the concept of bifurcation points in the natural sciences) when sharp institutional changes can be made, at which point contestation and power struggles play a critical determining role. Obvious examples of this are wars, colonial annexations, revolutions, *coups d'état* and so on. Of course the extent of 'criticalness' can clearly vary greatly, as do the mix of precipitating causes, which may be due to environmental, political, or economic crises and may be internal to a polity / economy; or brought about by external events.

How these critical junctures are used, and the implementation of the decisions taken during them are not automatically positive or 'progressive'. Reforms and revolutions can and often do lead to new forms of marginalisation, oppression and instability. Predatory or reactionary regimes can get installed, as colonial history shows us. However, seizing the opportunity and pushing through reforms in the institutional architecture, whether macro or within a sector or in relation to one issue, depends on political processes and the kind and amount of power which different interests can bring to bear. Moreover, the formal institutional structure within which the decisions are taken will also shape outcomes. This is clearly the case in India where the formal federal and parliamentary structure allows, as we know from many different sectors, great variation across the state.

Fundamental changes in property and tenure regimes are a good example of a 'critical juncture'. In terms of forest tenures we examine in this paper how the colonial concern to secure sustainable timber supplies led in the mid 19th Century to the creation of forest bureaucracies and the legal provisions to create a national forest estate. This may be seen as *the* key 'critical juncture' in India's and specifically West Bengal's forest landscapes, and this institutional change, one and a half centuries ago, is still casting long shadows today.

The structure of the administration of public (including forest) lands remains essentially colonial in nature. While reform of agricultural land was pressed forward following independence, the management of public lands has remained frozen

Gadgil & Guha 1995

Explaining why this is the case brings us to the second and complementary key idea which Historical Institutionalists use, that of 'path dependency'. This alludes to the regular pattern by which a consolidated institution becomes very hard to shift and that once established, even when regimes change, it may have a profound proclivity to remain in place.

The 'sharp' historical institutionalist in political science would recognise two aspects of this 'institutional stickiness'. First, an institution is often embedded in a network of associated and complementary institutions (formal and informal). It is hard to change the one without having effective change in others; moreover there will be a culture of familiarity with a particular institutional network. Also, there may be strong ideological/political attachments to an institution and what it represents. Second, underpinning the resistance to change - and hence sustaining the path dependency - are

questions of incumbent power and politics. Power because there will be deep vested interests committed to defending the institutions ('an organisation's biggest output is itself' to paraphrase Stafford Beer); political because there may be wider electoral considerations which governments don't want to threaten.

So, in historical institutional analysis critical juncture and path dependency stand in tension with each other. There may be critical junctures, a political regime coming to power or major reform, and there is room for manoeuvre. But these attempts at change may be thwarted by path dependent factors, power relations and resistance or diversion by bureaucracies and interest groups. In federal structures like India a critical juncture which gives rise to new policy or legislation will have very different implementation effects across different states, due to the diversity of local institutional arrangements.

This paper applies this Historical Institutional approach to help make sense of the complex historical processes and contemporary contestation over the forest and forest rights in West Bengal. In the paper we can see how the forest bureaucracy was created from a critical juncture in the colonial period, but has exhibited path dependency, as the 'historical injustices' it perpetrated have persisted and been further compounded over half a century into Independence up to the present day.

2. POVERTY IN WEST BENGAL'S FORESTED LANDSCAPES

2.1 West Bengal's Forested Landscapes

West Bengal covers 88,752km² (2.7%) of India, and 13.38% of which is 'recorded forest area' (12,343 km²) in official land records, meaning any land that has been legally notified as forests by the government, and is owned and managed by the government, although not necessarily having any forest vegetation.

The *actual* forest cover is slightly higher than the 'recorded forest area', at 14.64 of the state % (or 12,994km²). These forests, illustrated in the map below, are spread across three distinct forest areas, the North, the South West and the Sundarbans and are comprised of a range of forest types. 25% of this alone is now made up of tree plantations and private 'farm forests' (FSI 2009). The reported slightly increasing forest cover masks a process of the destruction of remaining unique natural forests biodiversity and its replacement by exotic tree monocultures providing a paucity of ecosystem services other than wood.

2.2 The citizens of West Bengal's forested landscapes

Although the state's forest area is relatively small compared to many other states, the absolute number of forest dependent people is very high; of a population of 80.02million (7.8% of the county's population - 2001 census) scheduled tribes typically living in forested landscapes comprise 5.5% of the population,(4.4m). The tribal population of the state is made up of 38 scheduled tribes in the state, of which the major groups are shown in the table below

Table 1: Major Scheduled Tribal Groups of West Bengal

Tribe	Population	Proportion to the total
Santal	2,280,540	51.8
Oraon	617,138	14.0
Munda	341,542	7.8
Bhumij	336,436	7.6
Kora	142,789	3.2
Lodha	84,966	1.9
Mahali	76,102	1.7
Bhutia	60,091	1.4
Bedia	55,979	1.3
Savar	43,599	1.0
Other	367,612	8.3%
All	4,406,794	100 %

Source: GoWB 2001 Census

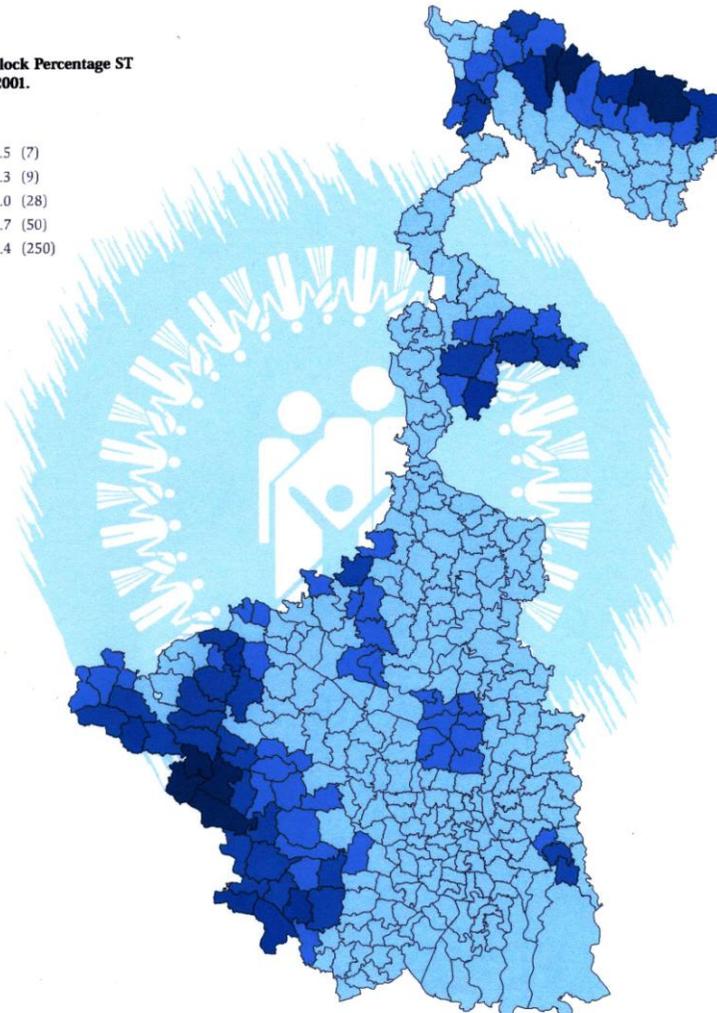
The number of villages having forest as a recorded land use is 8,571 involving 8 million people and about 0.6 million ha of forest. The number of directly forest dependent people is estimated to be 8.3 million, about 10% of the total population of the state (GoWB, 2001), the majority of the forest dependent people are poor.

Much of the rest of the state's rural population depends to a significant extent of forest for their livelihood security, particularly for fuelwood, fodder and non timber forest products such as *sal* leaves, *bidi* leaves, and so on.

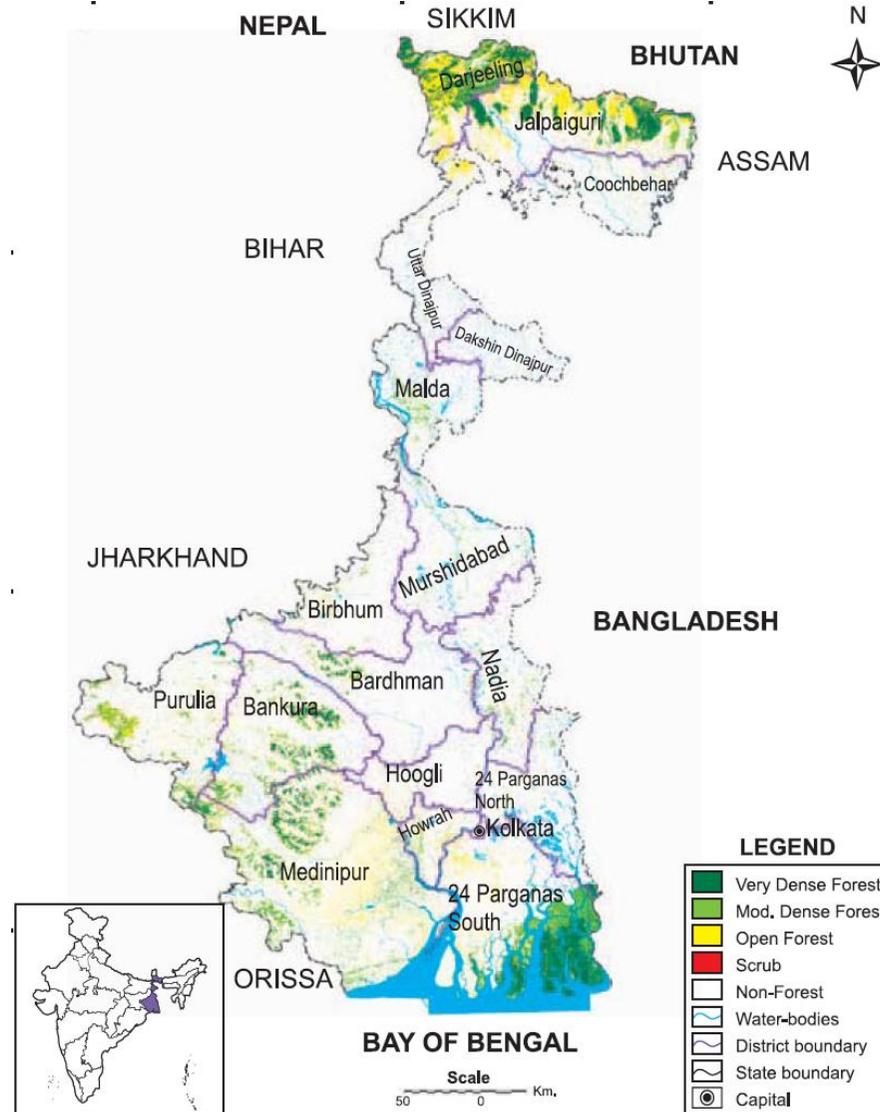
Map 1.4 WB Block Percentage ST Population 2001.

Legends

- 41.3 to 51.5 (7)
- 31.0 to 41.3 (9)
- 20.7 to 31.0 (28)
- 10.4 to 20.7 (50)
- 0.1 to 10.4 (250)



Map 1: Distribution of Scheduled Tribes in WB by Block (UNDP 2004)



Map 2: Forest Cover of West Bengal (Source: FSI 2009)

2.3 The Prevalent Poverty in West Bengal's Forested Landscapes

The table below shows the concentration of tribal and scheduled caste population in the main forested districts of the state

Table 2 Forest Area (2002) and Population (2001 Census) in Forested Districts

State/District	Forest Area: as % of land area	Population (Million rounded)	Scheduled Tribes as % of Population	Schedule Castes as % of population
Bankura	21.5	3.1	10	32
Purulia	14.0	2.5	20	20
Midnapore	12.1	9.6	8	12
Jalpaiguri	28.7	3.4	18	38
Darjeeling	38.2	1.6	12	18
<i>Mean</i>	22.9	-	14	24
West Bengal	13.3	80.1	5	22

The table shows that the districts with higher forest percentage areas have relatively larger SC and ST populations.

A wide range of studies have confirmed that tribals and other forest populations in West Bengal are both poorer, and also more dependent on the forest for their livelihoods (Banerjee 2007). If we consider data across the more forested districts of the state we see that for each main indicator (life expectancy, income and literacy) the forested districts score lower than West Bengal as a whole.

State/District	Life expectancy at birth		Per capita income (2001) Rs.	Aggregate Literacy rates
	Female	Male		
Bankura	68	62	15,741	63.8
Purulia	63	60	13,044	56.1
Midnapore	67	65	15,526	75.2
Jalpaiguri	63	61	16,749	63.6
Darjeeling	71	67	18,529	72.9
<i>Mean</i>	66	63	15,918	66.3
West Bengal	69	65	16,072	68.2

Source: UNDP 2004

For literacy for example, 43.4 per cent of the ST population has been returned as literate, and only 8.4% have literacy above matriculation (Census 2001). This compares poorly with 68.2% for the state as a whole.

Overall we can see that there is a coincidence between forests areas, tribal groups and poverty and lower human development levels. In the next section we build the case that this is significantly explained by historical emergence of forest rights deprivations.

3. THE ORIGINS, NATURE AND PERSISTENCE OF FOREST RIGHTS DEPRIVATIONS IN WEST BENGAL

All of the forest dependent groups mentioned above, whose basic economic survival depends to a significant extent on the use of forest resources, do not have legal rights for livelihood use of the forests. Customary and formal rights which the people possessed, were taken away by the state in a series of legal actions beginning in the colonial period and persisting through the post independence period. Deprivation of forest rights has significantly marginalized and indeed criminalised a large section of the state's population inhabiting forested landscapes, and these deprivations continue to the present.

Although some mitigation of the deprivations were provided in the 1990s through the Joint Forest Management programme, wherein local people who formed into JFM groups were permitted livelihood use of the forest in return for their protection this lacked any legal basis and was an ad hoc arrangement at the discretion of the Forest Department.

This section considers the historical emergence of underlying rights deprivations, their prevalence and the reasons for their persistence.

3.1 The pre-colonial period

From the earliest records, even around 2000 BC, the Aryan in-migrants from the West of India, considered the people living in the hills and jungles as inferiors: dark skinned 'anasas' (without nose) and prospective 'dasa' (slaves). These prejudices have been very persistent. Very little was written about their way of life at the time but Vedic and Pali works divided them into a number of totemistic clans (e.g. Hyena clan, Bird clan etc.) describing them as engaged in hunting, gathering and processing a range of forest produce. For example, *chamakaras* were leather workers and *nalakaras* were cane and rush workers' specializing in the manufacture of baskets and boxes. Some were tree cutters who sold wood to the newcomers.

Although these were relatively lucrative trades the Aryans compelled these people to stay away from their habitations as their professions were considered obnoxious. (Chatterjee, 1964 , Chakravarti, 2009). Whilst the newcomers expanded agriculture, established townships (*janapadas*), and generally improved their living, the forest dwellers and their successors of later periods (such as the Birhors, Kurumbas, Korwars and Hos) continued to stay in the forest, depended on the forest resources and were marginalised from the mainstream economic life.

Prior to the British colonial era, the forests and uncultivated land were nominally regarded a part of the state, but in fact most of it used by the people living near or in it. Thus they assumed customary rights of residence, cultivating, grazing, collecting produce and hunting.

During this period the state rulers of all categories encouraged the people to increase cultivation areas by felling forest that augmented the tax collection of the rulers, a gradual but ineluctable process (Sivaramakrishnan 1999).

3.1.1 The British colonial era

This situation changed with the advent of the colonial rulers, and the 1850s signalled the beginnings of 'historic injustice' for the rural forest dependent people. By this time the forests had been subject to indiscriminate plunder by timber traders for decades, as they sought to rapidly enrich themselves by feeding the commercial demand for timber for railway construction, ship building and construction. At the same time there had been rapid forest clearance for cultivation.

The colonial administration began to become seriously concerned that the strategically important timber supplies may be threatened by such plunder and

concluded that the forests and grazing 'wastelands' (most of which, not having any registered owner) should be taken over as state property and managed for their 'orderly exploitation' (Brandis, 1897)

The 1865 Forest Act, (strengthened in 1878, amended 1927, and still in force today) provided the legal instrument for state appropriation of forests, and register them as Reserved and other categories for state forests management. The Forest Acts provide for the appointment of a settlement officer who would look into the claims of rights by the people who may have been using it and decide after enquiry whether the area being claimed would be released or bought out by the state by acquiring them.

State appropriation, and timber-oriented management by a paramilitary cadre of foresters has the foundational forest rights deprivation for local people, and the basis for all subsequent ones.

Forest Rights Deprivation Scenario 1: Rights deprived through the normal settlement process

Forests were appropriated under the Indian Forest Act from 1865 onwards and taken under the management of the Colonial Forestry Service. State reservation of forests involved taking over forests which were inhabited or adjacent to habitation and subject to livelihood use. The principle was to commute or extinguish local people's rights with limited negotiation or concession.

A settlement officer had the responsibility, whilst declaring forests as reserved or protected, to conduct a settlement inquiry into local people's pre-existing use rights. If found genuine some may be permitted albeit as more precarious 'privileges', or they otherwise may be extinguished and compensated. This decision was at the discretion of the settlement officer and the extent to which the settlement officer acknowledged local rights or not depended on a range of factors.

The 'reservation' process took place towards the third decade of the 19th century. It seems in West Bengal settlement officers were particularly unsympathetic to local people's claims, rarely took cognisance of peoples' opinion as virtually all rights were extinguished in the process.

The forests in West Bengal, whether in the south west or the north regions all became owned by the State. In the north, the forests became classified as 'Reserved' due to their high timber value, and all use rights were automatically extinguished. In the south-west region, most forests became classified as 'protected' wherein some use could have been allowed (e.g. as was done for *nishtar* use rights in Madhya Pradesh). However in practice no use rights were given as local people's claims were not accepted.

Whether the due legal settlement process was strictly adhered to or not has not yet to be systematically explored. Although there is limited evidence of irregularity it has found to be the case in many other states that the settlement process has not been properly conducted according to the due legal process.

Forest Rights Deprivation Scenario 2: Irregularities in the normal settlement process

It is very difficult to say today how genuinely or well settlement investigations were done by the colonial settlement officers. There is no doubt that in many cases the settlement of forest rights was not conducted properly according to the legal provisions, because. Unlike in say Madhya Pradesh and elsewhere, the Protected Forest in West Bengal has not a single recorded instance of *Nishtar* rights.

The appropriation of very large areas of forest and other uncultivated areas as state public forests went on speedily and had a major impact on local people, who at the time were using these forests for their livelihoods. Their loss of their legal ground of forest use severely restricted and criminalised their everyday practices such as shifting cultivation, marginal agriculture, firewood collection, collection of NTFP including canes, bamboos for basket making and timber for processing and construction, and hunting of animals for food, sacred groves,).

As well as the deprivations due to forest reservation, there were a number of other rights deprivations processes, each very compromising the lives of the local forest users. None has been more severe than the creation of 'forest villages' during the later parts of 19th and early 20th century, across North Bengal. The villages were established to convert the newly criminalised tribal forest dwellers into a captive forestry labour force at negligible cost.

Forest Rights Deprivation Scenario 3: 'Forest Villages'

'Forest Villages' are an extreme case of the principle of forest institutions creating a forest underclass. Traditional forest dwellers, whose traditional livelihoods had been criminalised, became subjugated in a bonded labour relationship with the Forest Department akin to colonial serfdom. Forest Villages still exist across North Bengal.

The predominantly tribal inhabitants of the North Bengal region (including semi-nomadic groups like the Mech Rava, Garo, and others including the Dhimal, Lepcha, Limbu, Rais and Dukbas) has traditionally practiced a range of forest based livelihoods including shifting cultivation, gathering and hunting. But as colonial forestry management expanded in the later 19th Century a combination of exclusionary forest settlements and increasingly strict forest management regulations (especially on the use of fire in the forest) obstructed on their way of life and rendered them destitute.

The Forest Department exploited their destitution by creating forest villages, the earliest ones being created in the 1890s simultaneously across Assam, Bengal and the Central Provinces (now Madhya Pradesh). The tribals were allowed to remain forest dwellers and cultivate small patches. After cultivating their swidden plots for a few years they would raise plantations of mainly Sal and Teak monocultures. In the later *taungya* variation the swidden plots were intercropped with tree saplings.

In return the villages ensured a supply of free labour for the Forest Department's forestry operations. The labour the villagers gave was compulsory *begar* (*free service*). The FD had no formal agreements with them and did not pay any wages.

The 'recorded' or 'legal' villages can be classified into two major types: 1) forest villages including *taungya* villages and 2) fixed demand holdings. Originally settlements were temporary for a few years for the duration of forest operations, but permanent settlements also emerged. Difference in nomenclature does not however signify any perceptible difference in overall living conditions of these settlements; the residents everywhere are equally without any rights.

The Forest village arrangement was not reformed after Independence, and in the late 1960s, only after major agitations against *begar* in which several people were killed in police firings, nominal payments were conceded by the Forest Department

At present there is no official data on North Bengal forest villages, so we cannot be certain of their exact number distribution or population. Estimates by the (defunct) Forest Village Development Division in 2000 put the number of villages at 173, and the number of total resident households at 5,578, giving an average of 32 households per forest village. Independent assessments by activist groups suggest that North Bengal actually contains over 230 'forest village' settlements, many of which are 'unrecorded', 'temporary' and 'illegal'.

This exploitative institution persisted to the present day effectively denying the victims citizenship rights or state service delivery such as education and health provision.

Eviction/relocation/de-reservation of North Bengal forest settlements was an issue which the Forest Officials looked into from time to time. These were tried, unsuccessfully in 1970s, and in 1996 (no written records were available) and in various PAs, especially in potential National Parks which had 'enclave' villages, located deep inside the forest. The Department could only relocate two villages in Jalpaiguri and Buxa Forest Division (Khunia in Jalpaiguri, and Bhutia Bustee in Buxa, both relocated after the areas were declared PAs) after repeated attempts from 1980 onwards. Re-location is now a stated management strategy for all North Bengal Protected Areas, though the Department underplays it.

In 1990, the MoEF, GoI, recommended that forest villagers and inhabitants of other types of settlements existing on forest lands should be conferred heritable but inalienable rights over their lands. In February, 2004 the MOEF issued a similar order, which was stayed by the Supreme Court of India. There was another MOEF circular (November, 2005) that recommends conversion of forest villages as per the 1990 guidelines.

All these recommendations/guidelines admit:

- The forest villagers can not have any legal ownership or any tenancy rights over their agricultural or homestead lands under the present system of forest villages.
- The villagers get denied their rights to just and equitable development, because the present arrangement of forest villages has no scope for developmental schemes.
- This situation violates the provisions and spirit of the Indian Constitution and denies citizenship rights to the forest villagers.

For further details see Ghosh *et al.* 2007.

In spite of the imposed restrictions, the tribal and other people in the forested landscapes sought to continue their traditional forest use, particularly in areas which the FD was not actively managing. However, as the FD shifted its operations to these areas the forest users were caught and punished or those living in became considered illegal occupants of the forests and were evicted.

Most became resigned to the official action but some would actively resisted, giving rise to numerous intermittent rebellions. Conflict between the state and forest peoples has a long history, including the Chaur rebellions in 1767-1800, Naik revolt (1806-16), Santal Hul rebellion in 1855. Conflict only intensified with the Forest Department reservations in the later 19th Century (Poffenberger, 1996, Bosu Mullick, 2007). When the rebellions abated, the resistance continued to flicker leading to a very hostile relationship between the people and the FD officials.

Note that the history of changed forest ownership in Bengal starts in the middle of the 19th century in North Bengal, Sylhet and Chittagong Hill Tracts in the east and Sunderbans in the south. West Bengal at the time was part of a very large province including what was first Bihar and now Jharkhand on the west and Bangladesh in the east. Bihar was first separated as a new province in the later 19th century and Bangladesh as a separate country (eastern part of Pakistan) in 1947.

3.2 Post independence

Although Independence in 1947 was a fundamental institutional reform for India as whole, in forested landscapes the momentum of colonial forestry institutions was maintained in a 'path dependent' fashion. Rather than being reformed, forest rights deprivations, even gathered pace as the forest institutions consolidated their grip.

By the time of Independence most of the North Bengal forests and the western Sunderbans had been declared as reserved forests. The next major element of injustice occurred in the decade after the country became free. At the time of independence, substantial forests were managed by the princely states and other private zamindars (landlords) in different parts of India. With the merging of the states with the Indian

Union, a decision was taken to take over all these private forests by enacting Acquisition Acts, in West Bengal the Estate Acquisition Act of 1953. The Act provided for compensation to the owners and to the customary users (Ghosh, 2007). But when the forest acquisition was completed and the owners received some compensation, the users were completely ignored.

Thus the newly acquired forests also deprived the forest fringe and forest dependent people in a summary fashion. Reservation occurred across a vast area of about 4,500 km² in South-west Bengal and a further 200 km² in North Bengal (particularly Baikunthapur Forest) as well as the tea garden forests were also acquired at this time.

Forest Rights Deprivation Scenario 4: Post Independence estate acquisitions

The West Bengal Estate Acquisition Act of 1953 ... There were a wide range of landowners who lost out, not just large *zamindars* but also *jotedars* with smaller plots.

The protected forest of south-west Bengal and a small portion of North Bengal forests were however declared 'protected' after independence and the searches of paper and publications indicate that the customary rights of the people were not properly investigated and customary rights were extinguished without compensation (Ghose 2007). This specific scenario of deprivation is prevalent across southern West Bengal. The blanket criminalisation of livelihood forest use created intense conflict between forest users and the Forest Department, which became acute in the 1960s and 1970s, with scores of resulting deaths on both sides.

The FD also expanded its Protected Area network in the post Independence period, creating a range of National Parks, Wild Life Sanctuaries, Tiger and Elephant Reserves, Biodiversity Reserves and so on, which now make up over a third (about 34%) of West Bengal's total forest area (GOWB 2004). These forests have been totally dedicated to wildlife and biodiversity and thus local people have been excluded and their forest use mostly prohibited thus depriving the people of the use of these large areas more or less completely.

During this time, there was a continuous attempt by the FD to evict the people who still inhabited inside the areas and to fence the area to keep the fringe people to use the forest in any manner.

Forest Rights Deprivation Scenario 5: National Parks and Sanctuaries

The state has many protected areas (5 National Parks, 15 Sanctuaries 2 Tiger Reserves and 1 Biosphere Reserve) which comprise 34% of the state forest area and 4.6 % of the land area.

These reserves have very stringent restrictions against un-permitted use. The most significant deprivations due to the restrictions in such a large percentage of the forest area are in respect of cattle grazing and firewood collection.

In order to mitigate the conflict these areas have created the WBFD received money from the GoI and foreign donors for the establishment of 'Eco-Development Committees' (EDC) to involve the local citizens in alternate livelihood activities. By 2002 99 EDCs had been crated around protected areas, including 26297 families (GoWB, 2002). Although the EDCs are funded for activities to make the people less forest dependent this does not appear to have been even moderately successful.

However whilst the Wbfd has been expanding its own conservation areas it has been destroying the vernacular conservation practices at the core of forest peoples' cultural traditions. Tribal groups had established many sacred forest groves for religious rituals. They also had cultural festivals around traditional annual hunts. The Government, claiming the forest to be the state property disregarded the age-old cultural connections between the people and the forest groves and considered hunting activities as illegal.

Forest Rights Deprivation Scenario 6: Destruction of Sacred Groves

Sacred groves (SG) are discreet patches of vegetation consecrated in the name of cultural deities or ancestral spirits of the Tribal people (Deb 2007). These groves can be from a few trees to many hectares. SW Bengal had many such groves and continues to have some at present. In North Bengal, most if them however have been destroyed.

The loss of sacred groves amounts to religious and cultural deprivation of the tribal community. The loss happened in a number of phases. In the first phase, it had been brought about by the enactment and implementation of the Permanent Settlement Act of 1793 in the then Bengal to increase cultivation area to generate more revenue first for the East India Company and later for the British Crown (Deb 2007). In the next phase, Indian Forest Act of 1878 was used to reserve the forest for the state which removed the right and concessions of the people including those in the groves. Working Plans from 1880s prepared by the FD for forest management especially of Reserved forests of North Bengal did not consider the groves as areas for protection and thus felled its trees and vegetation (Deb 2007). In the third phase, development work after Independence included mine establishment, industrial growth, irrigation projects that decimated many of these sacred groves.

The Constitution (Seventy Third Amendment) Act, 1992 and subsequent related amendments modified the Eleventh schedule of the Indian Constitution to include social forestry and non-timber forest produce under Panchayat control, and provided that the Gram Sabha (the lowermost unit of the three-tiered *panchayat* system in each district) will promote and develop them. This provision has not yet been adopted in the State.

Forest Rights Deprivation Scenario 7: State monopolization of forest product marketing

The West Bengal Forest Development Corporation Ltd. (WBFDC) has been entrusted with a monopoly on harvesting and marketing of timber, poles, pulpwood and firewood in all territorial divisions of the North and of harvesting operation of all *sal* coppice Joint Forest Management areas of the south.

The arrangement means that local people cannot bargain themselves to secure the best price for wood produce of the local JFM forests. A major problem is in respect of the sharing of the JFM revenues of from north Bengal and coppice forests JFM areas. The JFM members are expected to get 25% of the net revenue collected by sale of forest procure (e.g. poles, pulpwood and firewood) by the WBFDC. But the distribution of the share is regularly delayed by more than one year, and when it comes it is commonly surprisingly inconsequential compared to the relatively high value of the procure harvested. Because the calculations are opaque one can only speculate as to the reasons. Firstly the sum is net of WBFDC management costs which they can estimate in their favour. Furthermore the price negotiations between the WBFDC and private contractors are non-transparent and have aroused suspicion of being 'fixed'.

Whilst local people cannot collect, process and sell wood products, they are permitted to do so for Non Timber Forest Produce. Although they lack the legal rights to collect they are permitted to do so under administrative JFM agreements across the

South West of the state. Whilst there is no general monopoly on NTFP marketing in the state, local marketing cooperatives have been established for specific produce, ('LAMP's) although these are reported to be grossly inefficient. Under the 73rd Constitutional Amendment and subsequent PESA 1996, NTFP marketing is to be under the control; of the local Panchayat. However these have not yet been properly implemented in West Bengal

State Forest Report 2008-2009, West Bengal; Government of West Bengal; 2009

The Indian Constitution's Fifth Schedule made provisions as to the administration and control of certain schedule areas and tribes. This is supposed to protect the tribes and the scheduled areas from alienation. However West Bengal does not have any scheduled areas and so these protection have not applied, and could not be used to prevent unfair land appropriation to proceed unabated in tribal areas, or transfer of land of scheduled tribes by unfair means. Tribal land also has been appropriated in the name of economic, industrial and mine and mineral development.

Forest Rights Deprivation Scenario 8: Land acquisition for industry and 'development'

Land has become an increasingly desired resource by outside commercial interests, and the state has been seeking to encourage industrial development by facilitating the appropriation of land and its change of use, particularly in accessible areas.

There are major conflicts in peri-urban areas. An instance of alienation of forest area for alternative use leading to deprivation occurred in Durgapore, in Burdwan district in SW Bengal. A large forest area (of more than 70 sq.km.) was taken over and deforested for industrialization in the 1960s. The forest was partly degraded but was used by the local population for fuelwood collection, *tassar* cultivation, collection of other NTFPs, for grazing cattle and in general for livelihood. In a few years, all the forests were removed for construction of factories, townships and infrastructure with the local people moving away to elsewhere.

There are extreme negative consequences for expropriated villagers, and the manner in which land is appropriated has been leading to conflict. Furthermore outside political groups may be exploiting these conflicts for gain. .

Although, the status of forest ownership was changed through application of Indian Forest Acts and in many cases the residents and the users were dispossessed of their homes and disinherited of their customary rights, a large section of the deprived people continued to reside in the forest as they had no other place to go, by stealth or forcibly or by unofficial arrangements with the local state officials and used the forest for their subsistence and livelihood. Thus, a very large number of forest peoples, tribal and otherwise, in the country including in West Bengal with legitimate customary rights on forest land found them in course of time to be regarded as illegal occupiers of state forest property and illegal collectors of its produces.

The other demonstration of lack of submission of the people to forest reservation was continued occupation of forest land by many ST&OTFD. The Government reports that 22,850 hectares of forest land were illegally occupied by 2000 AD of which 8,007 hectares in 2000-03 and 1,368 hectares in 2003-4 were 'recovered' through evictions.

Forest Rights Deprivation Scenario 9: 'Encroachment and Eviction'

Another deprivation scenario is that of eviction of farmers who were considered to be encroachers to the forests associated with the selected villages. The state officials

managing the forest had been complaining and documenting for a long time that the villagers in the forest fringes, some tribal and others belonging to OTFD and caste Hindus are occupying / encroaching into the forest land who need to be evicted. From time to time till the FRA came into force in 2006 some of them have been forcibly or by persuasion evicted without compensation or rehabilitation.

There are extensive recent scenarios relate to eviction of people living, cultivating or grazing etc. of the forest land. As of June, 2002, GoWB reports 'encroachment' of 22,850 ha. of government forests. The same report says that the FD *recovered* 8007 ha. and 1368 ha. of encroached land in 2002-2003 and 2003-2004 respectively through forced evictions (GoWB 2004).

At the same time (between 1980-2003) the government approved forest land use diversion of an area of 7,903 hectares of forest of which 5,888 hectares were allocated for boulder collection and 2010 hectares of net diversion. These statistics show the attitude that the FD harboured in the matter of people and deforestation. While the FD did not accept what they considered to be local illegal occupation of forest land, they agreed to diversion for other users. Another important consideration related to this was the fact that compensatory afforestation was assumed and implemented to offset the loss of forest area due to diversion. In contrast, when the supposed-to-be occupier is evicted, they were not provided with an alternative means of livelihood. In other words, the evicted people were not rehabilitated. There are cases where village (one example is Baskanali in Ranibandh of Bankura District) was removed as FD considered the area occupied by the village as state forests.

Thus, in West Bengal due to state usurpation of ownership of forest land and management that precluded any use and ownership rights to the people, the people especially the poorest and the forest dependent people were largely deprived of the legal utilization of a large portion of the state.

In order to mitigate the intense conflict prevalent in the South West, from 1988 the Wbfd promoted Joint Forest Management, which allowed local people conditional use in degraded forests for small timber, NTFP and a portion of the cash income derived from sale of poles and larger timber. However rights were not accorded, and local people had no control over the management regime, which remained commercial timber rather than livelihood oriented.

Forest Rights Deprivation Scenario 10: Joint Forest Management

In the non-protection forest areas, the FD has introduced JFM with Forest Protection Committees (FPC) composed of the fringe villagers associated with the forest block. The total number of FPCs by 2002 was 3545 comprising 386753 members protecting and using 488095 ha of forests (about 38% of the forest of the state). The FPCs are more successful in SW forests of the state and members have been able to conditional use of the forest block attached to each FPC. We would state that this is a partial retrieval of the rights that the people have been deprived of in the past. This is however allowed by an administrative order, details decided upon by the state officials and is not covered by any legislation. The forest ownership, rights on the produce and decision taking reside with the FD. The privileges enjoyed by the FPC members are in fact concessions.

A major negative livelihood impact and latent rights deprivation has come from the changing of forest species mix across the South West are, and the forest department has sought to spread fast growing species in tree plantations.

Forest Rights Deprivation Scenario 11: Afforestation of Degraded Land in SW Bengal

Another form of deprivation came about when the FD started planting and afforesting degraded and denuded areas at a rapid pace especially in SW Bengal. These areas sparsely vegetated with local species, grasses and shrubs that were extensively used by local community for a variety of purposes including collection of firewood and cattle grazing. The FD instead of rehabilitating the local species, planted them with Eucalyptus and a few other species for commercial management that have no household uses. Thus the people for whom these areas were the last resort for specific livelihood requirements (as the government forests were restricted from use) were also alienated.

The result of all of the above deprivations have been of enormous significance: for more than a century, the government has held on to the forest as their property and considered the use of the forests by the local people as unauthorized and the users liable to prosecution. Forest dependent people were obliged to continue using the forest for subsistence, but whilst doing so they were under ever-present threat, harassment, bribe seeking, and other forms of mistreatment including violence and killing.

Such antagonism between the government and local people became a common feature in forest areas, more so in South-western Bengal from 1950 onwards but in North Bengal as well in the present time. The manifestation of the antagonism was varied. From the government side, the vigilance by the forest guards and their supervisors quite often resulted in the arrest of the local people collecting firewood and NTFP from the forests. Some of the arrestees were produced to the court for prosecution. Others were released compounding the offence with fine allowed by the Indian Forest Act. In other cases the offenders were released with unofficial considerations; yet in other cases the two sides came to violent clashes. We find according to government records that 5,032 persons were arrested in 1996 -97 of which 106 were convicted in court. The number of forest personnel assaulted during this period was 13. During 2003-04, respective numbers are 44,82, 226 and 5 respectively (GOWB 2004). These cases are not necessarily related to the local people alone but also to the gangsters on the rise. There is no record of the number of people injured or assaulted by the officials.

To an extent this conflictual relationship has been mitigated, (although not resolved) by JFM in South West Bengal. However in the North this dysfunctional relationship seems to persist. The villagers, who were known to be peace loving and benign in the past, perceive that the FD has harassed and oppressed them, and kept them in a subjugated position, even though for long periods of time they had actually assisted the FD in forest conservation, plantation, development and protection. Large numbers are unemployed and suffering, and most seek in non forest work. They therefore have become extremely anti-FD, relations are at an all time low, and continuing cases of shootings, punishments and attempted evictions inflame them.

Forest Rights Deprivation Scenario 12: Arbitrary punitive state coercion

For example, in Buxa Tiger Reserve, (where the 28 mile Buxa Road study village is situated), a Public Hearing conducted in April 2005 (NESPON, 2005) statements and evidences adduced before the Board brought to light gruesome stories of torture and murder before the Board that included the Executive Chairman of West Bengal State Legal Services Authority. (Para 26, NESPON, 2005)

"The Forest department has adopted coercive methods to compel the forest dwellers to leave their dwelling place....."

"Tortures and atrocities are being perpetrated by the officials /employees of the forest department upon the forest dwellers. The forest department has adopted coercive

methods to compel the forest dwellers to leave their dwelling places and to move elsewhere to an unknown destiny."

"The Government is maintaining silence over the plight of the forest dwellers."

3.3 1970s on: Left politics and problematic decentralisation

Due to persistent inequity in landholdings after independence, frustrations led to increasing agitations around land reform in the state by the late 1960s, including the emergence of ultra-left quasi-Maoist 'Naxalite' movement. Tribals and others became involved, and 'forest village' inhabitants also agitated during this period against the Forest Department's practice of engaging the villagers free for *begar* bonded forest and sometimes personal work.

West Bengal assumed a unique political character within the Union from 1970 onwards, as the communist party became the dominant faction of a ruling coalition of left parties, which has persisted to this day. Their initial achievements in respect of economic improvement of the tribal and the poorer sections of the community was fairly good, symbolised by the Bargadar Act that allowed the share croppers some stability in utilization of agricultural land that they were cultivating on behalf of owners. Through Land Ceiling provisions, 'excess' land holdings were taken over by the state and distributed amongst the poor and landless people.

The state also established decentralised government through Panchayats, one of the earliest in the country, and continued to ensure their regular elections. The Panchayats were provided management powers with regards to many issues that the local rural people were concerned with. The state was a pioneer in the matter of experimenting with and establishing Joint Forest Management during the 1970s. These actions were no doubt somewhat supportive of the poor and landless people and surely of some assistance to their economic situation.

However, while the above records were significant, the local politics and its influence on the local population suffered from a grievous problem: the gradual usurpation of powers by the elected party by an oligarchy of leaders and their local associates to decide on every local substantive issue. This oligarchical control through party cadres, still continuing, stifled much of the democratic potential of decentralisation, particularly as checks and balances in programs and their implementation did not provide proper oversight to the bureaucracies actions.

This malady also became manifest in forest administration. Between 1970 and 1990, the people were offered hardly any rights of the forest produces on which their livelihood depended. Only around 1990 by which time the forest protection by the FD reached its nadir, JFM was finally scaled up to encourage with incentives the forest dependent people to participate in forest protection. This could have meant transferring powers to the local people. Nevertheless, the FD was most reluctant to do so and the Party in power along with its local panchayats collaborated with them. Thus, there was no change in the forest politics, the people and the FD remaining more or less separated with the FD playing the leaders' role and the people as the 'led' constituent (Banerjee 2007).

The ruling government coalition of 'left' parties formed 1980 onwards majority of the elected *panchayats*. Few of them however interfered directly in the forest management or governance. Even when the JFM came into being in 1990, the Panchayats which had representatives in the executive committee, left it undisturbed except in odd cases to the Village Forest Protection Committees (FPC) to handle the forest management under the leadership of the forest department officials (Banerjee 2007).

Until about 1965, West Bengal had been a leading states in respect of industrial development and growth. Thereafter, it started to lose its dominance as old industries declined, developing industries relocated to other states and little new industrial investment occurred. This resulted in rising unemployment, people losing their factory jobs and returning to villages for subsistence. The pressure on the forests increased substantially not only for regular subsistence collection of its produces and local sale but also timber smuggling, which became prolific, particularly in the forest boundary areas of North Bengal.

The tea industry went into declined during this period. It had employed large numbers of people, many of whom were located in tea garden villages, and with the downturn many of these people became unemployed and fell back on the forest resources of the area as a 'safety net', leading to illegal tree cutting and the poaching of wild life.

In spite of industrial downturn, the state recorded a better than average economic growth of India in the post independence period. The increase was mainly due to improved agricultural production and enhanced service sector. The forest sector did receive investment in larger tree planting, commercial felling of larger forest areas generating increased revenue and employment but did not register any significant leap in its contribution to the state economy.

In the Sixties and to a certain extent in the early Seventies, some political leaders during election time encouraged the local residents to occupy forest land without permission to garner their votes. One or two cases of large scale unauthorized occupation of forest land in North Bengal in the sixties and in Sunderbans in the eighties were also reported but these encroachments were promptly evicted by the FD.

We thus see that politics of resistance by the people could not play any role in regard to forestry to change in any way a colonial national legacy of monopoly on the forests. After independence also the government forest department kept the same policy, indeed any argument to the contrary, namely restoring rights to the people, was treated with hostility as if interference of state business. The 'contrary' people outside the forest department were considered ignorant and their proposal, a pathway to forest destruction. The strong belief persisted with the government that the forest can be only managed by the state with protection carried out by policing. With introduction of JFM, the government provided some privileges but the administration of the forest continued to stay with the FD. There has thus hardly been any change in the administration and governance since the colonial period, and only marginal if any change in the state's relationship with citizen's of forest landscapes.

CONCLUSIONS

This paper has detailed the critical juncture at which the colonial regime established forestry institutions, causing rights deprivations. The forestry institutions have shown extremely rigid 'path dependency' in maintaining themselves and limiting reform, and extending their ambit even after Independence. Consequently, the extremely dysfunctional pattern of forest rights deprivations has persisted to this day, and led to consequent poverty across the forest landscapes of the state.

Livelihood practices of the forest dwellers and forest adjacent populations in the post-independence period was substantially different from how they were using the forests in the 19th and 20th century. In the earlier period, the usages of the community as groups and individual families in the community consisted of living, hunting, marginal cultivation, shifting cultivation and the like which basically contributed to the largest portion of their livelihood needs. Subsequent to 1947 however when the reservation of forests continued, the inhabitants of the state's forested landscapes were partly dependent on the forest but also on other occupations including sedentary agriculture, local wage income and other wage incomes by migration in a part of the year. Nevertheless the range of rights deprivations continues to severely affect their food security and livelihood conditions

It is this complex of forest rights deprivations which the Forest Rights Act 2006 seeks to redress. In our subsequent paper we examine the extent to which this is occurring.

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