

**INCORPORATING STAKE HOLDER  
PERCEPTIONS IN PARTICIPATORY FOREST  
MANAGEMENT**  
*THE LAW AND POLICY CONTEXT*

**FINAL REPORT**



**ENVIRO-LEGAL DEFENCE FIRM**

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## **INCORPORATING STAKE HOLDER PERCEPTION S IN PARTICIPATORY FOREST MANAGEMENT: *THE LAW AND POLICY CONTEXT***

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### **EXECUTIVE SUMMARY**

#### **Introduction- Project context and objectives:**

The mandate of the project on ‘Incorporating stake holder’s perception in participatory forest management’ was to study and devise ways to incorporate the perceptions of diverse stakeholders in the forest sector in Harda district, Madhya Pradesh, India. In the present project a diverse and multi specialist group sought to analyze the sources of conflicts, so that a clearer understanding of stakeholder interaction in the context of participatory natural resource management can be developed. The analytical framework for understanding perceptions in PFM stipulates that the stakeholders’ perceptions and their consequent definition of the problem situation is a function of three components of current knowledge: knowledge of change, knowledge of theory and knowledge of policy. This report presents legal analysis in an attempt to validate perceptions from the legal standpoint. The hypothesis of this analysis is that it is the stakeholders’ current knowledge or the lack of it in terms of policy and knowledge of change in policy and law that shapes perceptions. This report thus attempts to draw linkages between stakeholders’ perceptions and law and policy framework.

In order to understand and incorporate stakeholders’ perceptions in participatory forest management, it was pertinent to assess the perceptions from the law and policy standpoint both at the source as well as the impact level. Diverse perceptions both at the source and the impact often result in conflicts. And it is our assessment (or assumption?) that every conflict, whether manifest or latent definitely falls within a legal paradigm.

It is in the above background that the present study has been undertaken, where first it comprehensively lays down the law and policy context, thereby setting the larger study where perceptions emerge in participatory forest management. An attempt has been to find out and highlight the compatibility or inconsistencies in the legal regime with the concept of participatory forest management in Madhya Pradesh, India.

In the above context it then takes perceptions of various stakeholders and attempts to analyze whether such perceptions have roots in diverse understanding of the law and policy regime or have their source in the lack of knowledge of change of law and policy framework or there are some conflicts in the legal arena which are shaping perceptions in the context of participatory forest management.

#### **Methodology and Scheme of the Report**

The methodology adopted in the study included a desk based legal research & analysis of the national and the state legal framework<sup>1</sup> on forestry, and a field based legal analysis of

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<sup>1</sup> The legal framework or regime here has to be understood in a broader sense, including laws, policies, rules, regulations, government circulars, orders, notifications as well as the judicial pronouncements.

all identified stakeholders' perceptions<sup>2</sup>. Accordingly the paper is divided into two main Parts. Part, A which looks into the contextual background and description of law and policy frame with respect to Participatory Forest Management. It details the legal regime impacting forestry sector such as Indian Forest Act, 1927 as is applicable to the state of Madhya Pradesh<sup>3</sup>, Forest Conservation Act, 1980, specific forest produce laws including those dealing with trade related aspects, Panchayats laws and their interface with natural resource management and joint forest management in the state of MP.

The second part examines the perceptions of various stakeholders on certain important issues related to forestry management with a close legal eye. Certain widely held perceptions clearly conflicting with law, both at manifest & latent levels, have also been analyzed, against the backdrop of past and present legal regime.

### **Legal Regime on Forests and Participatory Forest Management- The Conflict Within:**

The analysis of the legislation related to forestry, especially in the state of MP reveals that there is a fundamental variance in the primary legislation on forestry management. The Indian Forest Act, as applicable to the State of M.P, which in its scheme does not have any space for community participation in forestry management. Its entire focus is on commercial utilization of forests and forest produce, while strengthening the state control over forests and restricting the uses by local communities. This certainly creates a fertile ground to perpetrate conflicts, which may arise due to the fundamental conflict in the mandates of the JFM Resolution and the Law on forestry. Thus for example while the forests under the IFA are classified in three categories Reserve forests, Protected forests, and Village forests,<sup>4</sup> on the other hand the present JFM resolution of the State uses a totally different criteria for classifying forests; ecological and geographical. Conflict is thus bound to occur due to overlapping jurisdiction of different institutions in the forestry sector over the same land.

Another crucial development, which took place, was the 42<sup>nd</sup> amendment to Constitution of India which brought "forest" under the concurrent list which simply means that 'forests' which was hitherto totally under state control was shifted to a dual control of both the state and the Central Government. Both the Governments were thus competent to legislate on the subject of 'forests'. Consequently the Forest Conservation Act (FCA) was enacted in 1980, focusing primarily on the conservation of forests. The Act accorded prominent role to the central government in forestry management across the country by making approval of the central government mandatory for any use of forestlands for non-forest purposes and de-reservation of forest areas. Thus while on one hand the legal regime became more stringent, on the other the community participation in forestry

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<sup>2</sup> The Legal team has accompanied the field teams in some of their field visits. In addition to that, partner organizations' reports have been used to cull out perceptions of different stakeholders on various issues.

<sup>3</sup> Note that in India the primary law on forests is either the Indian Forest Act with respective state amendments in a given state context or separate State Forest Acts. Even where there are State Forest Acts they necessarily have to conform to the mandate of the Indian Forest Act. The State of M.P has adapted the Indian Forest Act with certain modifications; in accordance with state priorities.

<sup>4</sup> The category of village forests doesn't exist in the state of MP.

management was not adequately addressed in the laws on forests. Even after the advent of National Forest Policy, that is considered the formal basis of joint forest management in India, no consequent amendments have been made in the Act.

Similarly other important community rights frameworks such as *nistar* underwent a tremendous change. The rights to bonafide use of forests products admitted as rights in revenue records were carefully diluted to privileges. Subsequent enactments such as MP *Disposal of Timber and Forest Produce Rules, 1974* although recognize the legal basis to *nistar* but regulated it as privileges. Subsequent Nistar Policy and the JFM resolutions of the State of MP, have further diluted these privileges to concessions and favours. Thus there has been a systematic erosion of *nistar* from a “right” to a “concession”, being subject to the availability of the material. Further the “facility” has been provided only to the villages lying within the periphery of 5 kms from the forests. The present JFM resolution further makes entitlement to *nistar* subject to the discretion of the Divisional Forest Officer (DFO) and it even empowers the DFO to deprive any villager of the facility to derive *nistar*. Need less to add that such systematic erosions of rights are bound to give rise to conflicts in terms of access and use of forest products for bonafide community use.

Another feature of forests in MP, which has serious legal implications in terms of rights of communities, is the existence of “forest villages” within protected and reserve forests. These are administrative categories, not falling within the fold of revenue lands and are thus deprived of various revenue benefits. The *MP Forests Village Rules, 1977* guarantee every family in such villages 2.5 hectare of land on a *patta* or lease for 15 years. Madhya Pradesh is the only state in the country, wherein Panchayats can be established in forest villages also<sup>5</sup>. A closer look at the specific forest produce laws reveal State’s attempt to centralize the control over natural resources, especially forest produces. The specific Legislations such as the *M.P Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969*, *M.P.Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964*, establish State’s monopoly over the *tendu patta* and certain other forest produce in the State. However with respect to transportation of forest produce for bonafide domestic purposes, these restrictions have been relaxed to a certain extent. The State’s role in overall management and control in forestry is further strengthened by the *MP Van Upaj (Vyapar viniyaman) Adhiniyam* in respect to trade of forest produce, including fixation of prices, and *Transit (Forest Produce) Rules, 2000* in respect to transit of forest produce, though certain relaxations have been made to the local community.

Another land issue, the *Orange Area* land dispute is arguably the most serious issue with policy and legal implications on forestry in the state of M.P. It is a result of lack of coordinated functioning amongst the Forest Department and Revenue Department, confusion in understanding of the *Zamindari/ Malguzari Abolition Act, 1950* and State Land Revenue Codes and faulty adoption of administrative and political mechanisms, to give effect to the rights of the people. Lack of co-ordination, has resulted in claims,

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<sup>5</sup> This is because the definition of village in M.P. not only includes revenue village but also forest village.

counter claims as this has led to the fate of about ten lacs families who are predominantly tribal people and who eke out a living from the forests, hanging in uncertainty due to the negligence on the part of the States to resolve the contentions on the Orange Areas and its boundaries and jurisdiction.

Add to this the difference and erroneous interpretation of the forest boundaries especially in the light of the Supreme Court order (dated December 12<sup>th</sup>, 1996 in C.W.P. No. 202 of 1995) relating to the definition of forest, which is resulting in totally exploitative steps to evict tribals as the *Pattas* given to this land today stand cancelled and thousands of poor and vulnerable people face the prospect of eviction and destitution not to mention the loss of *nistar* rights.

In recent years, perhaps the biggest development especially in the context of M.P. is the advent of 73<sup>rd</sup> Amendment to Constitution, which marked the beginning of local self-governance, while granting important role to local institutions in management of natural resources including forests. Although M.P. is hailed as the front runner in the decentralization process an analysis of Panchayat laws in MP and its subsequent amendments clearly show that the Panchayati Raj Institutions (PRIs) do not play much role in management of forests, despite being the mandate of the 73<sup>rd</sup> amendment. Although there are enough legal spaces available, which can be utilized to empower the Panchayats in this regard, there seems to be a clear lack of administrative will in this regard.

The report also highlights the necessity of drawing the linkages between the PRIs and the JFMCs, as there exist clear conflicts regarding jurisdiction, power and role of the two institutions in forestry management. The issue assumes greater significance as the two are on different legal footing, while PRIs are constitutional bodies, JFMCs derive their origin through policy, which has a weaker legal support. The report explores the existing spaces in the law as well as the policy, which can be utilized to strengthen the relationship between the JFMCS and PRIs and thereby making PFM more relevant from the community perspective.

The analysis of the trends of judicial interventions on forestry issues, having implications on the PFM, shows that the Courts have intervened liberally. The Court has broadened the concept of “forests” by assigning it the dictionary meaning and making issue of ownership immaterial. It has resulted in extending the ambit of FCA. The Courts’ have also taken a stringent action of the issue of encroachment over reserve forests, thus adversely affecting the process of participatory management.

The present report also studies the transition in JFM in the state of MP and its co-relation with the central government guidelines passed from time to time. The State has attempted to bring more and more forests under the JFM, however it has not used legal criteria to classify forests. The State has also attempted to make JFMCs more inclusive, as now the entire gram sabha constitutes JFMC’s general body. It has special provisions with respect to participation of women, and disadvantaged groups of the society and user groups including Women Self Help Groups (WSHGs) etc. However actual impact of such

provisions needs to be explored. The report also analyses MP JFM on factors such as community participation, benefit sharing mechanism, conflict resolution mechanism, and role of FD. The MP JFM comes out to be weak and inadequate on these issues. Further certain grey areas with respect to legal issues in JFM have also been explored, on which JFM seems to be deficient.

### **Field Perceptions and PFM:**

The chapter on legal validity of perceptions reveals the ground level conflicts as emerging from the stakeholders' perceptions. The major areas of conflicts center around *nistar* benefits, encroachment, conversion of forest villages into revenue villages, panchayat-JFMC interface, and various other issues relating to JFM such as transparency, accountability, benefit sharing and conflict resolution mechanisms. On certain issues for example forest department -community relationship, divergent perceptions were seen across the different stakeholders, while on certain issues common perceptions were found. Thus for example there is a feeling that availability *nistar* has certainly been reduced. The process of legal validation of perceptions culminated into a list of widely held perceptions yet completely in conflict with the law. These range from knowledge about financial powers, importance of quorum, the process of membership, the legal impact of other village level user groups and institutions, fair wages, the formal power relations, rights to land, validity of a lease and many such issues. Diverse perceptions on these issues have been analyzed in the backdrop of a socio-legal milieu.



## Glossary of Terms

Adhikaar Abhilekh	Record of rights
Begar	The practice wherein the Forest Department gets work done by the local community without paying them for the same.
Compounding of offences	Compounding of a crime consists of the receipt of some property or other consideration in return for an agreement not to prosecute the one who has committed a crime. There are three elements of this offence under any typical compounding statute (1) agreement not to prosecute (2) knowledge of the actual commission of a crime and (3) the receipt of some consideration.
Dense Forest	All lands with tree cover of canopy density of 40 percent and above.
Eco Development Committee	A committee constituted for the forest areas within or around national parks and wild life sanctuaries so as to obviate pressures on them.
Forest Protection Committee	A committee constituted, under the JFM programme, to safeguard and protect the dense forests, which are exploited through regular forestry works.
Forest village	A Village community established in a reserved forest or protected forest for the purpose of maintaining a supply of local labour.
Forest Cover	All lands with a tree canopy density of more than 10 per cent, though they may not be statutorily notified as forest.
Forest Type	A category of forest defined generally with reference to its geographical location, climatic and edaphic features, composition and condition
Gram Sabha	Collectivity of all adult villagers in a village.
Janpad Panchayat	The Panchayat Raj Institution at the block level.
Janjatiyon	Scheduled Tribes
JFM	The practice of management of forest resources jointly by the Forest Department and the local communities which would entitle them in sharing of usufructs in lieu of their participation in protection and management of forest resources.
Lok Vaniki	Social forestry.
Nistar	Usufructory rights of the individuals living in the vicinity of the forests, over the certain forest produce in the public lands.
Open Forest	All lands with canopy density between 10 to 40 percent
Patta	Lease of land.
Paidavaar	Produce
Panchayat Institutions	Raj The three tiers of local self-government system, at village, block and district level.
Protected Forest	An area notified under the provision of Indian Forest Act

	having limited degree of protection. In Protected Forests all activities are permitted unless prohibited
Reserve Forests	An area notified under the provisions of Indian Forest Act having full degree of protection. In Reserved Forests all activities are prohibited unless permitted.
Recorded Forest Area	All lands statutorily notified as forest, though they may not necessarily bear tree cover.
Sarvajanik Sampada Scrub	Public property. All lands with poor tree growth mainly of small or stunted trees having canopy density less than 10 percent.
Scheduled Areas	Tribal Areas so declared under Art 244 (1) of the Constitution of India.
Shashwat pattas	Perpetual leases
Unclassified Forest	An area recorded as forest but not included in Reserved or Protected Forest categories.
Vriksh	Tree.
Village Forest Committee	A committee constituted for the forest areas, which have degraded and needs to be rejuvenated through soil moisture conservation and plantation.
Van upaj	Forest produce
Vyapar Viniyam	Regulation of Trade
Working Plan	A written scheme of management of forests, prepared by the Forest Department.
Working Circle	A forest area (forming whole or part of a working plan area) organized with a particular objective and under one silvicultural system and one set of working plan prescriptions. In certain circumstances working circles may overlap.
Zilla Parishad	Panchayati Raj Institution at the District level.

### **List of Abbreviations**

CCF:	Chief Conservator of Forests.
CF:	Conservator of Forests.
DFO:	Divisional Forest Officer
EDCs:	Ecodevelopment Committees
FD:	Forest Department.
FCA:	Forest Conservation Act, 1980
FSO:	Forest Settlement Officer.
FPCs:	Forest Protection Committees
JFM:	Joint Forest Management
JFMCs:	Joint Forest Management Committees.
IFA:	Indian Forest Act, 1927
PFM:	Participatory Forest Management.
MFP:	Minor Forest Produce.
MOU:	Memorandum of Understanding.
PRIs:	Panchayat Raj Institutions.
PESA:	Panchayats (Extension to Scheduled Areas) Act, 1996
UT:	Union Territory
VFCs:	Village Forest Committees.
WSHGs:	Women Self Help Groups.

## CHAPTER –I-

### INTRODUCTION

The mandate of the project on ‘Incorporating stakeholders’ perceptions in participatory forest management’ was to study how to incorporate the perceptions of diverse stakeholders in the forest sector in Harda district, Madhya Pradesh, India. A diverse and multi specialist group sought to analyze the sources of recent conflicts, in an attempt to provide a clearer understanding of stakeholder interaction in the context of participatory natural resource management. One of the key purposes of the Project was to improve livelihoods of the poor- developed and promoted in the specific context of policy and institutional arrangements for joint forest management in India. It is in this light that the legal and policy regime needs to be looked into some detail.

#### *1.1 The Analytical Framework for Understanding Stakeholder Perceptions in PFM and Its Relation with the Conceptual Frame for Legal Analysis*

The analytical framework for understanding perceptions in PFM stipulates that the stakeholders’ perceptions and their consequent definition of the problem situation is a function of three components of current knowledge: knowledge of change, knowledge of theory and knowledge of policy. The present legal analysis is an attempt to ground the legal validity of stakeholders’ problem definitions in the existence of these three types of knowledge (with regard to law).

It is our belief, that knowledge of law is differently diffused among different groups of stakeholders. In the case of the Forest Department, for instance, this knowledge may be closer to the ‘technical’ changes in the legislation (varied, of course at different levels within the department). On the contrary, at the village level, such knowledge is assumed to be born from the implementation of the law rather than its mere existence. At the same time, the traders’ perceptions may be restricted to those issues that are directly related to **marketing or transit** of forest produce. Hence, the sources for the ‘legal validity’ of their perceptions may be different.

To draw this relationship between stakeholder perceptions and law, the first step is to comprehensively review all ‘legal’ documents<sup>6</sup> that in any way impact forestry management in Madhya Pradesh. These include the Indian Forest Act, as applicable in Madhya Pradesh and the rules made thereunder, JFM resolutions and orders, legislation related to *nistar* and *nistari* rights, laws governing trade in forest produce and the rules as well as the laws on panchayats or decentralized governance and the rules made under it.

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<sup>6</sup> The role of courts in forestry management practices cannot be over-emphasised. It was therefore felt that a legal study should also incorporate the judicial viewpoint and its role in stakeholders’ definition of the problem. The scope and the definitions of, law have been expanded to accommodate this viewpoint

A critical examination of these is expected to throw light on:

- The conflict and concurrence within the legal frame governing forest management in MP;
- The changes that have taken place in stakeholder relationships with the resource.

Thereafter, 'ground-truthing' will aid in the establishment of *actual* changes in the stakeholders' relationship with the resource and with each other. It is believed that these changed equations are responsible for several 'issues' or perceptions in PFM.

In fact it is important to realise that one of the key elements in understanding the stakeholder perceptions is to assess the legal validity of these perceptions both at the source as well as the impact level. It is also pertinent to assess both the cause as well the impact of conflicts, which are of legal nature. Often conflicts in the legal arena are addressed and assessed when they are manifest. This is where stakeholder perception needs a special emphasis from the legal perspective. This is also necessary because latent as well manifest conflicts fall within a definitive legal paradigm whether understood from a layperson's perspective or not. In the context of forestry management this becomes more necessary as the legal framework on forestry has undergone tremendous change both from the policy as well legal stand point. Coupled with it is the State dynamics especially the State laws and Rules on forestry, which deserves separate attention.

One of the attempts in this part of the study is to peruse the laws that have governed the changes in status of land and consequent changes in land use and associated rights, and the impact of these changes on various stakeholder groups in light of forest management, (See Chapter on Field Perceptions) for example, how has the law converted nistar from a right to a privilege and now, to a subsidy, and the impact of this change on peoples' perceptions.

Going further, the analysis explores the legal validity of stakeholders' perceptions on PFM, as gleaned by the field team and the other project partners. An attempt is made to determine the extent to which these perceptions are grounded in changes in the legal framework. Through this exercise we will be able to trace the origin of the perceptions to:

1. Knowledge of change – if the perceptions are a result of the ground level changes that have resulted from the activities involved in the implementation of legislation.
2. Knowledge of theory – if the differential process of reasoning, and experiences are responsible for the differential perceptions of stakeholders on PFM issues that have the same legal source.
3. Knowledge of policy – if the perceptions are a direct result of the changes in policy/law, irrespective of the extent to which these changes are implemented and whether changes in the law, on their own, affect stakeholders' perceptions. Also, whether the involvement in policy decision-making has impacted perception development in any way.

## 1.2 Context and Rationale

In the context of the present study and a review of the various reactions on the alleged conflict situation in Harda, several legal phrases have been used by various stakeholders. It is pertinent to clarify these legal terms so that a common understanding is developed which minimises interpretations, which may be biased due to discipline loyalties. The concept of *nistar* or distinction between ‘forest villages’ and ‘village forests’ sometimes escape attention. The laws relating to minor forest produce, the implications of JFM orders, the agreements, if signed, and their validity as true contracts are all matters of strict legal scrutiny. The issue of forest tenure as well ancestral domain or property rights are critical to understand if perceptions have to be placed in the correct legal understanding. Similarly the distinction between rights and concessions especially in Reserve Forests also needs to be understood.

Perhaps the most important development in the polity of Madhya Pradesh is the evolution of the Panchayati Raj especially the new Gram Swaraj Act of 2001. There is a constant linkage of various user groups including JFMCs with lowest tiers of the Panchayati Raj system, the Gram Sabha. A number of Rules under the Gram Swaraj Act have also been enacted to operationalise the Gram Sabha in a true democratic spirit. The specialised Committees on Forests under it cannot be undermined as it will take a prime position once functions, functionaries and funds are devolved to these basic units of governance. This is coupled with the fact that Forest Fringe Development Agencies are also taking root at the same time and their linkage cannot be missed as such agencies have to operate within the overall framework of the Gram Sabha. The Lok Vaniki on non- forestlands presents a new legal challenge. The distinction between non-forest land and revenue land has to be made or at least the scope of such non- forestland has to be determined.

Finally, another important component that is often overlooked but which can be effective in conflict problem solving are the interpretations of the Courts on all the issues that have been illustrated above. The Role of the Supreme Court especially in the context of Madhya Pradesh has been very significant in the recent times. Also the role of High Court of Madhya Pradesh needs to be taken into account to give the latest position of judicial thinking on various laws on forestry and related subjects operating in Madhya Pradesh so as to facilitate the legal mapping in its most recent form.

Such a legal mapping as would be demonstrated in the report would be significant in this research in two ways:

Firstly, it informs and clarifies the legal complexity that exists in all stakeholders after a rigorous legal analysis. This would in turn help understand their viewpoint from the correct legal standpoint. Secondly, a field based legal analysis of this nature then takes each conflict situation or perspective of each stakeholder to fit into the nature and legal validity of the perception. This would be instrumental in resolving the conflicting perceptions in case the research project includes conflict resolution within its mandate at a later stage.

### *1.3 Methodology:*

The methodology adopted in this research process from the legal stand point is in two phases:

- 1) A desk based legal analysis of the national and the state legal framework on forestry. This includes all laws, regulations, rules, orders and circulars issued on forestry in the State of Madhya Pradesh. The policy and legal documents have been collected from various sources including libraries, archives, district record rooms, forest divisions, law institutes, Supreme Court library and high court library, publications divisions, public relations department, State Secretariat and Department of Forests.
- 2) A Field Based legal analysis with all identified stakeholders to understand their position from a legal standpoint to assess the legal validity of each perception. The Legal Consultants have accompanied the field teams in some of their field visits. Apart from this all the participant organizations have also shared their findings with the legal consultants so that the remaining villages or new findings in villages that have been visited are also assessed and reviewed.
- 3) Another significant component has been to train the field team on legal aspects and periodically clarify the legal issues or the perceived legal issues that have emerged from the field. A sample of questions and questionnaire that were developed is appended as **ANNEXURE I**

## CHAPTER- II

### THE LEGAL FRAMEWORK ON FORESTS IN MADHYA PRADESH

#### 2.1 Introduction

An exercise to ascertain the precise legal validity of specific stakeholders' perception is subject to good understanding of the legal framework on forestry management. This chapter therefore deals with the laws on forestry while seeking to analyse its linkage with the principles and practice of participatory forest management.

The two most important laws on forests are the Indian Forest Act, 1927(as applicable in the State of Madhya Pradesh) and The Forest Conservation Act, 1980. The former is the colonial Act brought by the British. The mandate of this Act was to utilize forest commercially and therefore the conservation aspect was missing. It was only after the forty-second constitutional amendment Act when the forest and wildlife protection was brought under the concurrent list<sup>7</sup>, the Forest Conservation Act, 1980 was enacted to bring in the conservation approach within the legal regime.

#### 2.2 Indian Forest Act, 1927 (as applicable in the State of Madhya Pradesh)

The Indian Forest Act, 1927 is a central Act. The subject "forests" falls under the concurrent list of the constitution. That means both Centre as well as the States can legislate on it. Thus the State of MP, while adopting IFA and subsequently has made some modifications and amendments in the Act, which are applicable specifically to it. Thus in MP it is this modified version of IFA that governs the forestry sector<sup>8</sup>. The preamble to the Act states that the Act seeks to consolidate the law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce.<sup>9</sup>

A useful starting point for a closer examination of Indian Forest Act, 1927(as applicable in the State of Madhya Pradesh) would be to understand the most important definitions under the Act with the aid of interpretation of these definitions by the Courts.

#### (i) Important Definitions/ Terms

**Forest-** In the Indian Forest Act an initial striking feature is the absence of any definition of forest or forestland. It has been emphasised time and again that there is a need to develop the definition of forests. Lack of any such definition has wide implications at the

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<sup>7</sup> There are three list of subjects provided under the Indian Constitution. The Union list provides subjects under the control of the Union Government, the State list provides subjects under the control of respective State Governments and the concurrent list provides subject over whom both the Union and State Government have control and in event of any dispute between the two the law made by the Union Government shall prevail.

<sup>8</sup> Since forest falls under the Concurrent list of the Constitution, both centre as well as the State can legislate on the subject. IFA, 1927 is a central Act and therefore the States can make amendments in the legislation while adopting it.

<sup>9</sup> The legal connotation of a consolidating Act should not be missed. It has been authoritatively held that "the distinction to be drawn between statutes which codify and those which consolidate the law, is that in constructing the latter *there is a presumption that laws was not intended to be altered even if the words used are not identical*; but this presumption must yield to plain words to the contrary". Halsbury's Statement of Law Vol. 36, Simond's Edition at pg. 406



field level. The attempt of the Supreme Court to assign a meaning to the term ‘forest’ as per the dictionary meaning has seen a spate of interventions in the court due to its wide ambit. Forest, as per the above said definition, may include land, which might be private, common pastureland or cultivable land<sup>10</sup>. The Supreme Court in the ongoing Godavarman Case<sup>11</sup> in its Order dated December 12 1996 stated, “the word ‘forest’ must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act (FCA). [The FCA is discussed later] The term ‘forest land’, occurring in Section 2 of FCA, will not only include ‘forest’ as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership.” On a close examination of this order it is interesting to note that forestland includes the definition of forest apart from any area that may be recorded as forest in the government record irrespective of ownership.

**Forest Produce-** The definition of Forest Produce has given rise to numerous conflicts under the Indian Forest Act. The Act puts forest produce into two categories, those produce, which will always be treated as forest produce wherever found and those which could be forest produce only when they are found in or brought from forest. The forest produces as per the above categories and mentioned in the Act for the State of Madhya Pradesh are listed in Boxes 2.1 and 2.2<sup>12</sup>. The State of Madhya Pradesh brought in an Amendment<sup>13</sup> adding to the existing list of forest produce. Notably this included *Standing Agricultural Produce*, ‘when found on or brought in from a forest’.

At the national level the ambit of the definition of forest produce and regulation of its transit are the two primary causes of conflict that have reached the courts. The problem associated with the scope of the definition of the forest produce needs to be appreciated in the light of the fact that the definition is not exhaustive but inclusive. Generally speaking, the test appears to be that any article or thing, which is ordinarily found in forest, shall be treated as forest produce. It is apparent from the definition of forest produce under the India Forest Act - that applies to all the States subject to their own modifications and amendments - that besides the produce of forest, which has the natural growth, the legislature has also included products out of a forest produce, which comes into existence with the aid of human skill.<sup>14</sup> Most of the disputes relating to the forest produce almost inevitably examine the nature and extent of human skill deployed to prepare items out of naturally grown forest produces.

<sup>10</sup> Upadhyay Sanjay and Upadhyay Videh: 2002:Hand Book on Environmental Law Vol. 1; Lexis Nexis Butterworths: Page No.33

<sup>11</sup> (1997) 11 SCC 605

<sup>12</sup> Forest Produces depicted in Italics in both these boxes were inserted vide Amendment Act No.9 of 1965 by the State of M.P.

<sup>13</sup> Amendment Act No.9 of 1965

<sup>14</sup> This is clear from catena of decisions. See for instance 1993 Mah. LJ 108 and 1995 (2) K.L.T 93.

<b>Box 2.1</b> <b>Always to be treated Forest Produce</b>
<ul style="list-style-type: none"> <li>• <b>Timber</b></li> <li>• <b>Charcoal</b></li> <li>• <b>Caoutchouc</b></li> <li>• <b>Catechu</b></li> <li>• <b>Wood-oil</b></li> <li>• <b>Resin</b></li> <li>• <b>Natural varnish</b></li> <li>• <b>Bark</b></li> <li>• <b>Lac</b></li> <li>• <b>Shellac gum</b></li> <li>• <b>Mahua flowers</b></li> <li>• <b>Mahua seeds</b></li> <li>• <b>Tendu leaves</b></li> <li>• <b>Kuth</b></li> <li>• <b>Myrobalans</b></li> </ul>

<b>Box 2.2</b> <b>Forest produce only when found in or brought from forest</b>
<ul style="list-style-type: none"> <li>• Trees and leaves, flowers and fruits and all other parts and produce not mentioned here.</li> <li>• Plants not being trees (including grass, creepers, reeds and mosses), and all parts and produce of such plants</li> <li>• Wild animals and skins, tusks, horns, bones, silk cocoons, honey and wax and all other parts of produce of animals</li> <li>• Peat, surface soil, rock and minerals</li> <li>• <i>Standing Agricultural crops</i></li> </ul>

**Forest Offence-** Offences under Forest Act, on account of their peculiarity, differ from those under Indian Penal Code in the sense that as a result of the former no one is personally aggrieved or affected by the injury inflicted upon the forests, and vast expanse of it makes the detection of offences difficult.<sup>15</sup> Forest offence has been defined under sub section 3 of section 2 of the Indian Forest Act to mean “ An offence punishable under the IFA or rules made there under.” Forest offences have been classified into two broad categories. Firstly, there are trivial offences covered under section 68 where offences may be disposed of by compounding<sup>16</sup>. Then there are offences which do not fall under the above category and they entail higher punishment which include imprisonment, confiscation of private forest produce, tools, vehicle and cattle and in addition the recovery of an amount equal to the damage done to the forest as compensation in case of offences relating to Reserve Forest (Section 26)<sup>17</sup>. Madhya Pradesh Government taking a stern view on forest offences vide various amendments in the Act has extended the term of imprisonment to one year and fine up to rupees one thousand. A third category of forest offenses relates to cattle trespass. Such offences are disposed of under the Cattle Trespass Act 1871, which has been discussed later.

## (ii) Categories of Forest

It is pertinent to discuss categorisation of forest since forest under the Act and under the JFM process have been categorised on totally different basis. The Indian Forest Act establishes three categories of forests *Reserve Forest*, *Protected Forest* and *Village Forest*.

<sup>15</sup> Ahmad Tasneem; 1995; Prosecution of Forest Offenders; Poonam International Publishers

<sup>16</sup> See glossary of terms.

<sup>17</sup> Upadhyay Sanjay and Upadhyay Videh: 2002:Hand Book on Environmental Law Vol. 1; Lexis Nexis Butterworths

Out of these three the third category does not exist in the state of Madhya Pradesh and instead there is another category, which is an administrative category, called *Forest Villages*. Madhya Pradesh Government has formulated rules for declaring and constituting forest villages<sup>18</sup>. These rules have been formulated under Indian Forest Act, which makes them applicable to those forests, which are either reserve, or protected. No revenue benefits can accrue to these kinds of forest, as they are not situated on revenue lands. This leads to several conflicts at the field level and there is an urgent need to provide some kind of legal definition to these villages. The other two categories as applicable to the State of Madhya Pradesh are discussed below.

**Reserve Forest** - The most restricted category is "reserved forest." These forests may be constituted by the State government on any forestland or wasteland which is the property of the government or over which the government has proprietary rights. Where forestland or wasteland is the property of government, the Forest Settlement Officer shall proceed to determine subordinate rights in the land before a final notification is issued making the area a reserve forest.<sup>19</sup> Generally speaking, in reserved forests, most uses by local people are prohibited unless specifically allowed by a forest officer in the course of "settlement."<sup>20</sup> State of Madhya Pradesh vide an amendment had also brought those lands under the category of forestland or wasteland which were either reserve or protected forest or under any other category immediately before their merger in the Indian territory<sup>21</sup>. Such deemed forest were to be looked afresh especially in the light of the Supreme Court order and the process of settlement which is still not complete in many areas.

**Protected Forest**- The State Government is empowered to constitute any land other than reserved forests as protected forests over which the government has proprietary rights. In "protected forests," the government retains the power to issue rules regarding the use of such forests, but in the absence of such rules, most practices are allowed.<sup>22</sup> Among other powers, the state retains, the power to reserve specific tree species in protected forests which has been used to establish state control over trees whose timber, fruit or other non-wood products have revenue-raising potential.

The categorization under the Indian Forest Act (as applicable to the State of Madhya Pradesh) was not followed while forming committees to carry out PFM or JFM and while classifying the type of forest over which these committees will have jurisdiction. The forest under JFM is classified on the basis of geographical location and ecological basis of the land and not as per any legal classification<sup>23</sup>. This classification in itself is ambiguous as one category finds legal basis and the other two are not legally recognized. Further the classification also lacks any proper criterion. The lack of clarity on these

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<sup>18</sup> Madhya Pradesh Forest Village Rules 1977. These Rules do not define forests villages per se. The Rules have been discussed in section 2.4 of the same chapter.

<sup>19</sup> This notification is issued under Section 20 of the Indian Forest Act. The enquiry by Forest Settlement Officer in this regard is discussed later.

<sup>20</sup> Indian Forest Act, Sections 3-26.

<sup>21</sup> Section 20A Inserted vide M.P. Amendment Act 9 of 1965

<sup>22</sup> Ibid. Sections 29-34

<sup>23</sup> The categories of forests under JFM have been discussed in detail in later part of the Report (Chapter-5)

aspects may lead to disputes arising out of competing rights or claims of forest department or village panchayat over the land under the JFM resolution.

**(iii) Process of Settlement under IFA**

The Indian Forest Act establishes an elaborate procedure for settlement of rights when a reserve forest is constituted<sup>24</sup>. The state is first required to issue a notification declaring its intention to reserve a certain tract of land, and appointing a Forest Settlement Officer to inquire into the existence of any alleged rights in favour of local inhabitants<sup>25</sup>. The Forest Settlement Officer (FSO) is required to consider the claims of local inhabitants to certain usage rights, but leaves ample discretion for him to relocate, revise or discontinue such practices.

It is significant to mention here that the inquiry by the FSO should not be confined to merely recording evidence produced by the claimants or ascertainable from the records of the Government. The FSO may call for an examination of any person who, he may think, has the knowledge of the facts including the evidence of any person likely to be acquainted with the same (Section 6). No new rights in notified land may arise after such notification has been issued, and those claiming any pre-existing right have a period of at least three months in which to appear and assert such right, and to make a case for compensation<sup>26</sup>. Generally, rights, which are not asserted during that period, are extinguished, although there are provisions in extraordinary cases for later assertions until the final reservation order is published. Even though such an elaborate process is provided for, a number of conflicts tend to arise in the process especially over such lands, which have different status in revenue records and in forest records. What is pertinent in this component of study is the ongoing process of settlement in 53 blocks [as per the DFO, Harda] where Section 4 (1) Notifications have been issued and the settlement has been mandated in a time bound manner (sixteen months) in the district of Harda.<sup>27</sup> In this context a few more words on the possible rights and claims before the FSO seems proper.

**(iv) Rights and Claims of Forest Dwellers and the Forest Settlement officer**

The Indian Forest Act anticipates three types of claims<sup>28</sup> in forests proposed to be reserved. First, a forest dweller might lay claim to ownership of land. The forest officer shall pass an order admitting or rejecting the claim. Second, a claim may be asserted for rights to pasture or forest produce. Again, the Forest Settlement Officer shall decide whether to admit such a claim, and if he does so, then he is to record the “extent” to which it is admitted. The Forest Settlement Officer then shall take such steps as are necessary to ensure the continued exercise of that right, including removing such practice to another forest, or allowing the use to continue subject to appropriate rules. However, if the Officer determines that it is impossible having due regard to the maintenance of the reserved forest to make any settlement that would allow the practice to continue, he may

<sup>24</sup> Sections 3-26 of the Indian Forest Act, 1927.

<sup>25</sup> Section 4, 6.

<sup>26</sup> Section 5

<sup>27</sup> Note that this is the fourth attempt to settle rights in the state of Madhya Pradesh. Earlier being 1969, 77, 1994 and now in 2003.

<sup>28</sup> Section 10. This section draws from Lindsay, Jonathan. 1994. *Law and Community in the Management of India's State Forests*. Cambridge: Lincoln Institute of Land Policy Working Paper Series.

commute the rights by payment of money or grant of land “or in such other manner as he thinks fit”. [Section 16 of the IFA] Finally, special provisions apply to the practice of shifting cultivation, which the Forest Settlement Officer may prohibit without any compensation.

As evident from the above description forest dwellers or villagers rights are subject to the discretion of the FSO. Situation under the JFM is also very similar. As the rights provided under the JFM resolutions are in form of usufruct rights and can be revoked any time by the Forest Department. When looked in terms of corresponding rights and duties the whole concept of participatory forest management is on an extremely weak legal footing. Rights as provided under legal jurisprudence are those, which are enforceable by a court of law as discussed earlier, and this is not the case with JFM.

**(v) Duty on timber and transit of Forests Products**

The power to levy duty on timber and other forest produce and the regulation of timber and other forest produce in transit vests with the Central Government and State Government respectively (Section 39, 41 of IFA). However, the duty levied by the States at the time of commencement of the IFA is deemed to have been duty levied under the provisions of this Act (Section 39(3) of IFA). Notably, while the power to levy duty is entrusted to the Central Government the regulation of transit of timber and forest produce lies with the respective State Governments. It is important, however, to bear in mind that this does not prevent the State Government to levy duty as forest is a concurrent list subject and the State Governments can adopt variants to the Central Act. The State of Madhya Pradesh has formulated various rules and regulation for levying duty on transit of timber and on various other forest produces. All these rules and regulations will be discussed in the next section on rules and regulations of state of Madhya Pradesh. However one important point that comes to mind is the trade and marketing aspect of forest produce and products<sup>29</sup>. A lack of clarity in transit is bound to give rise to conflicts.

**(vi) Working Plans**

Even after assuming due importance and validity<sup>30</sup> by the Apex Court the integration of micro plans with working plans find no mention in the scheme of PFM. The State Government has failed to substantially include working plans as a guiding document in the JFM Scheme. Working Plan as is well known is the guiding document for forest management in a forest division and even after numerous amendments of the JFM resolutions, and its specific and substantial mention in the guidelines provided by the Central Government in the Year 2000, the issue has not been adequately addressed in the existing State JFM Resolution. The term “working plan “ has been mentioned in the resolution, but its immediate context needs to be seen closely. The recent State JFM resolution<sup>31</sup> focuses primarily on the “principles” of forest and wildlife management. The micro-plan, as prepared under JFM programme has to confirm to these principles as emerging from the “working plan” as well as from the relevant laws and rules. However the working plan for a forest division goes beyond laying down general “principles” for forest management. It, in fact, deals with taking those principles to the ground and

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<sup>29</sup> An issue dealt with in detail by another partner

<sup>30</sup>T.N. Godavarman V. Union of India

<sup>31</sup> JFM Resolution for the state of M.P. 2001

includes details like identification of working circles for sprucing, fuel protection, plantation etc. It also elaborates upon factors like financial forecast, cost of the plan, forestry plantation, and labour supply. Keeping in mind the prominent place that it has been accorded by the Apex Court, it is important that the micro-plan prepared under JFM should correspond with working plan. This issue needs to be addressed in the JFM resolution itself.

**(vii) Some Relevant Amendments pertaining to State of Madhya Pradesh**

Madhya Pradesh Government has amended the Indian Forest Act, for its state adaptability, a number of times. These amendments fall under different chapters of the Act. Some of the relevant amendments are discussed here:

Under the chapter of ‘Penalties and Seizure’ the provision for appeal and revision against order of confiscation were added<sup>32</sup>. Opportunity to show cause before being evicted from any land falling in a reserve forest or protected forest was added in the miscellaneous chapter<sup>33</sup>. Provisions for deemed reserve or protected forest was inserted in respect to those lands, which were held by different rulers and merged in the Indian territory after independence<sup>34</sup>. Further the State Government inserted an interesting provision whereby any forest or any portion of the forest will cease to be protected forest if the state issues a notification to that effect. But a clause was added that no right, which have been extinguished at the declaration of the protected forest, would be restored<sup>35</sup>.

**2.3 Forest Conservation Act, 1980**

The Forest Conservation Act is the primary legislation for conservation of forests. The Act was enacted with the twin objectives of restricting the use of forestland for non-forest purposes and preventing the de-reservation of forests that have been reserved under the Indian Forest Act. However, in 1988 the Act was further amended to include two new provisions where it sought to restrict leasing of forest land to private individuals, authority, corporations not owned by the Government and also restricting clear felling of naturally grown trees.<sup>36</sup> However the concept of community participation could not find a place in the Act, even after the 1988 amendment, which came into effect in the year 1989, but derives its source from the National forest Policy even though this policy preceded the amendments.

The Forest Conservation Act of 1980 (FCA) represents an attempt by the Central Government to check deforestation caused by the conversion of forestlands to non-forest purposes. Under this Act, no State Government can authorise such conversion without securing Central Government’s approval. It is pertinent to mention that FCA as modified up to 1988 does not ban any non-forest activity or the de-reservation of forestland. All it requires is that the permission of the Central Government be secured for such actions. The Act has been given credit by some for slowing the rate of deforestation in India, in

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<sup>32</sup> Section 52A and 52B inserted vide amendment Act No 25 of 1983.

<sup>33</sup> Section 80A inserted vide M.P. Amendment Act 9 of 1965.

<sup>34</sup> See Section 20A inserted vide M.P. Amendment Act no 9 of 1965.

<sup>35</sup> See Section 34A substituted by M.P. Amendment Act no 9 of 1965

<sup>36</sup> Section 2.

part by providing a defence against political pressures for converting forest areas to other uses and against State Governments that may be overly enthusiastic about revenue generation through natural resource exploitation (such as mining). It is pertinent to note that the criteria for diversion of forestland to other purposes need to be further developed beyond what is provided under the Forest Conservation Rules of 1981. The Recent Forest Conservation Rules of 2003 can be considered as a step towards streamlining the process of according approval to non-forest activity on any forestland as it provides for formulation and constitution of committees for according such approvals. These rules provide for constitution of committees for advising the Central Government in granting approval of any non-forest activity on any forestland. Though these rules entail detailed provisions for constitution and working of the committees but prescribed time period within which the committee may come up with its recommendation is not provided. But a period of sixty days is prescribed for the government to act upon the recommendations of the committee i.e. either to reject the proposal or to approve it. Since there is no fixed time for the committee to give its recommendations this time schedule for the government is diluted. Further, it is emphasised that the reasons for acceptance or rejection of any proposal for clearance under this Act should be made a public document.

The restriction on certain activities under the FCA is not an absolute but a qualified one. The parts of FCA, which have been prone to litigation, especially in the higher courts, have been the grant for mining leases in forest regions. The Act-and a number of judicial decisions interpreting it-has made it clear that before granting a lease covering any reserved forest or any forest land for use of non-forest purpose which will include mining operations prior approval of Central Government is a must. It has also been clarified that this bar imposed under Section 2 of the Act shall apply even to cases of renewal of leases<sup>37</sup>. In addition to this, the FCA may also have detrimental effects on local experiments designed to increase local community participation in forest management. While the FCA provides some important accountability measures with respect to State Government actions, narrow interpretations of the Act's restrictions on non-forest uses could limit the types of activities that could be initiated under JFM. This aspect is further highlighted in the Chapter on JFM.

#### 2.4 Significant Rules under Indian Forest Act, 1927

In the colonial era one of the major causes for degradation of forest was illegal cutting and removal of forest produce by contractors and their labour. Ostensibly to check this practice the Forest Contract Rules<sup>38</sup> of 1927 were brought in force. Significantly under these rules the contractors have no power to monopolize their rights over the forest area and to interfere with the nistar rights of the private persons. For improving the

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<sup>37</sup> This was clarified first in *Ambicca Quarry case* and has been followed later in a number of decisions both of the Supreme Court and the High Courts. These decisions are referred to in Chapter on Judicial Trends and Decisions.

<sup>38</sup> Formed under the Indian Forest Act of 1878.

employment condition, preference to the inhabitants of the village forest as laborers should be given<sup>39</sup>. There are two issues that emerge here:

- a. The lawfully vested rights of the private persons relating to access to forests and appropriation of forest produce, which necessitates a close look at the concept of *nistar* rights,
- b. The preference accorded to local inhabitants for labour visa-vie the practice of begar.

At this juncture it is important to see how has the concept of *nistar* been changing since 1927. Under the *MP Disposal of Timber and Forest produce Rules, 1974*, *nistar* has been defined to include – “dry wood fit only for fuel, dry bamboos, grass, thorns, leaves and bakkal”. Whereas in protected forest areas the term *Nistar* also includes timber of unreserved trees, or reserved trees where, expressly sanctioned in that behalf, for agricultural implements, building new houses or repairing houses and cattle sheds of the agriculturists, and surface boulders, muram, sand, chhui and clay<sup>40</sup>.

Under the new *nistar* policy of M.P Government<sup>41</sup> the facility of *nistar* shall be available only to such villages lying within the periphery of 5 KM from the forest<sup>42</sup>. This is similar to the JFM resolution (which is discussed in detail later in chapter 4), which is confined to the villages within the periphery of 5 KM from the forests, and gives entitlement to *nistar* to the members of JFM committees, constituted within the said area. Even the JFM Policy of the MP has been changing with respect to *Nistar* benefits. The central government JFM circular<sup>43</sup>, which introduced the concept of JFM, provided that the beneficiaries are entitled to usufructory rights like grass, lops and tops of branches, minor forest produce etc. Under the 1995 Resolution of the state of MP<sup>44</sup> the Forest Protection Committees formed under the JFM resolution<sup>45</sup> were provided forest produce under *Nistar* system by only charging extraction and haulage expenditure and without charging any royalty but this is on priority basis subject to the availability of forest produce. Under the present JFM programme, the access to *nistar* has been further restricted, by making it subject to the satisfaction of the DFO, and the availability of forest produce. However, the status of *nistar* rights during non-availability of forest produce is nowhere specified.<sup>46</sup>

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<sup>39</sup> The national Forest Policy, 1988 also aims to provide gainful employment to people living in and around the forest.

<sup>40</sup> Under the MP Protected Forest Rules, 1960.

<sup>41</sup> Dated 26.12.1994

<sup>42</sup> for details refer to Box no –2.

<sup>43</sup> Central circular on JFM Dated 1/6/1990

<sup>44</sup> resolution no. F. 16-4-10-2-91 Bhopal. Dt. 4.01.1995.

<sup>45</sup> Order no. 16/4/10/2/91 of 10.12.91.

<sup>46</sup> Resolution no. F16/4/91/10-2 Bhopal Dt. 22.10.2001



**Box No – 2.3 New Nistar Policy of M. P Govt.**

M.P. Govt. amended the Nistar Policy of 1975, vide notification-dated **26.12.1994** but was implemented from 1<sup>st</sup> of July 1996. Notable points of the new Nistar Policy are:

- The “**facility**” of nistar shall be available only to such villages lying within the periphery of 5 KM from the forest.
- *Nagar Nigam, Nagar Palika* or any *Gram Panchayat* lying within 5 KM will not be given Nistar facility. The people of the said area would get forest produce on the prevalent market rate.
- No concessions to be given to people living outside the periphery of 5 KM from forest. Forest produce to such villages will be made available on market rates through *Gram Panchayat*.
- For villages lying within periphery of 5 KM, the forest produce would be made available to the villagers “through” the Forest Protection Committee (FPC) and Village Forest Committee (VFC) subject to the availability of the material.
- The facility of taking fallen, dry fuel wood by head loads for personal use or for sale is to continue as usual.
- Every year *nistari* forest produce is to be given by the FD from 1<sup>st</sup> January to 30<sup>th</sup> June.
- For people staying in the Bastar region and Basods the facility would continue as usual.

On the issue of nistar it is pertinent to trace the way *M.P Protected Forest Rules*, are being amended from time to time. Under 1960 Rules<sup>47</sup> the villagers were categorized into two categories. One, taking *nistar* and *paidawar* requirements free of charge and the other taking these requirements on payment of specified amount. For enjoying nistar facility a commutation pass<sup>48</sup> is to be obtained on payment of certain commutation fee. However the said Rules have been superseded after the recent amendment<sup>49</sup> in the Rules. The Rules specifically provide for management of protected forests as per the approved Working Plans<sup>50</sup>. The Rules also prohibit “collection of forest produce in violation of the provisions of the approved working plans” unless permitted by the State government.<sup>51</sup>

Under the *M.P Disposal of Timber and Forest Produce Rules, 1974*; a distinction has been drawn between forest produce for bonafide domestic requirement and forest produce for commercial use. The consumers with restrictive demand in small quantity of forest produce for their own domestic requirement or for local sales may be removed and disposed of under free pass in accordance with the exemptions granted<sup>52</sup>.

The other key issue in merit is that of grazing rights. Under the *Protected Forest Rules, 1960*, artisans, labourers or agriculturists residing or owning land in a village allotted to a particular protected forest shall be permitted to graze their cattle in that forest area. According to the *M.P Grazing Rules, 1986*<sup>53</sup>, a grazing unit has to be constituted in both

<sup>47</sup>MP Protected Forests Rules, 1960, framed under section 32 (d) and 76 of the Indian Forest Act, 1927.

<sup>48</sup> Commutation means payment of a fixed sum once for the whole year in return for the “Privilege” to obtain from the protected forest reasonable quantity of Nistar or Paidawar requirement for bonafide domestic consumption, or for occupational purposes only and not for barter or sale or for wasteful use.

<sup>49</sup> MP Protected Forests Rules, 2005, framed under section 32 (d) and 76 of the Indian Forest Act, 1927 (No F 25-1-X-3-04)

<sup>50</sup> Section 6 of the MP Protected Forests Rules, 2005.

<sup>51</sup> Section 5 (d) of MP Protected Forests Rules, 2005.

<sup>52</sup> Section 102(2).

<sup>53</sup> framed under section 26, 32 and 76 of the Indian Forest Act, 1927.

reserve forest and protected forest areas. A minimum number of cattle are fixed which can graze in that particular area. A grazing license is mandatory for all cattle even if allowed free grazing. Grazing is also allowed to cattles in RF or PF area through transit passing. In total contradiction of these rules the 1991 JFM resolution<sup>54</sup> totally restricted grazing in the forestland protected by village community. The latest JFM resolution of 2001<sup>55</sup> does not mention the position of grazing in MP.

The important jurisdictional issue that may result in conflict and varied perception is the legal mandate of Forest village and Revenue Villages. The present study also comprises nine forest villages as study areas therefore it becomes essential to analyze the provisions given under the *MP Forest Village Rules, 1977*. These rules are applicable on land declared as Protected forests<sup>57</sup> and Reserve forest<sup>58</sup> under of the IFA, 1927. While constituting a forest village, land required for settlement of tribals, for nistar and community purposes etc is to be ensured. The rights given to the tribals for grazing cattle is same as the rights given to villagers in any revenue village. The distinguished feature of this legislation is the provisions related to distribution of *patta* to the residents of forest village. Each family of the concerned forest village is to be allotted 2.5 hectare of land with an additional 2.5 hectare in case there are more than one adult member in a joint family. Preference is given to the tribals belonging to the scheduled tribes<sup>59</sup>. These pattas are allotted for a period of fifteen years subject to renewal. The patta holder would have to pay fee at such rate as rent fixed for same area of land in a Revenue Village<sup>60</sup>. On violation of any rule the concerned authority can cancel such pattas. To curb away the practice of *begar and bonded labour* villagers doing forestry work are entitled to wages in accordance with the *Minimum Wages Act* as per the said rules.

**Box No 2.4**

**Legal Concept of ‘thalua’<sup>56</sup>:**

There is a very peculiar situation with regard to land-less labourers of the forest villages. The patta holders are few, while their offspring are many. On death of the holder, only the eldest son gets the right of succession of the land and the other sons remain landless. The other siblings cannot possess land intestate. They are termed as ‘*Thalua*’

## 2.5 Specific Forest Produce Laws.

The major forest produce in this region is Tendu leaves<sup>61</sup> therefore it becomes crucial to analyse the laws relating to forest produce with special reference to tendu leaves<sup>62</sup>. The *M.P.Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964* aims at regulating the trade of *tendu* leaves in public interest by creation of state monopoly in trade. ‘Trade’ in tendu

<sup>54</sup> Order no 16/4/10/2/91 of 10.12.91

<sup>55</sup> Resolution no. F16/4/91/10-2 Bhopal Dt. 22.10.2001

<sup>56</sup> defined under Working Plan for 1984-85 to 1993-94

<sup>57</sup> section 29

<sup>58</sup> section 20(1)

<sup>59</sup> Rule 6 (b)

<sup>60</sup> Rule 20

<sup>61</sup> See Human Development Report- Sanket

<sup>62</sup> The Trade aspect of forest produce will be dealt by TERI (a project partner) in detail.

leaves would only consist of its sale and purchase and not its import.<sup>63</sup> Transport of tendu leaves imported from outside the state are not controlled by this Act. It is pertinent to specify here that tendu leaves fall under the category of nationalised forest produce. Tendu leaves can only be purchased or transported by a government official or any agent duly appointed by the government. But a grower of tendu leaves is allowed to transport the leaves from one place to another within one unit<sup>64</sup> without any restriction. The provisions of the above-mentioned Act correspond to the state's stand of centralizing the control over natural resource. The JFM resolution on the other hand does not talk of tendu leaves specifically but does talk of forest produce in general. There is no mention of sharing of income derived from the nationalised minor forest produce. It does specify that 100% of value of the forest produce including timber (after deducting the harvesting cost) will be given to the Village Protection Committees. However it is not clear whether forest produce here would mean only non-nationalized or nationalized forest produce also. A combined reading of the Act as well as the JFM clearly show that the people's participation has not been envisaged for trade or marketing of the forest produce. Thus there is a need to further explore the issue. .

Another important legislation which governs trade in forest produce is the *M.P Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969*. The Act aims at regulating the trade of certain forest produce in public interest by creation of state monopoly in such trade. Under this Act any person may transport the produce in prescribed quantity for bonafide domestic use or for consumption within a unit. Any person having the right of *nistar* in any forest in respect to any specified forest produce (See box No. 2.6) can transport such produce for his domestic consumption but according to the prescribed terms and conditions. For purchase and trade in specified forest produce agents are appointed who are either the officers of the state government or agents appointed by the state government. A transit pass is required for any person purchasing any specified forest produce for manufacturing goods within the State. The JFM resolution does not talk about the transit of forest produce. It only talks of the proceeds arising from the sale of forest produce and its distribution. The individuals had right to forest produce even before the coming of JFM programme.

**Box No: 2.5**

**Specified Forest Produce under M.P Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969:**

Kulu Gum.  
Dhawara Gum, Khair Gum, Babool Gum, Salai resin.  
Mahua Flowers.  
Mahua seed.  
Harra and Kacharia  
Sal Seeds.

The *M.P Van Upaj other than Timber (Vyapar Viniyaman) Niyam, 1969*<sup>65</sup> applies to all specified forest produce other than timber. Unlike other rules for collection of forest produce the government or any other body assigned by the government is not authorized

<sup>63</sup> State of MP vs M/S Chhotubhai Jethabhai, 1972 MPLJ 641.

<sup>64</sup> 'Unit' means a sub-division of a specified area constituted into a unit under section 3.

<sup>65</sup> Rules formed under the MP Van Upaj (Vyapar Viniyaman) Adhiniyam,

for collection of forest produce. Here people's participation has been taken care of. Applications are invited from people interested in being appointed as an agent. Under the Rules, transportation is allowed for bonafide domestic consumption from the place of purchase to the place where it is required. Person having right of nistar can transport the produce for domestic use or *consumption in a specified quantity*. The MP Van Upaj (*Vyapar Viniyaman*) Adhiniyam, 1969 also talks of constitution of a committee for advising the government in the matter of fixation of prices<sup>66</sup>, which includes members amongst the traders, and growers of forest produce. An appreciable point in this enactment is that it has considered the interest of people where as JFM resolution does not even mention about JFM committees to take up such responsibility of acting as a collecting agent. It only talks of benefit sharing. Clearly the Resolution can take cues from this legislation and incorporate into it for more effective management of forest produce.

*Transit (Forest Produce) Rules, 2000*<sup>67</sup> also aim at regulating the transit of timber along with other forest produce. These rules have an overriding effect over the MP Transit (Forest Produce) 1961 Rules. Under the 1961 Rules, there is a mention of several passes like rated passes, forest produce passes, and free and paid *Nistar* passes. According to the Rules, no separate transit pass is required in case a person possesses any of the passes mentioned above. Under the 2000 Rules, forest produce covered by Money Receipts/Rated Pass/Forest produce Pass/Carting Challan are exempted. Other provisions of the amended rules are similar to that of 1961 rules. Under the 2000 Rules no transit pass is required when the forest produce is removed for bonafide domestic consumption within the limits of a village where it is produced. A separate transit pass is required for each load whether such load is carried by a person, on animal or in a vehicle. Making of such rule has made the process more complicated for the villagers. Another conspicuous feature of this enactment is that the Panchayat along with the DFO has been given power to issue passes subject to the ownership of forest produce. For any forest produce owned by any person the DFO or the Gram Panchayat have the power to issue passes. Gram panchayat have the power to issue passes for timber like Babul, Neem, *Beautia*, etc. For any transit of forest produce within the district, the gram panchayat have power to issue passes<sup>68</sup>. Everything starting from collection to sale of timber is in the hands of the government. Obviously there is little people's participation. The sale proceedings are carried on according to will and wish of the government.

The State of Madhya Pradesh has recently issued the *Forest Produce (Conservation of Biodiversity and Sustainable Harvesting) Rules, 2005*<sup>69</sup>. The Rules empower the State government to take steps regarding the collection or extraction of forest produce from government forests so as to ensure the conservation of bio-diversity and sustainable harvesting of forest produce<sup>70</sup>. For that purpose the State can declare certain period or periods of a year as "closed season" for the collection or extraction of any forest produce

<sup>66</sup> Section 6 of *The MP Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969*.

<sup>67</sup> Rules framed under section 41 and 42 along with section 76 of the Indian Forest Act, 1927.

<sup>68</sup> Section 4 of *Transit (Forest Produce) Rules, 2000*.

<sup>69</sup> Under section 76 (d) of Indian Forest Act, 1927.

<sup>70</sup> Section 3 of *Forest Produce (Conservation of Biodiversity and Sustainable Harvesting) Rules, 2005*.

from government forests. The State can also declare certain areas as “closed areas” for a specified period, for the collection or extraction of any forest produce, prescribe limits on quantities of any forest produce that can be collected or extracted from a specified forest area in a particular year. The Rules also authorise the State government to prescribe sustainable harvesting practices for any forest produce.

## 2.6 *Other important legislations which has a bearing on Forestry Management in Madhya Pradesh*

There are other legislations that have an impact over forestry management. They include Act and Rules to protect tribals’ rights in trees, regulate cattle trespass in forest areas and land encroachment. Clearly this needs to be delved into as they too have a bearing on the participatory forestry management.

The coming into effect of *M.P Van Bhumi Shaswat Patta Pratisanharan Adhiniyam, 1973*, revoked all perpetual leases<sup>71</sup> whether granted by special grant, or on contract on forestland. Under the Act once the land is resumed to the State Government, the landowners have no interest over the land. The objective of the Act is to transfer this important means of ‘production’ in the hands of the state for benefit of weaker sections of the society. The Act specifically provides that any perpetual lease should not be cancelled by the State Government from which the income generated is used for:

- 1 Promotion of the interests of the general public or,
- 2 Promoting educational or economic interests of the weaker sections of the people and in particular Scheduled Castes and Scheduled Tribes.

The Act also talks of giving certain amount to lessee for revocation of perpetual lease.

### *The Orange Area conflict*

After referring to the some of the revenue records such as *Missal Bandobast, Adhikar Abhilekh* (Record of rights) of the revenue department and corresponding working plans of the forest department it is clear that the exact title of several pieces of land is still unclear. There is ample evidence that there are huge areas of lands that have been doubly entered in both revenue and forest records. The settlement process of the erstwhile princely lands which included a number of forestland and which were acquired after the *Zamindari Abolition Act in 1950* has been far from satisfactory. Huge chunks of such lands were demarcated as proposed reserved forests and the remaining were termed as left our areas or *Orange Areas* where settlement would be jointly done in consultation with the forest department. In fact several such lands have been transferred from forest department to revenue department, which have not been found fit to be reserved albeit on paper<sup>72</sup>. Interestingly on several such disputed lands valid leases (*patta*) have been given by both revenue and forest department through various schemes. Wherever these leases have expired or where the family has grown such extra members have remained in such places for want of better options. This forms a big category of people who are now

<sup>71</sup> Lease of forest land for a period of 30 years or more but does not include an industrial lease.

<sup>72</sup> In fact a network of people’s organizations have approached the Supreme Court through the Consultant to bring this issue of Orange Areas at the Apex level which is ongoing.

referred to as “encroachers” This issue of encroachment is even raised under the JFM resolution of 2001, which talks of protection of forest from encroachment. However it misses the historical background under which such “encroachment” has taken place.

The protection to tribals and their property from exploitation in the matter of transfer of interest in the specific trees standing on their land is an important issue, and has been addressed under the *M.P Janjatiyon ka Sanrakshan (Vrikshon mein heit) Adhiniyam, 1999* aims at the protection of aboriginal tribes and their interest in the specified trees standing on their land. Any person who intends cutting trees standing on tribal’s land should get permission from the Collector. No such permission may be provided for sale of timber but if the said sale is necessary to meet the urgent expenses of the member of aboriginal tribe permission may be granted.

The *M.P Lok Vaniki Adhiniyam, 2001* and the Rules thereunder<sup>73</sup> give effect to the concept of social forestry. This Act was enacted to encourage the scientific management of privately owned ‘forest’ and other tree clad areas in the state. It is an enabling law to encourage the owners of private forests and other tree clad areas to manage their natural resource *suo motto* on scientific lines for optimizing both economic as well as environmental returns. The *Lok Vaniki* on non- forestlands presents a new legal challenge. The distinction between non-forest land and revenue land has to be made or at least the scope of such non- forestland has to be determined. As per the *T.N. Godavarman Case*<sup>74</sup>, ‘forest’ has to be understood in its ordinary meaning. By assigning the dictionary meaning to forest, tree farming on private land would also be covered under forest and any use of such forest for non – forest purpose would have to conform to the provisions of Forest Conservation Act. Although the Supreme Court has excluded farm forestry lands from within the purview of the order, the wide definition of forest where ownership is not a constraint creates an ambiguity regarding the status of private forest. Due to this ambiguity in law tree farming on forestland is not able to attract much attention of the people willing to take up forestry on their private holdings. This is apart from the tedious process of clearance for removal of trees from private lands.

*The Grazing Rules, 1986* restrict grazing in certain areas. *Cattle Trespass (M.P Amendment) Act, 1871* was passed in order consolidate the law relating to cattle trespass. Under the Act the definition of ‘cattle’ is inclusive. This Act is a beneficial legislation and is enacted for improving the condition of public and society. Under this Act, officer of police includes the village watchmen. This Act is silent on any condition relating to cattle trespass in Protected Forest and Reserve forest areas. In this context, it is important to mention that Indian Forest Act; declares trespassing in a Reserved Forest (RF) or in any portion of Protected Forest (PF) closed to grazing as damage done to a public plantation<sup>75</sup>.

This Act nowhere specifies the area of forest where grazing of cattle would amount to an offence punishable under the Cattle trespass Act.

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<sup>73</sup> M.P Lok Vaniki Rules, 2002

<sup>74</sup> Discussed in chapter related to role of courts.

<sup>75</sup> Within the meaning of Cattle Trespass Act, 1871

*MP Land Revenue Code, 1959* even though deals with the land revenue, it also imposes a duty on the revenue officer to prepare a *nistar patrak* for the unoccupied land in a village falling under the revenue department. Under the Code, Nistar patrak should be prepared for every village giving details of the unoccupied land present in a village. Under the nistar patrak, provisions should be made for –

- a. Free grazing of the cattle used for agriculture,
- b. Removal of forest produce for bonafide domestic consumption.

Under the Code, collector is under a duty to set apart unoccupied land for the exercise of Nistar Rights. The provisions of the said Act are only applicable to the revenue villages and not to the forest villages, thus rendering the position in the Forest Village under dispute.

### CHAPTER III

## THE ROLE OF PANCHAYAT AND ITS LINKAGE WITH FORESTRY MANAGEMENT

Let us now see another important development, which may perhaps be the biggest boon or bane to participatory forest management. The 73<sup>rd</sup> Amendment<sup>76</sup> to the Constitution of India, by giving constitutional status to PRIs, gave a stronger footing to the age-old practice of management of natural resources by the local community. To make decentralization a reality, it was aimed to endow Panchayats with a multitude of powers; important among them are social forestry, farm forestry and minor forest produces. Since then central as well as state governments have taken a number of initiatives, at various levels including law and policy, to involve Panchayats in forestry management. However here we will focus on the State of Madhya Pradesh only.

The term Panchayats refers to, duly elected local self-government bodies; operating in the rural areas at three levels;

- *Gram Panchayat* at the village level;
- Block Panchayat at block level (known as Janpad<sup>77</sup> Panchayat in the State of Madhya Pradesh)
- *Zilla Parishad* at District level.

Apart from these Panchayat Raj Institutions, the 73<sup>rd</sup> Amendment also provide for a more inclusive body at the village level; namely *Gram Sabha*, which consists of all the adult villagers. While the Panchayats are administrative and political bodies, the Gram Sabha is the real representative of the village community. An important aspect of the 73<sup>rd</sup> Amendment was to empower the Gram Sabha.

It is pertinent to mention here that the mandate of 73<sup>rd</sup> Amendment was not extended to certain states of the country; inhabited predominantly by tribal populations. Such States are termed as Schedule States<sup>78</sup>. Later in 1996, Provisions of Panchayats (Extension to Scheduled Areas) Act 1996 (Hereinafter referred to as PESA) was enacted to extend the system of Panchayats in such areas. The most striking feature of PESA was to make the Gram Sabha center stone of all developmental activities in a village. The gram sabha was also entrusted with the management of natural resources within a village. Interestingly the ownership of minor forest produce was devolved to the gram Sabha and the panchayat at appropriate level. All the States having scheduled areas were required to amend their respective Panchayats laws so as to bring them in conformity with the spirit

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<sup>76</sup> The Constitution (Seventy Third) Amendment Act, 1992

<sup>77</sup> Also known as "mandal parishads" in certain other parts of the country.

<sup>78</sup> The fifth and sixth Schedules to the Constitution to India list these States. Such States have historically been excluded from normal operation of ordinary laws, to preserve their social customs and safeguard their traditional vocations. The present study is restricted to fifth schedule States only. There are nine such States; State of Madhya Pradesh being one of them. However the entire State in not scheduled, there are certain districts or blocks within such districts, which constitute scheduled areas within the State.



of PESA. The MP government made such amendments in 1997<sup>79</sup>. The same shall be discussed in subsequent part of the chapter.

### 3.1 Role of Panchayats in forestry management:

Right after the 73<sup>rd</sup> Amendment, The MP Panchayat Raj Adhiniyam, 1993<sup>80</sup> was enacted. It is important to look at the manner in which powers with regard to forestry were distributed among various tiers of Panchayats. While the Gram Panchayat<sup>81</sup> was made responsible for the "plantation" and "preservation" of "Panchayat forests", the same was subject to the availability of funds with the Gram Panchayat, which speaks volumes on the state's sincerity towards conservation of forests. Another area of concern is that important functions with respect to control and management of such forests were clearly State's responsibility. Similarly the Janpad Panchayat's duty to provide for social forestry was made subject to the rules framed by the State Government from time to time. It is noteworthy to mention that in the Principal Act no provision was made to involve the Gram Sabha in the management of an important natural resource like forests.

Various amendments have been made in the Principal Act from time to time. By 1997 amendment the Zilla Parishad was given an advisory role to the State government in respect to protection of environment and social forestry. By virtue of the same Act special provisions for scheduled areas were also included in the Principal Act. It is pertinent to mention here that the provision in respect to ownership of MFPs was not included in the Act. Till date, even after a couple of amendments, the same have not been provided for.

In 1999 (MP Act 5 of 1999), the gram sabha was entrusted with the management of natural resources including water, land and forests. However the same was to stand the test of compatibility with the provisions of constitution and other laws. While conformity with the constitution is necessary, making the power of gram sabha subject to other laws destroys the spirit of this provision as most laws dealing with the natural resources vests the control, management of such resources in the State and don't recognize the role of gram sabha as such. Thus in case of a conflict, which is clearly manifest here, the specific laws dealing with the natural resource shall take precedence.

Subsequently in 2001 the functions of Gram Panchayat in respect of plantation and preservation of Panchayat forests were omitted, and the same was entrusted to the gram sabha with a difference, that instead of "Panchayat forests" the term "village forests" was used. The term village forest has been assigned a specific meaning under the Indian Forest Act<sup>82</sup>, 1927. As per the said Act the "State government may assign to any village community the rights of government to or over any land which has been constituted a reserved forest....all forests so assigned shall be called village forests." Reserve forests

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<sup>79</sup> MP Act 43 of 1997

<sup>80</sup> Act 1 of 1994

<sup>81</sup> (Act 3 of 2001). This Act renamed the MP Panchayati Raj Act as " Madhya Pradesh (Panchayat Raj Avam Gram Swaraj) Adhiniyam, 1993.

<sup>82</sup> The Indian Forest Act classifies the forests in three categories; Reserve forests, protected forests and village forests.

refers to those forests land and waste land, which are property of government or over which the government has proprietary rights or the government is entitled to the forest produce of such forest land or waste land. After being constituted as reserve forests, all or some of the rights of the government ranging from management, control, exploitation, development etc may be assigned to a village community and the same are called village forests. Since the management of the same is already with the village community, giving specific powers of plantation and preservation of such forests to gram Sabha doesn't really make much sense. Further it also restricts the jurisdiction of gram sabha, because village forest is one category of forests that practically doesn't exist. Further it is important to understand the difference between "village forests" and "forests villages" as the two are generally used interchangeably. While a village forest is a legal category of forests recognised under the Indian Forest Act, 1927, the forest village is an administrative category. Although forest village is recognised by the forest department, the revenue benefits cannot accrue to such villages as they are not technically under the revenue departments.

Another interesting feature of the system of Panchayat law in MP is that it defines villages to include both revenue as well as the forests villages. This assumes significance because perhaps no other State recognizes or equates the forest villages to revenue villages. One of the benefits that usually don't accrue to forest villages is the establishment of Panchayat Raj Institutions, but in MP the Panchayats can be established in forest villages by virtue of this Act. However the chapter enumerating the special provisions for Scheduled areas doesn't provide for the inclusion of forest villages in the ambit of the term "villages", In our opinion this is a clear case of drafting error rather than an intentional exclusion of forest village from the purview of Gram Sabha in Schedule Areas.

Thus we see that the PRIs don't play much role in forest management in the State of MP, despite being the mandate of the 73<sup>rd</sup> amendment. Though certain provisions have been provided for, they have been made subject to factors like Rules framed by the State government, availability of funds, other laws in force etc. It is important to mention section 53 of the Act, which specifically mandates, "Subject to such conditions as may be specified by special and general orders issued by the State government, Panchayat at appropriate level shall have the powers and authority as may be necessary to enable them to function as institutions of self government in relation to matters listed in Schedule IV", the matters listed in Schedule-IV includes; social forestry, farm forestry, minor forest produces and fuel and fodder. Some of these are not reflected in the functions devolved upon the Panchayats. Thus there are enough legal spaces available in the law. This is clearly a case of lack of legislative will to empower the gram Sabha as well as various tiers of the Panchayats in respect of forest management.

Further the local laws dealing specifically with forests, forest produce, transit and trade of the same totally excludes PRIs and *Gram Sabha* and vests major powers in the government machinery barring a few like *MP Transit (Forest produce) Rules, 2000*<sup>83</sup>. These Rules empower the gram panchayat to issue passes for the transit of forest

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<sup>83</sup> Enacted under Indian Forest Act, 1927

produce, within or outside the State of Madhya Pradesh. Though these Rules don't define forest produce, but since the rules are framed under IFA, the forests produce here refers to the one as defined under the principal Act, which covers a wide range of forest produces. (See chapters 2 for MP amendments in the principal act as regards the definition of forest produce). However this is not the exclusive power of the Gram Panchayat, the transit passes can be issued by the DFO or Gram Panchayat. Thus it would be useful to find out whether or the Gram Panchayat has actually exercising this power.

### 3.2 *Linkages between Panchayats Raj Institutions and Joint Forest Management Committees:*

After understanding the role of Panchayats in forest management, it is now relevant to draw the linkages between the Panchayat and the Joint Forest Management Committees (hereinafter referred to as JFMCs). The absence of clear linkages between these two may lead to conflicts at the ground level. The interface between these bodies should be seen in the light of the fact that Panchayats have due legal backing, while the JFMCs originate from Government orders/resolutions, which are revocable. The entire JFM programme is built upon orders issued by the executive branches of government, having no relation whatsoever to the existing legislative framework. The two institutions have different nature and scope and they exist for different purposes. The JFMCs are specific natural resource management bodies, while the Panchayats, being institutions of self governance perform a variety of functions like overall village administration, social and economic development; the management of natural resources being one of them. "Technically, JFMCs are non-political though heavily controlled and managed by Forest Department. Panchayats on the other hand are essentially political bodies that would principally and eventually be the authority under which the issues of local governance and other resource management issues will be synthesized and managed as per the law of the land."<sup>84</sup>

In the context of MP, the relationship between these two assumes greater significance as from the previous section, it is clear that the Panchayats play negligible role in the forestry management. By drawing clear linkages with JFMCs, their involvement can be strengthened.

Before delving further in the issue it is important to highlight that the village as defined for the purposes of JFM programme in MP is different from the way it has been defined under the *Madhya Pradesh (Panchayat Raj Avam Gram Swaraj) Adhiniyam, 1993* in respect of non-scheduled areas. The recent JFM Resolution of the State<sup>85</sup>, defines villages as per PESA. The PESA defines villages on community lines, i.e., it takes a habitation (s) or hamlet (s) or small villages or their groups, which include such communities, which have been managing their affairs traditionally as a village, to be a village for both scheduled and non-scheduled areas. However as per the MP PESA, it is only in scheduled areas that villages are defined on these lines. Thus the JFM order going beyond the mandate of the PESA would create problems in non-scheduled areas. Until this issue of geographical boundaries of villages is settled, it is pre-mature to discuss the inter-

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<sup>84</sup> Upadhyay Videh; 2003; Beyond the Buzz, Panchayats, User groups and Natural Resources in India. A study conducted by ELDF for JNU.

<sup>85</sup> Dtd 22<sup>nd</sup> Oct 2001

relationship between Panchayats and JFMCs as the terms gram sabha or PRIs are referred to a particular village. However it is a common principle of law that executive orders can't bypass an existing legislation. Thus it can be assumed that the villages shall be defined in accordance with the Panchayat law and in such villages JFMCs shall be constituted as per the JFM Resolution of the State.

Now it is important to closely see the JFM Resolution to see how it provides for the involvement of Panchayat Raj Institutions. The order provides for classification of forests and thereby of JFMCs in three categories:

- Ecodevelopment committees for **National Parks and Sanctuaries**;
- Forest Protection Committees for the villages situated within five kms from the boundaries of **dense forests**;
- Village Forest Committees for the villages situated within five km from the boundaries of **degraded forests**.

It is to be noted that while the first one is a legal category of forests, the latter two are demarcated on the basis of their ecological status and geographical boundaries. This is coupled with the fact that no criterion has been laid down to identify what forest-areas would be considered as dense or degraded..

Unlike other States where the conflict between PRIs and JFMCs arise only in revenue villages, the situation of MP is more precarious as there Panchayats exist in both revenue as well as forest villages.

The links between the Panchayats and the JFMCs can be traced to the first JFM circular of the Central Government<sup>86</sup>, wherein it was specifically mentioned that the beneficiaries under the programme have to be organized into a village institution, this village institution could be **Panchayat** or the cooperative of the village. Interestingly no State thought of using an existing institution like Panchayats for the purposes of JFM, perhaps because this Institution had not attained the constitutional status by then. It was only after 73rd amendment that the PRIs gained due constitutional support as bodies of local self-governance. It is another matter that instead of Gram Panchayat, the gram Sabha, being the collectivity of the village people, is better suited for this purpose. The 2001 JFM resolution of the MP Government should be seen in this light. There the gram Sabha plays an important role in the establishment of the JFM committees. These committees are formed by convening a meeting of gram sabha as per the Panchayat laws. The general body of the committees comprises the Gram Sabha of the village. This general body meets every six months. Further the chairman/vice-chairman and the executive of the committee is also elected in a Gram Sabha meeting duly convened under the law. Further the *panchs/sarpanchs* residing in the village act as *ex-officio* members of the committee. It is to be noted that establishment of JFMCs with active participation of village Panchayats is not a nascent concept. In 1991 the village *Antoyada* committee and the Sarpanch did have a role in constitution of JFMCs. Similarly in 1995 JFMCs were

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<sup>86</sup> No 6.2 1/89-FP) dtd: 1<sup>st</sup> June 1990

formed through Panchayats. The *Panchs* and *sarpanchs* of the village Panchayats have always been included in the Executive of the JFMCs.

The inclusion of Panchayat members in these committees, though a welcome step, doesn't really suffice. What is required here is the institutional linkage. It is noteworthy to mention certain inter-departmental correspondence here to see how the State government is taking this issue. In a letter<sup>87</sup> to the chief conservator of forests, MP, the Additional Secretary of the FD talked about the establishment of gram Swaraj, wherein it was mentioned that the *Sravajanik Sampada Samiti*<sup>88</sup> of the Gram Sabha shall act as the nodal committee for the committees formed under the Joint Forest Management programme. However the subject matter as well as the purposes of the two can be different. While the subject matter of the JFMCs is forests-areas, the *Sarvajanik Sampada Samiti*, in addition to forests areas, excises jurisdiction on land, water, public monuments etc. Since ambit of the said committee's activities is too broad and scattered, it is not suited for the being nodally responsible for various JFMCs. Thus it is incumbent upon the State to give clear guidelines as to how the two can be work together.

Similarly the Director General of Forests<sup>89</sup> gave certain directions to all the States Forest Department in order to strengthen the JFM programs. In the letter a specific guideline were given<sup>90</sup> which talks of relationship with Panchayat. It says,

*'The relationship between Panchayats and JFM Committees should be such that the JFM Committee take advantage of the **administrative and financial position** and **organizational capacity** of the Panchayats for the management of the forest resources'*. The crucial question here is to devise ways to do so.

In the said guidelines it was also advocated that a district level coordination committee be constituted under the chairmanship of the President, *Zilla Parishad*, with DFO as convener and other district level officers as members. However what will be the specific tasks of such committee and how will it coordinate the working of various JFMCs are the questions that need to be thought through.

Based on the same premise the State JFM resolution provides for obtaining funds from other developmental departments, including Panchayats for the forest work included in the micro-plan. The financial help of the Panchayats is also sought for other works, "which can reduce the dependence of the villagers on forests". This way the Panchayats can be involved in the JFM programme but not necessarily in the forest management.

Further the provisions given in the Panchayat laws (as discussed in the previous section) need to be seen closely. The Janpad Panchayat has been made responsible to make provisions for "social forestry". Similarly the Zilla Parishad advises the State government in the matters related to "social forestry". Generally the terms "social forestry",

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<sup>87</sup> Dtd; 25 may 2001, S.No. 3/136/10-2/2000.

<sup>88</sup> Public Property committee.

<sup>89</sup> letter-dated 24/12/2002

<sup>90</sup> Para no. 2

"community forestry", "joint forest management" and "participatory forest management" are used interchangeably, as they all are used to describe the initiatives that involve people in forestry. The State needs to clarify how it envisions these terms. Further the use of a common terminology is recommended. If we equate social forestry with joint forest management, then there are clear linkages in the Panchayat laws. While the Zilla parishad would advise the State Government on formulation of the JFM programme. The Janpad Panchayat may be involved in the overall supervision or implementation of the programme at the ground level.

There is another view that advocates that the JFMCs should be made a sub-committee of the PRIs or the Gram Sabha. Though this will give due legal status to the JFMCs, it would reduce their status to an executive arm of the State machinery, instead of being a grass-root level body.

***Conclusions:***

Thus we see that there are a lot of grey areas that need to be looked into before coming up with the concrete conclusions. While the concern of the State government for this issue is evident from the 2001 JFM resolution, what state has eventually done is mere patchwork, which might do more harm than good. The nature of the two institutions needs to be seen closely while drawing any linkages between the two; one is a specific resource management institution, while the other is a political and administrative body. However the differences between the two need not be over-emphasized, the idea should be to make the existence of the two institutions more meaningful to the community at large.

## CHAPTER IV THE ROLE OF COURTS IN FORESTRY MANAGEMENT IN M. P

Judicial intervention on Participatory Forest Management is still hazy as evidence of direct Court intervention on the issue of PFM is not clear, but on other issues relating to forest and forestry management courts have intervened liberally. This liberal intervention may have varied implication on PFM. This chapter aims to study the trend of judicial interpretations on such forestry issues in the state of M.P. The emphasis will be on important High Court and Supreme Court Cases. Courts have played a very effective and active role on issues like definition of forest, encroachment of forestland, issuance of pattas, significance of working plans and afforestation. Some of the important issues where courts have intervened are discussed below.

### *4.1 Definition of Forest*

It is a relatively less known fact that since 1950's the Courts have taken a liberal stand and have held that meaning or definition of forest should be construed in its widest possible significance<sup>91</sup>. In an ongoing case<sup>92</sup> Supreme Court has virtually made the issue of ownership immaterial in respect of those lands recorded as forest land in the government records. The verdict in this case has had vast implications not only for the state of Madhya Pradesh but for the whole country. The Courts' intervention in this case can be said to have contributed to stringent implementation of the provision for prior approval of Central Government for any non-forest activity under the Forest (Conservation) Act<sup>93</sup>.

### *4.2 Working Plans*

The Supreme Court has redefined the importance of working plans giving it a new dimension<sup>94</sup>. In one of its earlier orders in the case the court banned all such felling in any forest, which was not in accordance with the working plan, and in states where there was no working plan it was ordered that felling can only be done by the forest department and no other person. Courts even directed the States to come up with working plans as soon as possible.<sup>95</sup> This kind of renewed importance given to a Planning document that had little legal consequences till then has indeed paved the way for its acceptance as a guiding document by the Central Government.

### *4.3 Patta or Lease on Forest Land and Its Revocation*

The Supreme Court has also held that revocation of patta allotted to people staying in forest villages on the grounds of violation of terms specified on it is valid. In fact in the same case the court held revocation of patta by the Divisional Forest officer (DFO) perfectly valid and gave discretion to the Conservator of Forests (CF) to examine the

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<sup>91</sup> AIR 1953 Nag 51 (F.B)

<sup>92</sup> Order Dated 12-12-1996 in T.N.Godavarman V. Union of India

<sup>93</sup> Section 2 of FCA

<sup>94</sup> T. Godavarman vs UOI (W.P No. 202 of 1995), order dated 12.12.96

<sup>95</sup> Order Dated 12-12-1996 and 15-01-1998 in T.N.Godavarman V. Union of India

matter if rehabilitation measures were necessary and if CF thinks that such measures are necessary then he would make suitable recommendations to the State Govt.<sup>96</sup> It is important to mention here that the M.P. Forest Village Rules, 1977 specifically provide that no officer below the rank of Conservator of Forests (CF) is entitled to cancel patta on violation of any terms specified on it<sup>97</sup>. The stand of the Apex Court on the issue as above said has created confusion over the power of CF to cancel any patta or lease in any forest village.

#### 4.4 *Encroachment over Reserve Forest:*

Courts have especially in the recent past taken a very strong stand to deal with the problem of encroachment over reserve forest. Again in the *Godavarman Case* the Court banned all kinds of felling in any forest within the country except for as provided in the working plan and also made clear that no non-forest activity could be carried out in any forest without the prior approval of the Central Government. Different government departments both at the central and the state levels have in fact interpreted the term *non-forest use* and *non-forest activity* differently. It has been reported that this has also resulted in unjustified eviction of dwellers from designated forest areas. The question of regularising encroachments in forest lands in favour of tribals and conversion of forest villages to revenue villages in the nineties have been unresolved due to the ongoing case. In another significant ongoing case the Supreme Court has stayed the denotification of any reserve forest, national park and game sanctuary without its permission<sup>98</sup>. The result has been that the forest dwellers were restrained from making any claim on the land and forest, which have been the source of their livelihood for years. Several groups approached the Court seeking amendments of its earlier orders and in the year 2001 the Court held that all post 1980 encroachment should be removed in a time bound matter and the Ministry of Environment and Forest along with the *Central Empowered Committee* – constituted by the Supreme Court itself should together resolve the issue of pre 1980 encroachment. The matter is still pending before the court. Even the M.P. High Court in its recent judgment directed the State Govt. for the removal of encroachment within three (03) months period from the Reserved Forest (RF) area<sup>99</sup>. The High court issued several other directions, which included constitution of a permanent task force to see that forest involved in the present case are not encroached upon and in this regard the High Court went to the extent of constituting a high powered committee comprising the Secretary, forests, Govt. of M.P; Chief Conservator of Forest (CCF) and the concerned Divisional Forest Officer (DFO) to oversee that all steps directed by the High Court are complied with. This tough stand of the courts has led to ‘an *anti forest department*’ feeling within the community living in and around the forests.

<sup>96</sup> Sarvan Singh v. DFO, Sagar & others 1991 J.L.J. 306 (SC)

<sup>97</sup> See Rule 8 of M.P. Forest Village Rules, 1977.

<sup>98</sup> CEL WWF-India Versus Union of India {W. P. (C) 337 of 1998

<sup>99</sup> The petition was filed by Panch of a village for removing encroachment from Reserved Forest (RF) area and to remove persons from the cattle grazing area. Patiram Chandel v. State of M.P. 2003 (4) M.P.L.J. 424



#### 4.5 *Afforestation*

This is an issue that has got ample amount of attention from the courts. The Supreme Court in *the Godavarman case* held that Central Government, while granting approval for non-forest use of forestland, can accord a condition of compulsory afforestation. It is the user agency, which has to ensure effective implementation of this condition and if the Central Government finds that this condition is not being followed or implemented effectively then this approval can be quashed by it. Note here that the Apex Court in one of its earlier order in the same case was of the view that plantation fell out of the definition of forest and cannot be said understood as forest activity.

#### 4.6 *Concluding Remarks*

Thus it is quite evident from the above that a more intensive insight is needed to deal with issues relating to forest and forestry management, which are in the legal domain, especially as the implications of Court orders have been varied and often unexpected. The real impact of these orders are felt at the field situations, where in the absence of capacity to understand the legal jargon, the field functionary interprets the order as per his/her convenience, which becomes the “Supreme Court Order”...!

## CHAPTER V JFM ORDERS IN MADHYA PRADESH-THE TRANSITION FROM 1991 TO 2001

### 5.1 Introduction

The nineties witnessed a major shift in government's policy towards forest management, from timber oriented management to management for meeting local people's requirements. It was the National Forest Policy, 1988 that first envisaged community involvement in forest management. Followed by the guidelines<sup>100</sup> issued by the Central Government to various States and UTs for involving the local communities in the protection and development of the forests, which marked the beginning of joint Forest Management in India. Joint Forest Management, generally, can be defined as the practice of management of forest resources jointly by the Forest Department and the local communities, which would provide the communities a usufruct title for a share in the forest produce, in lieu of their participation in protection and management of forest resources. Subsequently two more Central Government guidelines were issued, in 2000 and 2002, detailing upon various aspects of participatory forest management.

The State of MP took one and a half year to come up with the first JFM resolution<sup>101</sup>. Since then it has been amended three times. This section attempts to capture the transitions in JFM orders in the State of MP, and also to find possible factors necessitating these amendments. Further some legal issues regarding JFM, such as legal basis of JFM, implications of signing a Memorandum of Understanding (MOUs), registration of JFMCs as societies etc shall also be discussed.

It is interesting to see that the 1991 JFM Resolution starts with the note that illegal cutting and encroachment is done by "organized gangs". It was also noted by the State Government that inspite of "adequate measures" taken in sensitive areas, satisfactory results have not come so far. Thus the State concluded "until residents of villages adjoining the forest areas sensitive to damage give their active cooperation to the Forest Department in the protection of forests, it would be impossible to protect the forest areas fully." This can serve as a useful starting point as the preamble of this resolution assumes that the village communities have not been cooperating in the protection of forests and the State has taken adequate measures to deal with the problem. This premise itself is questionable, as neither these "organized gangs" or their association with the local community has been exemplified, nor has the steps already taken by the government to deal with the problem have been discussed. Further the 1991 resolution gives central position to the Forests Department and its officials, while the role envisaged for the community was limited. Even after ten years and a couple of amendments, the major role is still played by the Forest Department, though the attitude towards the village community has definitely become more liberal. The State has taken various initiatives to make JFMCs constituted under the JFM programme more inclusive, especially by

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<sup>100</sup> No. 6.21/89-FP

<sup>101</sup> Order No. 16/4/10/2/91 of 10.12.91

creating space for the disadvantaged people, like backward classes, landless families etc. Further attempts have been made to ensure that JFMCs work in tandem with other village level institutions such as Panchayats and user groups. The field impact of such linkages are difficult to locate or assess. This coupled with the ambiguity in conflict resolution mechanism, regularity and certainty of the benefits that would accrue to the community raises serious questions on how "participatory" the JFM programme is. An attempt has been made below to explore all these issues and their larger implications.

## 5.2 Transitions in MP JFM

This section reviews various JFM resolutions of the State of MP and the way they have changed since 1991. The success of any JFM programme among other things depends on the institutional structures that have been created under it and the jurisdictional clarity over which such institutions operate. The powers and responsibilities of the JFMCs are crucial to a successful programme. While it is important that the JFM order contains clear and unambiguous provisions on these aspects, it is all the more necessary that such provisions are fair and equitable.

### i) **Forest Category and types of Committees:**

One of the notable features of the MP JFM is to classify the forest areas in different categories and establish different committees for such areas. Initially<sup>102</sup> two types of committees were formed, Forest Protection Committees (hereinafter referred to as FPCs) in forest areas sensitive to damage, and Village Forest Committees (hereinafter referred to as VFCs) in forests degraded due to biotic pressure. These are not legal categories of forest, rather classified on the basis of extent of degradation, vulnerability to damage, activities required to restore the ecological balance. In 1995<sup>103</sup> resolution the classification of JFMCs remained the same, however the villages to be covered were restricted to the ones located within the periphery of five kms from the forests. At the same time forest areas under FPCs was changed to "well-stocked forests". It is noteworthy to mention here that the State of MP's initiative to cover good forests areas preceded Central Governments guidelines advocating inclusion of such forests under the JFM<sup>104</sup>. Further the term eco-development was used for the first time as one of the purposes for constituting FPCs. This is perhaps influenced by the 8<sup>th</sup> five-year plan (1992 to 1997), which first mooted the idea of eco-development.

Subsequently in 2000 resolution<sup>105</sup>, another category of forests was added; i.e., National Parks and Sanctuaries and Protected Forests. Ecodevelopment Committees were constituted in villages inside and outside such areas. Further instead of "well stocked forests" the term "dense forests" was used for the forests under the jurisdiction of FPCs. Similar classification was made in the 2001 resolution. It is notable that National parks

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<sup>102</sup>Order No. 16/4/10/2/91 of 10.12.91

<sup>103</sup> No. F.16-4-10-2-91 Bhopal Dt. 4<sup>th</sup> Jan 1995

<sup>104</sup> MP Resolution came in 1995 while Central governments guidelines came in 2000 (N0. 22-8/2000-JFM (FPD) dt. 21 Feb 2000.

<sup>105</sup> No F16/4/

and Sanctuaries, which are one of the categories of forests for constituting the JFMC's under the JFM resolution 2001, are also a legal category of forests under the *Wild Life Protection Act*. The other two categories degraded forest and dense forests do not find any legal basis.

Thus we see that the state government has attempted to bring more categories of forests under the JFM programme. However the legal terminology has not been used to classify forests, while the first one is a legal category, the latter two are classified on the ecological and geographical basis. This may lead to conflicts because there is a different legal regime for each category of forests. Within a reserve forests there may be different patches, both degraded and dense, thus the types committees for one patch will be different from the other one, however the legal regime as regards the exploitation of forestland and forest produce would be the same. This may lead to ambiguities at the ground level.

ii) ***Composition of committees:***

The composition of JFM committees should be seen at two levels; one the composition of the general body and secondly the executive. In MP there has been a remarkable change towards a more inclusive general body. In 1991 one member from each family could be nominated as a member. In 1995 this was changed to one male and one female member from each family. In 2000 the ambit of general body was further broadened to include all village people eligible to vote. In other words it is the gram sabha of the village that constitutes JFMCs.

As regards the executive, a similar trend can be traced. While the 1991 resolution provided for the inclusion of Panchayat members, village teacher, village *kotwar*, apart from the Forest Department officials. In subsequent orders provisions were made for inclusion of women, members from landless families, representatives of self-help groups, user groups and members from scheduled castes and scheduled tribes and backward classes.

The above-mentioned developments, though welcome, don't suffice to make JFM, a truly democratic process. It is all the more necessary to involve the community in decision-making process. The 2001 JFM resolution of the State provide for regular meetings of the General body atleast, once in six months. In those meetings important decisions like election of executive body, etc are taken. The quorum of general body constitutes of 30% of the members. Similarly the meetings of the executive body are held atleast once in three months, and for that 50% of the members should be present to form the quorum.

Participation of Women in the JFM programme has always been advocated, as they are primarily responsible for collection of fuel-wood, fodder, fruits and other minor forest produces for both household as well as livelihood purposes. The first JFM Guidelines of the Central Government didn't provide for women's participation, same was reflected in the 1991 JFM resolution of the MP Government. In 1995 the State made certain provisions for inclusion of women in general body as well as in the executive, for instance the general body was to consist of one male and one female from each family,

while minimum two women members should compulsorily be included in the executive. Subsequent JFM resolution gave more space to women by providing that 33% of the executive shall consist of women and either the chairman or vice-chairman of the committees shall be a woman. Here also the initiatives of the State Government preceded central guidelines; the idea of participation of women was firstly mooted by the central government in 2000, wherein same suggestions were made.

It is noteworthy to mention a distinguished feature of the 2001 resolution, apart from the secretary, who is the beat guard or the forester-in-charge, it also provides for an Assistant Secretary who will take over as the member secretary after two years. During these two years he/she works with the Secretary to gain proficiency in the work. It would be worthwhile to make a quick assessment in the study area as to how many Asst. Secretaries have taken over from the existing secretaries. Our apprehension is –none. Even the village reports prepared by the partner organisations, don not show signs of any such Assistant secretary existing in any village.

Further the State has also been increasing the tenure of the executive members of these committees, except for the *ex-officio members*. From one year in 1995, it has been raised to five years in 2001.

Thus we see that over the years, at least theoretically, the State has attempted to make the programme more inclusionary, special provisions for the disadvantaged sections of the society and women have also been made. Further there has been an attempt to address the initiatives at the village level, like the involvement of user groups, WSHGs etc to make the programme more relevant to the present scenario.

*iii) Micro-planning:*

Micro planning is another important part of the JFM as it prescribes the forest as well as other development activities to be undertaken under JFM. Since the idea is to manage the forests jointly with the village community, the same should be reflected in the formulation of the plan. In other words, soliciting community's involvement in formulation of micro plan is not only a recommendation, but is a necessary pre-requisite of JFM. At another level, this management plan or micro-plan should be compatible with the Working plan drafted by the Forest Department<sup>106</sup> for the management of the forest area. The JFM resolutions of the State should be seen in this light.

Initially the participation of the community in preparation of micro plan was limited to the approval of the plan, which was prepared by the forest department<sup>107</sup>. In 2001 resolution, the section on Micro-plans starts with the note that the micro-plan shall be

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<sup>106</sup> Generally speaking a working plan is a guiding document to manage forest divisions for a prescribed period. This includes the details of a forest division wherein the Working circles of such division are identified for sprucing, fuel, protection as well as plantation among other things. Further, the Plan also includes detailed information on the legal status of forests, the nature of rights, the financial forecast and cost of the plan, staff and labour supply, wildlife management, expected forestry operations and other details.

<sup>107</sup> The 1991 resolution accorded central position to the forest department, while the community only approved the plan already prepared by the forest department.

prepared by the villagers, with the participation of the Forest Department and other development departments. It is not clear that which development department will participate in preparation of these micro plans. Again it is the FD who finally approves this micro plan.

As regards the compatibility with the Working plans, certain interesting provisions of MP resolutions deserve mention here. For instance in 1991 resolution there was no mention of working plans. While in 1995 the JFM resolution, it was mentioned that as regards the well stocked forests (Forests under FPC) the forest area shall be managed as per the working plan. On the other hand in degraded forests (under VFCs) the working plan of the FD shall remain suspended and the forests shall be managed as per the so called "micro-management plan". It is important to mention here that the working plans are framed for entire forest circle, for instance Harda in MP will be considered one forest circle. Thus there will be practical difficulties in giving effect to such provisions, for example in reserve forest of Harda, a patch will be degraded therefore working plan shall remain suspended there, while another patch that will be well stocked, will be worked as per the working plan. Further the importance of working plan can't be undermined like this. The same has been recognised by the Apex Court in an ongoing case<sup>108</sup>, which categorically prohibited felling in all parts of the country, except in accordance with the working plan. It should also be noted that this judgment came after the 1995 resolution. In subsequent resolutions the State did away with such provision. However instead of clarifying the relationship between the working plan and the micro-plan, the State overlooked the issue altogether.

The 2000 guidelines of the Centre provide for the interlinking of the two. It says, "in case of new working plans a JFM overlapping working circle should be provided to incorporate broad provisions for micro-plans". Similarly for the areas where the existing working plans are in force, for incorporation of micro-plans in the working plans, a special order may be issued by the PCCFs for the implementation of the Microplan. Now the present JFM Resolution<sup>109</sup> of the State deserves mention here. The term "working plan" has been mentioned in the resolution, but its immediate context needs to be seen closely. The recent State JFM resolution focuses primarily on the "principles" of forest and wildlife management. The micro-plan, as prepared under JFM programme has to confirm to these principles as emerging from the "working plan" as well as from the relevant laws and rules. However the working plan for a forest division goes beyond laying down general "principles" for forest management. It, in fact, deals with taking those principles to the ground and includes details like identification of working circles for sprucing, fuel protection, plantation etc. It also elaborates upon factors like financial forecast, cost of the plan, forestry plantation, and labour supply. Keeping in mind the prominent place that it has been accorded by the Apex Court, it is important that the micro-plan prepared under JFM should correspond with working plan. This issue needs to be addressed in the JFM resolution itself.

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<sup>108</sup> TN Godavarman Vs. UOI (Writ Petition (c) 202 of 1995) order dated 12.12.1996

<sup>109</sup> 2001 Resolution.

Certain distinguishing features of 2001 resolution are worth mentioning here. The micro-plan is assessed on both technical and legal aspects. Further it also provides for compatibility with the existing laws and rules dealing with forest and wildlife management. There are clear provisions for involvement of other development departments not only in preparation of micro-plans but also for raising funds for developmental activities enumerated in the micro-plans. Further there is a provision for a district level co-ordination committee for the co-ordination of the activities to be executed through the micro-plan.

**iv) Dispute resolution:**

The idea of conflict resolution was put forward for the first time by the 2000 Central government's guidelines. These guidelines recommended for Divisional and State level representative forums or working groups, including representatives from all stakeholders. However it is pertinent to mention here that the conflicts may arise at various levels like conflicts, among the committee members, between committee and forest department, between village level institutions like Panchayats, user groups and JFMCs.

In the recent JFM though some provisions have been provided for conflict resolution they don't really suffice if seen in light of the facts mentioned above. One of the powers of the forest officers is to assist the committee in resolving the disputes. It fails to answer the manner in which the committees will resolve the disputes and how will the forest officers extend their help to the committees. As regards the conflict between the Forest officials and committee members over termination of an individual's membership or deprivation of any member's eligibility to obtain nistar, there is a provision for appeal to the Range Officer within one month of passing of such order. On dissolution of committee by the forest officer, an appeal can be made to the Federation of chairpersons of the committees constituted at the forest division level.

While the committee is competent to resolve the conflicts between the committee members themselves, the conflicts between different institutions like Panchayats and JFMCs or between two JFMCs should be referred to some authority at the State or district level as suggested by the central government guidelines.

Thus there are limitations with the existing conflict resolution mechanisms. It is imperative that the State comes up with clear guidelines on this aspect as it is a necessary requirement for a program involving livelihood and sustainability concerns in which not just the village community but also a host of other institutions are involved.

**v) Benefit sharing mechanism:**

The 1990 JFM guidelines of the central government starts with the note that "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 forests, are to be treated as first charge on forest produce". This echoes the mandate of the *National Forest Policy, 1988*. Further it was also observed that certain benefits are to be provided to the village community so that they can be motivated to identify with the protection and development of forests. This itself reflects the importance accorded to the benefits. However there are

certain pertinent questions on the benefit sharing mechanisms, especially between village community and the Forest department. Firstly the committees can't claim these benefits as rights as they are subject to the discretion of the DFO. Further *nistar* has been made subject to availability of forest produce, after deduction of harvesting costs. It is not clear here that if the forest produce which is not sufficient for people's *nistar* requirements or is not available, then whether the FD will provides some alternative sources or produce. It is needless to mention here that the day-to-day life of village community is dependent upon these *nistar* requirements. Thus depriving them of such benefits may have implications on both their subsistence as well as the livelihoods. It is to be noted that a person may be deprived of his eligibility to obtain *nistar* if he doesn't co-operate in the activities of the Committee or commits a forest offence. The same is done after taking a decision in the general body of the committee, however any action is taken after giving an opportunity of being heard to the member.

As regards the mechanism for sharing benefits from the forests, the same is equally ambiguous and confusing. A chronological trend from 1991 to 2001 reflects no consistency in State's approach towards benefit sharing. In every resolution the State came up with a different system. However over the years there is an increase in the percentage of the benefits to be shared with the people (see Table-1 below).

**TABLE-1- TRANSITIONS IN BENEFIT SHARING (1991-2001)**

Resolution No	Benefits to FPCs	Benefits to VFCs	Benefits to EDCs
No. 16/4/10/2/91 dtd. 10.12.1991	20 % of the net income derived from forests area	Full right to non-nationalized MFPs  30% of the net income obtained from the nationalized MFPs  Entire quantity of fuel-wood, timber bamboo yielded from thinning, clearing etc.  30% of total quantity of timber and fuel-wood from natural felling or final exploitation of planted trees or 30% of the net revenue to be obtained from the forest produce.	No such category in 1991
No F.16-4-10-2-91 dt. 4 <sup>th</sup> Jan 1995	<i>Nistar</i> requirements, subject to availability, without charging any royalty.	Full right to non-nationalized MFPs  Fuel-wood, small timber bamboo and other forest produce.  Collection charges, incentive, remuneration, bonus etc on collection and delivery of all nationalized MFPs.	No such category in 1995



		30% of total quantity of timber and fuel-wood from natural felling or final exploitation of planted trees or 30% of the net revenue to be obtained from the forest produce. The same will be reckoned as the spot values minus harvesting cost.	
No F16/4/91/10-2 Dt. 7 <sup>th</sup> Feb 2000	Royalty-free Nistar, subject to availability, On payment of extraction costs.  100% of forest produce, on payment of extraction costs, obtained as a result of thinning in timber coupes and cleaning of the bamboo clumps in the degraded bamboo forest  Forest produce equivalent to 10% of the value of produce obtained from final felling of bamboo/timber coupes, on payment of the proportionate extraction cost. Price shall be calculated on the basis of the <i>sanctioned malik makbooza</i> timber/bamboo rates of the concerned forest circle	Royalty-free Nistar, subject to availability, On payment of extraction costs.  100% of forest produce, on payment of extraction costs, obtained as a result of thinning in timber coupes and cleaning of the bamboo clumps in the degraded bamboo forest  Forest produce equivalent to 30% of the value of produce obtained from final felling of the planted area on payment of proportionate extraction costs.  Price shall be calculated on the basis of the <i>sanctioned malik makbooza</i> timber/bamboo rates of the concerned forest circle	Royalty-free Nistar, subject to availability, On payment of extraction costs.  100% of forest produce, on payment of extraction costs, obtained as a result of thinning in timber coupes and cleaning of the bamboo clumps in the degraded bamboo forest  The amount to be paid to the EDCs (Inside PA) shall be equivalent to forest produce given to the FPC situated in the area adjoining the PA.  EDCS outside PAs-benefits on the basis of density of the forests allotted to them
F 16/4/91/10-2 dt. 22 Oct, 2001	Royalty-free Nistar, subject to availability, On payment of extraction costs.  100% share of the produce obtained from the thinning of timber coupes and clearing of clumps in degraded bamboo forests.  10% of the forest produce obtained from final felling of timber coupes, 20% of final felling of bamboo coupes	Royalty-free Nistar, subject to availability, On payment of extraction costs.  100% share of the produce obtained from the thinning of timber coupes and clearing of clumps in degraded bamboo forests  100% of the value of forest produce obtained from plantation/rehabilitation of degraded forests/pasture development work/final	Royalty-free Nistar, subject to availability, On payment of extraction costs.  100% share of the produce obtained from the thinning of timber coupes and clearing of clumps in degraded bamboo forests  same as in 2000 Out of the amount received by the EDCs from the final felling, 50% to the members in

	after deduction of harvesting costs	of felling of planted area after deduction of harvesting costs	cash, 30% on village development and 20% on forest development
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Further in 2001 resolution there is a provision that the rights of the committees over MFPs shall be in accordance with the decisions of the State Government under Provisions of Panchayats (Extension to Scheduled Areas) Act 1996. The said legislation applies only to scheduled areas, it provides for ownership of MFPs to vest in any tier of the Panchayat and the Gram Sabha. However the State Government has not yet made any provision in its panchayat law in this respect. Thus the State needs to clarify its stand in this regard, further whether the said decisions on MFP's will apply to Scheduled areas only or to non-scheduled areas also is unclear. It is pertinent to mention that our study area has no scheduled area and thus is not within the purview of the legislation on PESA.

**vi) Role of Forest Department:**

Since JFM is carried out jointly by the forest department as well as the village community it is pertinent to look at the role of the forest department more closely. The 1991 resolution gave central place to the forest department, while that of the village community was peripheral. It were the forest officials who selected the area to be covered under JFM, mooted the idea of JFM in village people's meeting, formulated micro-plan, certified whether or not the committees have been performing satisfactorily and thus granting them various benefits enumerated under the resolution. Even after three amendments the role of forest department is more or less the same. For instance 2001 resolution provides for formulation of micro-plan jointly with village community and other developmental departments.

Most controversial among these powers is the power of the DFO to disband a committee or to terminate the membership of any individual in the committee. While the Forest department can dissolve any particular JFMC anytime, there is no space for voluntary and collective decision of the village community to terminate the programme. Similarly entitlement of benefits to people has again been made subject to the satisfaction of the DFO.

There is a view that the forest department should play the role of a facilitator like providing financial as well as technical assistance. Though such provisions have been provided, it is important to restrict some of the unchecked powers of the forest department as discussed above to make JFM more participatory, just and equitable.

**5.3 Legal Issues in Joint Forest Management:**

In this section we would discuss certain legal issues related with Joint Forest Management. There are certain grey areas when it comes to the legal basis of JFM, its interlinkages with other legislations etc. These issues are discussed herein below:

**(i) Legal basis of JFM:**

Most significant issue relates to the legal status of the JFM circular itself. It has to be borne in mind that it has no force of law and thus JFM circular premise is on weaker



footing. The circular is in fact a set of guidelines that are to be followed to carry out the JFM programme. Therefore in case of any conflict with the Indian Forest Act, 1927 or Forest Conservation Act, 1980, the circular may be over ridden by the legislations. The inter-relationship between the two has been dealt with in chapter-2. Based on these guidelines the State of MP has issued Government resolutions, isolated from the legal map. Government resolution is one of the procedural means available to Members of Parliament and ministers to raise a discussion in House on a matter of public interest. As such it is not binding on the government.<sup>110</sup> Further these Resolutions are easy to modify, which on one hand lends flexibility to them, but on the other, deprives them of being certain and stable.

Since JFM has not been formalized under any law, its provisions cannot be challenged in or enforced by a Court of law. Thus the need of the hour is to give some kind of legal backup to JFM. Here the 2000 guidelines of the Centre needs to be taken into consideration, which suggests among other things the registration of JFMCs as Societies under the *Societies Registration Act, 1860*. However the purpose for which such societies are formed is totally different from that of the JFMCs. The Preamble of the Societies Registration Act clearly says that it is an Act to improve the legal condition of Societies for promotion of literature, art, science and for diffusion of knowledge as well as for charitable purposes. This fundamentally is at variance with the basic objective of JFM, which is an incentive based management strategy. Thus there is need for clarification on the issue of registration of JFMCs as Societies.

However the State of MP doesn't provide for registration of JFMCs as Societies, it on the other hand talks of registration of JFMCs by the DFO. It is important here to question the competence and the legal authority that the Divisional Forest Officer possesses and from which law and under which provision of the Indian Forest Act, he acquires this power of registration. Registration is a legal process, which is done under the *Indian Registration Act*, or different institutional registration Acts such as the *Society Registration Act*, the *Cooperative Society Act*, or the *Trust Acts*. Any such power purported to be given to the DFO without proper legal authority would not be tenable in law. Therefore, any such registration process by an incompetent authority *vis-à-vis* registration would be legally invalid.

**(ii) Memorandum Of Understanding:**

The legal instrument to be concluded between the forest department and the community participating in the JFM programme is referred to as a Memorandum of Understanding (MOU).

It is important to understand the legal nature of the memorandum of understanding, which is the **binding agreement** between the forest department and the village community. A quick overview of the MOU suggests that, there are duties and responsibilities spelt out for the community participating in the JFM programme, through the binding instrument for such a JFM programme. This kind of a MOU, which is so biased against the interest of community, where there are no equal rights and

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<sup>110</sup> Rule 178, Rules of Procedure and Conduct of Business in Lok Sabha, sixth edition, 1980

responsibilities is bound to fail under close legal scrutiny. An instrument of this nature needs to be a valid contract and, as such, must be fair and reasonable. It is important to mention here that the right to recall or, in another words, the right to proceed with or disband a JFMC programme vests exclusively in the forest officer, although provisions granting a reasonable opportunity to object have been included. However, in a joint programme of this nature there has to be an equal sharing of power and this appears to be missing in the MOU.

It is thus imperative for the State to implement a programme, involving community on a wide scale, which is simple, while ensuring security of right, and clarity of responsibility, and equality of ownership. Such simplicity, defining in clear terms the objectives and the mandate of joint forest management is missing from the present Resolution. Although a number of duties have been allocated to the different tiers of government along with the village community, the binding MOU clearly favors the discretion of the forest department over that of the village community.

Thus these legal issues raise serious concerns on the JFM programme. It is crucial to address them to ensure its success. A programme based on the premise of joint management of an important natural resource, effecting lives and livelihoods of the village community on large scale, needs to have a place in the larger legal map. Further interlinkages with existing legislations are a must so as to ensure that two are compatible and there are no conflicts on the implementation level.

## CHAPTER-VI

### LEGAL VALIDITY OF THE PERCEPTIONS EMERGING FROM THE FIELD

The purpose of this chapter is to examine the perceptions of various stakeholders- held by people in the study area of the Harda District- on important issues relating to forestry management for testing their validity in law.

The chapter is divided into two sections; first section presents those perceptions that illustrate the conflicts within the legal arena. These perceptions have been closely examined to assess whether they stand the test of law or not while referencing them to existing laws, regulations and policies within the forestry sector. This exercise in legally validating the perceptions is preceded by a background note locating the specific context within which the set of perceptions have arisen.

The second section, focuses on widely held perceptions that are not legally ‘valid, i.e., either in conflict with the Statutes or depicting an illegal practice in the sense that it contravenes existing statutory provisions, rules and regulations. Such perceptions have been referred to as “*Perceptions not legally valid*”. There is an attempt to understand who (which group/stakeholders) holds these perceptions, what are the likely reasons for holding them and how do the differences between existing ‘law’ and perceptions contribute to conflict and finally, what are their implications for PFM.

#### 6.1 Legal Validity of Perceptions:

These perceptions have been culled out of the other partners’ reports including the Village Reports<sup>111</sup>, Interviews with Forest Department<sup>112</sup>, Panchayat Raj Institutions<sup>113</sup>, Market Actors and Traders<sup>114</sup>, MTOs and NGOs<sup>115</sup>.

#### A. Perceptions from Village Reports

##### I. JFM PROCESS:

##### a) *Transparency:*

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<sup>111</sup> The field team visited and prepared village reports for twenty four villages in the Harda District. These villages included both forest and revenue villages.

<sup>112</sup> Looking Beyond Forest Boundaries; The Forest Departments’ Perceptions on Participatory Forest Management.

<sup>113</sup> Participatory Natural Resource Management: Perception of Panchayati Raj Institutions on Forest Management in Harda, TERI

<sup>114</sup> Incorporating Stakeholder Perceptions in Participatory Forest Management in Harda – A Study on market-related Actors; TERI

<sup>115</sup> Incorporating Stakeholder Perceptions in Participatory Forest Management in India; Perceptions of *Sangathans* and NGOs; WINROCK INDIA INTERNATIONAL

**Select Perceptions:**

- *"Supervision is not apparent; the President only knows what he has done with all the deposits"*- **School Teacher, Didmdha (FV)**
- *"Ban to giya-power nehin hey-kitna raasi aaya, kitna bhuktan hua, humko labh nehin milta. Adhakshya ki samne bhuktan hona chahiye. Unko bana diya giya, koi byakti aayenge, puchhenge-to kya batayenge"*- **FPC president, Bothi (FV)**
- *"President of JFMC is not vibrant and energetic—diesel engine allotment is not proper—the engine stays with him who has taken earlier or influential..."* **School Teacher, Keli (RV)**
- *"Though, rules & regulations of FPC are pro people, executive committee members have different agenda. If management of accounts be given to people, there motivational level will increase and institution will strengthen"*- **Balaji Kakode, Up-sarpanch, FPC-vice president, Badjhiri (FV)**
- *"There is no transparency in fund utilization. When we ask about expense details panch (ward members) just show the bills, which we do not understand",* **Pujari Gowli. An active member of gowli community, Rwang (RV)**
- *"Beat guard runs the show---JFMC leader is hand picked and the whole program is maintained in resolution thereafter—",* **School Teacher, Keli (RV)**

**Background:**

The select perceptions above clearly reflect people's concern for transparency and accountability in the overall JFM process, especially in reference to fund utilization. In one case while people blame the President for not communicating effectively to them, the president himself pleads helplessness as the real powers according to him vest with the Forest department.

**Legal Validity:**

The 2001 JFM resolution<sup>116</sup> provides that the committee would maintain a record of the funds flowing in and out of the committee's account<sup>117</sup>, which shall be audited by an agency appointed by the Forest Department<sup>118</sup>. However it is silent on the mechanism for fund utilization, for instance who shall take the decisions regarding the expenses to be made. Though the community is involved in the maintenance of accounts, it is not involved in fund management and utilization.

Similarly the perception on JFMC president being handpicked may reflect the ground situation but is not compatible with the law. As per the JFM resolution, the chairman, vice-chairmen and the executive body are elected in a duly conducted Gram Sabha meeting<sup>119</sup>.

**b) Meetings:**

<sup>116</sup> F16/4/91/10-2, dtd: 22<sup>nd</sup> Oct, 2001

<sup>117</sup> Sec 11.2 (9)

<sup>118</sup> 12.2 (8)

<sup>119</sup> Sec 5.2 of 2001 Resolution.

### Select Perceptions:

- *"Meetings are held seldom; nobody attends"-Villager, Didmdha (FV)*
- *"Though there is FPC, its meeting don't take place, Villagers have elected inept person for the post of Sarpanch "- Balak Ram Dhurve (School Teacher), Rewang (RV)*
- *"When officials do not come, what discussions will be held"-FGD, Unchan (RV)*

### Background:

The select perceptions clearly show that JFMC meetings do not take place regularly. Further these perceptions hint at two things, firstly the people themselves don't attend meetings, Secondly the forest officials do not come. Thus the lack of interest is from both the people as well as the forest department functionaries.

### Legal Validity:

The latest JFM resolution prescribes an elaborate procedure for convening meeting, for both the executive and the General body. As regards the Executive it is mandated that the Secretary shall convene a meeting in every three months<sup>120</sup>, in which minimum 50% members shall be present<sup>121</sup>. Similarly for the General body, a meeting shall be convened in every six months, whose quorum shall be 30% of its members. Further it is also provided for recording of the proceedings of the meetings. However it is important to mention that earlier there were no provisions for the general body meetings. It was in 2000 that a provision for such meeting was incorporated in the JFM resolution for the first time. Hence, at present the meetings should be convened as per the JFM resolution.

### c) Women participation:

#### Select Perceptions:

- *"Women do not attend meetings"- Villager, Didmdha (FV)*
- *"Earlier women also taken part in the JFM meeting but now not single women participate in JFM meeting." Rukmani Bai, Member of Executive body, Dheki (RV)*

### Background:

The above-mentioned perceptions reflect absence of effective participation by female members of the JFMCs. It is important to note that even the Executive member who is a lady complains about the negligible mobilization of women in the JFM programme.

### Legal Validity:

Though there are provisions for involving women in JFM, i.e. 33% reservation of seats for women in Executive, representation by women SHGs, inclusion of minimum one female member representing the landless families in the Executive<sup>122</sup>, the resolution fails

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<sup>120</sup> Sec 9 of 2001 Resolution

<sup>121</sup> Sec 10 of 2001 Resolution

<sup>122</sup> Sec 6 of the 2001 Resolution

to provide a fix minimum percentage of women forming quorum at General body or Executive meetings. The quorum for Executive meetings is 50%, and since it may be filled by men only leaves a gaping hole in the legal requirement with respect to women participation. Similarly there is a provision that either the chairperson, or the vice-chairperson shall be a woman, however the effect of this provision is negated by the fact that the meeting of the executive can be convened in the absence of chairperson or vice-chairperson.

**d) Membership of JFMCs:**

**Select perceptions:**

- *"No individual knows who is a member"- FGD, Keli (RV)*
- *"Gram Sabha is bigger body than JFMc"- FGD: Lohar dhana, Rwang (RV)*

**Background:**

Similar perceptions were seen in certain other villages also. It is surprising to note that people are not aware of a fundamental aspect of JFM programme, i.e., their membership in the Committee.

**Legal Validity:**

The entire Gram Sabha constitutes the JFMCs<sup>123</sup>. JFMCs should not be seen as bodies existing independently of the village people.

**e) Term of Executive:**

**Select Perceptions:**

- *"Leaders need to rotate---leaders are selected by the beat guard to suit his way of thinking---President is not active and he needs to rotate" -School Teacher, Keli (RV)*
- *"Netaon to badalte rehna chahiye"- Villager, Lodhidhana, FV)*

**Background:**

The villagers of both revenue and forest villages expressed their concern for rotation of EC members. This again shows lack of awareness about the functioning of JFMCs.

**Legal Validity:**

The term of the Executive Committee members of JFMCs is at present five years<sup>124</sup>. Since 1995, the tenure of EC members has been increasing, from 1 year in 1995, to two years in 2000; it has now been made five years in 2001. These changes in policy resolutions have not reached the village level and it is perhaps the lack of knowledge of change that have resulted in the current level of awareness and varied perceptions.

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<sup>123</sup> Sec 5.2 that mandates that all villagers eligible to vote shall be the members of the general body of the committee.

<sup>124</sup> Sec 6.11 of the 2001 JFM Resolution.



**f) Member- Secretary of JFMCs:**

**Select Perceptions:**

- *The change that he would like to see in the JFMC, is a secretary belonging to their own community, he is unhappy with the present secretary, i.e., beat guard.*  
**Villager-Lodhidhana (FV)**

**Background:**

People are unhappy with the beat guard as Secretary. They want that he should belong to their community.

**Legal Validity:**

The secretary of the Committee is the beat guard or the forester-incharge. In order to ensure greater involvement of people in the programme, the 2001 resolution introduced the post of an Assistant Secretary to be chosen from the members of the Executive<sup>125</sup>. Here preference shall be given to a person belonging to Scheduled caste / Scheduled Tribe. After working with the Secretary for two years, he takes over the post of secretary, while the beat guard continues working as a technical specialist.

**g) Dispute Resolution:**

**Select Perceptions**

- "Village level conflicts/ disputes are resolved locally. Village patel and kotwar hear both parties and give decision as the 'panch' ruling.....Forestry related issues are resolved by involving Nakedar"- Harikaran, Village Patel, Bhhempura (RV)

**Background:**

Here the dispute resolution mechanism adopted by the villagers to sort out conflicts relating to forestry issues has been discussed. However the village patel is talking about village level conflicts only.

**Legal Validity:**

The JFM resolution does not provide for any formal dispute resolution process. It only casts a duty on the Forest Department to help villagers in resolving their internal conflicts<sup>126</sup>. Thus the village level conflicts are resolved by people themselves, as per their traditional methods, as is evident from the perceptions mentioned above.

**h) Decision-making:**

**Select perceptions:**

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<sup>125</sup> Sec 6.9-10 of the 2001 JFM Resolution

<sup>126</sup> Sec 12.2 (6) of the 2001 JFM Resolution

- *"People are responsible for managing activities of FPC. We do not have any directly role in it. Our role (i.e. forest department) is just coordination".-* **(Mr Thakur Deputy ranger of Magardha beat Circle, Badjhiri (FV))**
- *"There have been many "Resolutions" from the JFMC regarding demand for work, development activities etc, but most of them have been turned down. Quantifying the same he said that so far only 10% of their resolutions have been accepted and passed, rest have been rejected. The decisions at the village level are done in consultation of all."* **(Hazari Lal-Panch and Ex RGWSC President; Mannasa (FV))**
- *"Whenever. FD official/staff requires consent of villagers, they call few important members at Range office or Beat guard residence and complete the formalities"-* **(FGD, Mannasa (FV))**
- *"All villagers participate equally in decision-making process regarding forest management issues"* **(Kaliram-villager, Bhempura (RV))**
- *"President of VFC selected after consensus and he is well literate person of village."* **(Makhan lal, Patel of village, Dheki (RV))**

#### **Background:**

Divergent views can be seen with regard to decision-making process. While the FD asserts that the people are involved equally in decision-making (this view is supported by some villagers also), the other set of views shows that only a handful of influential people take the major decisions. One villager also expresses his lack of interest in the process.

#### **Legal Validity:**

Firstly the JFM resolution does not contain clear and unambiguous provision for involvement of people in decision-making. Most of the important decisions regarding selection of area under JFM, fund utilization, eligibility of members for obtaining benefits under JFM, disbanding of JFMCs, termination of any individual's membership etc are taken by the forest department itself. The only place where the community is involved is preparation of micro-plan that it does along with forest department and other development departments.<sup>127</sup>

#### ***i) Bias in favor of tribal community:***

##### **Select perceptions:**

- *"The SC community has taken away all the benefits---we do not get the scope to know about schemes".* **(Genda lal, Sigampur (RV))**
- *"SC community is the dominant community and hence they hijack everything and we do not go to the meetings".* **(Genda lal, Sigampur (RV))**
- *Tribal of the village, those who have good connection with the forest department officials, dominate in JFM committee* **(Pujari Gowli, active member of gowli community, Rwang (RV))**

#### **Background:**

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<sup>127</sup> Sec 8 of the 2001 JFM Resolution

The above-mentioned perceptions show that in certain villages the benefits from the JFM have reached only tribal communities. This has larger implications for social structure.

**Legal Validity:**

The Executive of the JFMCs includes the members belonging to SCs, STs and OBCs in proportion to their population in the Gram Sabha, with a restriction that total EC members shall not be more than 21<sup>128</sup>. Though larger population of such communities in the village means greater representation by them in the EC, it however doesn't mean total dominance by tribal community. Such perceptions perhaps reflect the ground reality, which however is not the intention of the JFM.

**j) Proliferation of village-level institutions:**

**Select Perceptions:**

- *"It is creating rift in the community "samittee bhai-bhai ko lada rahi hai". - FGD: Lohar dhana, Rwang (RV)*

**Background:**

This perception reflects a possible larger implication of the JFM especially where the society seen as getting fragmented because of the number of village level institutions.

**Legal Validity:**

Number of institutions have sprung up at the village level, for instance PRIs and their committees, user groups, NGOs etc. Most of these trace their origin to formal law and policy. While Panchayats are Constitutional bodies<sup>129</sup>, the policy framework backs JFMCs<sup>130</sup>, similarly several other user groups have also been established under the formal legal and policy. Thus the conflict lies in the legal regime itself, which creates institutions, having overlapping powers and functions and conflicting jurisdictions.

**k) Role of NGOs:**

**Select perceptions:**

*"FD say we are Sangathan people and hence do not allot any work---since last three years work has stopped in the village" (Villager-Dhega, FV)*

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<sup>128</sup> Sec 6.2 of the 2001 JFM Resolution

<sup>129</sup> The 73<sup>rd</sup> Amendment to Constitution of India gave Constitutional status to PRIs and made it mandatory for all the States to conduct Panchayat elections every five years.

<sup>130</sup> Firstly a central government circular was issued in 1990 (No. 6,21/89-FP), which introduced the ideas of JFMCs. Followed by state circulars establishing JFMCs. In MP the first JFM circular came in 1991 (Order No. 16/4/10/2/91 of 10.12.91)

**Background:**

The above-mentioned perception reveals that there is a conflict between the NGOs, MTOs and committee. The Forest Department deprives the village people belonging to such organisations from the benefits of the JFM.

**Legal Validity:**

The JFM, as envisaged by the first central government circular<sup>131</sup> was to a tri-partite arrangement between the Forest Department, community and NGOs, where the NGOs were envisaged to facilitate the process by acting as an intermediary between the Forest department and the people. While the JFM in MP doesn't clearly create a place for the intervention by NGOs, it provides for involvement of people belonging to user-groups, women self-help groups. However it has to be borne in mind that the entire adult population of the village comprises JFMC, irrespective of the fact that they belong to some NGOs or not. Thus the Forest Department cannot discriminate at least legally against the village people belonging to any non governmental organisation.

***l) Samity on Papers-real powers with the Forest Department:***

**Select Perceptions:**

- *“Sanctioned fund are sufficient for the management of forest or restoration of niche of compartment but as allotted fund are under the control of the forest official, it promotes fraudulent practices among the forest official”- (Brijlal-villager, Bori, FV)*
- *“Samity was formed for us---but the main thing rests with Forest department---there is problem for fund utilization---we wanted to take utensil for the village to meet our need in marriages and other functions and however, there is no permission from the Ranger” (Villager-Dhega, FV)*
- *“Attend meetings but the Samity is defunct—no work is done—when samity was implementing schemes got wage but now everything has stopped” (Villager, Chikalpat, RV)*
- *“Now JFMC (FPC) have no role in forest protection. Everything is being done by watchers....A few people take decisions with respect of keeping watchers....There is need to strengthen FPC with some improvement.” (Sikari, Carpenter & Marginal Farmers, Badjhiri (FV)*

**Background:**

The above-mentioned perceptions hint at a very serious problem that the Samity exists only on paper, at least in certain places. It is asserted by the people that it is a toothless body. They also show that while the Samity was formed for people, the real powers still vest with the Forest Department.

**Legal Validity:**

The perceptions of the people raise an important legal issue. While the policy aims at joint management of forests by the community and the forest department, vesting of

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<sup>131</sup> 1<sup>st</sup> June 1990 (No. 6,21/89-FP)

certain important powers in the department adversely affect the level of involvement of the people. The powers of the Forest Department to disband JFMCs, terminate an individual's membership, to determine who are eligible for the benefits under the programme, etc result in an arrangement which does not create equal partnership and hence is liable to be challenged legally.

***j) JFM and Panchayats- the institutional linkages***

**Select Perceptions:**

- ***“Forest department implements directly—get minimum suggestion from Panchayat—implement without objective. “(Villager- Chikalpat, RV)***
- ***“There should be coordination between the JFM and PRI, both the institution should jointly used their resources for development of village “ (Fagulal, koshadhyakash, Jamiyakhurd, RV)***
- ***“Development for Panchayat is linked to the whole society while for Samity(forest) the link is only to department---we have only interest to the depot and we do not have any interest for nakedar and the forest.” (Sarpanch, Sigampur RV)***
- ***"Gram Sabha is bigger body than JFMc"- FGD: Lohar dhana, Rwang (RV)***
- ***“Panchayat and Forest department relationship is good” -(Beat Guard, Chikalpat, RV)***
- ***“Activities of FPC is discussed in Gram Panchayat and Gram Sabha Meetings. In past issues like silvicultural, fund utilization was discussed in the meeting. FPC functionaries also asked suggestions from Panchayat representatives. FPC is also involved in development work and construction of Panchayat Building”. (Mr Thakur, Deputy ranger of Magardha beat Circle- Badjhiri (FV)***

**Background:**

One important issue emerging from the field perceptions is the real and imagined notions on institutional linkages between the PRIs and the JFMCs. While the Forest Department and Panchayat members assert that there is co-ordination between the two institutions, the village community complains about the clear absence of the same.

**Legal Validity:**

As per the JFM resolution, it is the gram Sabha that comprises the JFMC. Further, the Panchs/Sarpanchs of the village are included in the Executive of JFMCs. Further the JFMCs are constituted, election of the Executive members are held in a duly convened Gram Sabha meeting as per the Panchayat Laws. Although there is a linkage at a constitutional level there are no clear linkages between the functioning of the two institutions, either in the JFM resolution or in the Panchayat laws. It is not clear as to how the two institutions, considering the differences in their nature, can work in tandem with each other. This is a serious legal impediment or atleast have a potential of future legal conflicts in the context of PFM.

## II ENCROACHMENT:

### *a) Restrictions on Grazing: Samities and Forest Department*

#### **Select Perceptions:**

- *People of the Gwali community perceive that as the Samitywale restrict animal movement why should we come in to the Samity. Villager. Keli, RV)*
- *Cattle come from outside; Rehatgaon, Harda, Timarni and this has stopped. Deputy Ranger. Keli (RV).*
- *There have been no cases of illegal grazing so far in the village. FPC. Keli (RV)*
- *Chandkhal Samittee does not allow our cattle to graze in the forest. When Samittee was not in existence there was no problem in grazing. They were paying 1-2 pai grain per cattle to Deputy ranger. It was age-old practice. Shivdin. Salai Theka (RV)*
- *Earlier there was scope for grazing; now there is no water, no rains and moreover, government has restricted cattle grazing: Anganwadi Worker: Keli (RV)*

#### **Background:**

The above-mentioned perceptions reveal villagers' concern regarding the prohibition/restriction on grazing by the Samiti, which in turn raises a critical legal question on the competence of the Samiti to impose such restrictions. Similarly the role of Forest department as well as that of the Panchayat for regulation of grazing needs to be seen closely. While a legal framework exists for the problem faced by the villagers because of the cattle trespass from outside, grazing continues to be an integral part of the larger problem of encroachment.

#### **Legal Validity:**

FPC and VFC had restricted grazing in the forestland under the 1991 M.P. JFM resolution<sup>132</sup>. But permission was granted to cut and carry grass free of cost. This restriction is in conflict with the rules regarding grazing in MP<sup>133</sup>. Rules such as the M.P. Grazing Rules would have a far more legal authority over a policy document such as JFM resolution. The latest JFM resolution of State of M.P.<sup>134</sup> is silent about the issue of grazing. Forest Department is the sole statutory authority, which regulates grazing on forestland under the state specific statutes and rules<sup>135</sup>.

Indian Forest act refers to the Cattle Trespass Act on any intrusion in a reserve or protected forest as damage done to any public plantation. Impounding of cattle and imposition of fines is provided under the Cattle Trespass Act. Under the M.P. Gram Sawaraj Adhinyam Panchayats have a specific role of maintaining grazing lands within their jurisdiction.

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<sup>132</sup> Order no 16/4/10/2/91 of 10.12.91

<sup>133</sup> M.P Grazing Rules, 1986

<sup>134</sup> Madhya Pradesh, JFM Resolution no. F16/4/91/10-2 Bhopal Dt. 22.10.2001

<sup>135</sup> Cattle Trespass Act 1871 (as applicable to the state of M.P.) and The M.P. Grazing Rules of 1986

## ***b) Encroachment-as a Right***

### **Select Perceptions:**

- *These landless people feel that individuals on the basis of “Baap dada ne jota thaisliye” have usurped government land. Suklya Villager. Bori (FV)*
- *Distribution of Patta has aggravated village situation because possession with someone and patta with some other. FPC. Keli (RV)*
- *Tribal community has encroached upon the forestland and destroyed the forest. ‘Coupe niklthe hi adivasi kheti shuru kar dete hai’. No one is there is stop them. Even FPC is not effective. FGD-Gollidhana. Rawang (RV)*
- *The entire chote ghass is under encroached possession of the farmers. Hari Singh (Korku). Unchan (RV)*

### **Background**

The above perception makes it evident that latent and manifest conflicts arise out of access to land, because in certain cases the owner of the land is not the one in possession. The land on which the villagers have been residing for years is being taken from them. Here the role of the judiciary as well as the State’s stand on the issue of regularization of encroachment needs to be seen in detail, especially with reference to the State of Madhya Pradesh. This issue traces its origin to the land reforms carried out after independence, under which land was distributed unequally and arbitrarily. Further various categories of forests, e.g., chotta jhad, bada jhad needs to be seen closely as there is a different legal regime for each one of them.

### **Legal Validity**

There is a clear provision for the allotment of Patta of 2.5 Hectare to every family staying in a Forest Village<sup>136</sup> and in case of families, where the number of adult members exceed more than one, 5.0 Hectare of land is to be allotted<sup>137</sup>. It is important to note here that the said rules prescribed that after the death of the patta holder the son or wife of the patta holder as the case may be would get the said patch of land under succession. The Rules made no provision for other progenies of the patta holder nor did the State Govt. allotted the said patch of 2.5 Hectare of forestland to them. It is important to bring to light that the FCA through amendment in 1988 made the permission of Central Govt. mandatory before assigning any forestland to any private person<sup>138</sup> or body through lease or by any other method. Role of judiciary has also attracted great attention on this issue. Apex Court and the M.P. High Court have taken serious note of the issue of encroachment. Supreme Court in an ongoing case<sup>139</sup> directed all the state governments to remove all post 1980 encroachment on any forestland. This post 1980 stand was taken on the pretext that these encroachments have come up after coming up of Forest Conservation Act, 1980.

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<sup>136</sup> whether located on RF or PF

<sup>137</sup> See Rule 6 (b) M.P. Forest Village Rules, 1977.

<sup>138</sup> Or Authority or Corporation etc.

<sup>139</sup> T.N. Godavarman V. Union of India W.P. (C) 202 of 1995

Even the M.P. High Court in one of its recent judgments<sup>140</sup>, following the same stand, directed the state government to remove all such encroachment within a span of three months. There is another very huge problem in the state of M.P., which has already been discussed earlier in the chapter pertaining to M.P. Specific Laws that pertains to the *Orange Areas*. This problem relates to the settlement process of those lands, which were acquired from the princely states in the post independence era and allegedly been recorded doubly in both revenue and forest records. Various *patta* holders now possess *pattas* from both the revenue and forest authorities and in a number of cases there are conflicts as the title of land is not clear.

### III. NISTAR:

#### Select Perceptions:

- *We had to do our nistar according to the requirement; do with Nakedar's support:* (Village People Didmdha (FV))
- *There is change---earlier it depended on forest guard---today it depends on Samity---earlier beat guard used to restrict and now it is the "Haq" of the Samity:* (Villager Dhega (FV))
- *We bring timber without the knowledge of Nakedar and Dy Ranger; do not fell a standing tree. After transporting of main parts of timber, we meet our nistar requirement. For this we represent Nakedar and they bear it. Ancestors died, where to migrate? Government is inflicting sorrow:*(Villager: Bori (FV))
- *After the formation of JFMC in the village, nistar related benefits have improved.:* Up-sarpanch FPC-vice president: Jamiyakhurd (RV)
- *JFMC is the one that has been stopping the villager to get Nistar from the forests:* Nathuram-villager: Kukdapani (RV)
- *People from Kukudapani and Ramtek come for nistari; we enter into altercation sometimes and seize fuelwood—it has happened twice—5 to 10 women steal fuelwood but listen when we say them not to do this:* Villager: Chikalpat (RV)
- *Get nistar items by stealing from coups; has to give something to get bamboo-* Villager; Village People: Didmdha (FV)
- *Panchayat has not given certificate so far to anybody to collect timber for house repair —people do it of their own from the forest, pay the beat guard and manage:* School Teacher: Keli (RV)
- *Nistari is done by the local people depending on availability---do it from the depot—people in 10 Panchayat depend on this depot:* Beat guard: Chikalpat (RV)
- *A bamboo depot was opened at Kaida but nobody availed from the depot:* Beat Guard: Beat Guard
- *We get poor quality bamboo from the depot whereas the good quality is given to big and rich farmers in under hand dealings:* Sukhram (Fisherman): Unchan (RV)

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<sup>140</sup> ibid (Role of Courts)



### **Background:**

The abovementioned perceptions clearly reflect that villagers on their own find it difficult to meet their nistar requirements. They need the support from either the forest department or the JFMC. In the absence of the above they resort to extra legal means. Another important point is the reduction in the availability of nistar and this further raises some critical issues such as impact of JFMC on the nistar benefits as well as some jurisdictional issues. The other important point is corruption prevalent at the lower or frontline staff of the forest department. Role of Panchayats on Nistari access is also questionable. Distribution of nistari is one aspect, which has drawn lots of attention especially with regard to opening up of depots for villagers to avail their nistari as per the new Nistar policy.

### **Legal Validity:**

Nistar in the present context connotes a usufruct right, and historically it has changed from a 'right' to a 'privilege'. Note here that while a right is enforceable through court of law concessions or privileges are not. In the context of JFM this privilege can be accessed at the discretion of the DFO, and /or the forest department. The other important factor, which affects this privilege, is the availability of resources. In a resolution<sup>141</sup> the FPC formed under the JFM resolution<sup>142</sup> is provided forest produce under Nistar system by only charging extraction and haulage expenditure and without charging any royalty but this is on priority basis subject to the availability of forest produce. All families of the committees are entitled to royalty free nistar subject to the availability of forest produce. But the status of nistar rights during non-availability of forest produce is not specified under these resolutions.

The term forest produce as used in the new Nistar Policy<sup>143</sup> raise confusion because of its synonymous usage with the term nistari. Nistari is a broad word denoting a gamut of needs that are statutorily provided for and its usage in limited sense and restricting it to forest produce would limit its potential and is bad in law.

Under the transit rules the transit passes for transit of forest produce, which may include nistari within the district, are issued by the gram Panchayat<sup>144</sup>. Forest Department has opened up various depots for distribution of forest produce and nistari on reasonable rates.

## **IV. OFFENCES:**

### ***a) Reduction in Illegal Activities: Impact of JFMC?***

### **Select Perceptions:**

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<sup>141</sup> Resolution no. F. 16-4-10-2-91 Bhopal. Dt. 4.01.1995.

<sup>142</sup> Order no. 16/4/10/2/91 of 10.12.91.

<sup>143</sup> M.P. Nistar Policy of 1996

<sup>144</sup> M.P. Transit forest produce Rules 2000

- “Offences like illegal grazing, felling of green trees have been completely checked after formation of committee. Villagers told that they do not fell green tree for Nistar purpose. Instance of forest fire too has gone down significantly” (**Villager-Amba, FV**)
- “Illegal feeling incident is negligible”. (**Sitaram Korku JFM president, Badjhiri, FV**)
- “There has been reduction in the cases of theft”. (**Sarpanch, Richharia RV**)
- “(Chori Chapari) Theft is very many for fuelwood and timber by people from outside (Raktia, Tinsar, salaidhana and Hasanpur”. (**VFC President, Richharia RV**)

### **Background**

It is evident from these perceptions that the illegal activities have been reduced after formation of JFMCs. However it is to be noticed that two of the perceptions are of the JFMC Presidents.

### **Legal Validity:**

As per the JFM resolution the Committee has to work with the Forest Department to check the forest offences. However, the role of the committee is limited to conveying the information about a forest offence to the department. They do not have any power to arrest or seize or search. Also note here that with regard to forest protection, the committee members are treated as public servants. They enjoy the benefits and immunities of the forest officials.

#### ***b) Lack of cognizance of illegal activities by the forest department.***

### **Select perceptions:**

- “Once or twice the villagers tried to nab the thief but forest officials do not have will to confront the matter”- (Sukhram, villager, Richharia, RV)
- “There have been many disputes over the issue of grazing between the villages, but the FD denies sorting them out, as they do not have time for such things”. (Pyarelal (Gram Patel, **Lodhidhana FV**)

### **Background:**

It is evident from above that there have been instances of conflicts and also offences where the Forest Department has been found wanting in terms of taking cognizance of these offences.

### **Legal Validity:**

It is unlawful on the part of the Forest Department to ignore its duty to check forest related crimes. The Indian Forest Act, 1927 vests Forest Officials with a number of powers relating to forest offences like prevention of commission of such offences<sup>145</sup>, to hold inquiry into forest offences.<sup>146</sup> The JFM also recognizes the duty of the Forest

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<sup>145</sup> Sec 66 of the IFA, 1927

<sup>146</sup> Sec 72 (d) of IFA

Department to assist the Committee members in discharging their duties. An important duty of the Committee is to check forest offences and inform the Forest Department about any illegal activity. The combined reading of all these provisions show that it is incumbent upon the Forest Department to look into the matter, if the JFMC approaches it. It is the binding duty of the FD to prevent and check any illegal activity relating to forest.

**c) Need for a forum where conflicts between FD and community can be addressed**

**Select perceptions:**

- *Fire incidents take place to take revengeful action against beat guard for his acts of POR, rounding of animals-* **(Beat guard, Dhanpada RV)**

**Background:**

The root of such problem lies in instances where the Forest Department actions acts contrary to the interests of the people, and people in turn direct their anguish on the forests. The most likely reason this happens is due to the lack of spaces in the law and policy framework for ventilating the grievances of the people and for deliberations over serious issues by the people and the department.

**Legal Validity:**

In instances like the above a moot legal question is the effective use of appellate authority. The JFM provides for appeal to the senior forest officers, like Range Officer, against the actions of the lower level department functionaries. However, to ensure that the people utilize such provisions, it is important to open all channels of communication, win people's confidence so that they can come with their complaints with a free mind. An operational mechanism is still not in place although the provision is on paper.

**V. LIVELIHOOD CONCERNS:**

**Select Perceptions:**

- *“Wage is different for men and women”* **-(Aganwadi worker, Keli, RV)**

**Background:**

The above perception raises a serious legal issue, i.e. differential wage structure for men and women, where the latter are paid less than the former.

### **Legal Validity:**

The Constitution prohibits any kind of gender discrimination and promotes not just equal employment opportunities to all but equality in all aspects of public life<sup>147</sup>. Thus any kind of discrimination on basis of gender is against the law of the land. The Judiciary, especially the Supreme Court has also recognized, “equal work, equal pay” as a fundamental right, being an essential ingredient of the “Right to life under Art 21”<sup>148</sup>. Further, Equal Remuneration Act, 1976<sup>149</sup> was enacted to ensure payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex, against women in matters of employment. The duty has been cast upon the employer to pay equal pay for same work or work of similar nature<sup>150</sup>.

## **VI CONVERSION OF FV INTO RV**

### ***a) Problem of credit faced by the FV villagers***

#### **Select perceptions:**

- *They do face problems in getting credit from Banks. Banks do not accept patta, they want detailed terms and conditions of patta and explanation from Forest Department while sanctioning a normal credit. Villagers have to approach forest department officials getting their sanctions: **Jageshwar Villager: Amba (FV).***
- *He is of the view that their village should be converted into a Revenue Village. This is because then they will have their own lands (Pattas), they will be able to get loans easily. He visualizes this with the example of the village Chhirpura: **Bhaiyalal Villager: Amba (FV)***

#### **Background**

The perceptions show that the villagers living in forest villages face problems in obtaining credit from banks and other financial institutions. Such institutions seek Forest department’s sanction before granting loan to these villagers, which in-turn increases their dependence on the department.

#### **Legal Validity:**

To tackle the credit related problem of forest villagers, the State of Madhya Pradesh, has issued directions to banks that a certificate from the forest department detailing the status of the land and terms and conditions of the patta, in respect of the land which is the subject matter of the loan should be treated as papers of the land for purpose of credit and loans. However, this is in the nature of executive instructions and thus are not binding on

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<sup>147</sup> Art 14 contains the fundamental concept of equality, while Art-15 talks prohibits any kind of discrimination on the basis of caste, sex etc. Art-16 is more specific guaranteeing equality in matters relating to public employment.

<sup>148</sup> 1995 Supp (2) SC 549

<sup>149</sup> Act 25 of 1976

<sup>150</sup> Chapter II of the Act.

Banks or other financial institutions engaged in loans or credits. A legal amendment is required to ensure that till the time such forest villages exist the temporary leases (pattas) be considered valid legal documents and loans be advanced on the basis of the same.

*b) Benefits from Conversion-automatic land entitlement?*

**Select perceptions:**

- *Conversion of forest village into Revenue would help us in getting land ownership. He can sell his land in emergency period. In addition to it villagers would be free from Nakerdar and Deputy rangers clout. They would not be forced to do 'begar': Sabulal-villager: Lohhidhana (FV)*
- *"Zammen khot par de ja sakti hai". The villagers of the revenue village know exactly how much land do they possess. They have written rights to the land. Agar revenue main badal diya jayega to achha hi hai zameen par Adhikar ho jayega. Pyarelal (Gram patel), Lohhidhana (FV)*

**Background:**

The above perceptions show that the people are in favour of conversion of forests villages into revenue villages, as they believe that such conversion would be beneficial to them, especially in getting them permanent entitlement to their lands. An important issue, though not clearly emerging from the perceptions, is whether all forest villages can be converted into revenue villages.

**Legal Validity:**

The forest villages can be converted into revenue villages by either denotifying the concerned protected forest or by de reserving the reserved forest on which such forest villages exists. However to do this the sanction of the Central Government is required under the Forest Conservation Act, 1980 along with the procedure prescribed under the Indian Forest Act as applicable in Madhya Pradesh.

The IFA also makes it clear that no right, which has been extinguished at the declaration of the protected forest, should come into effect again<sup>151</sup>. Thus conversion may not lead to land entitlement automatically. The villagers will have to prove their rights to the land they are holding and settlement process may take long. The above issue of conversion of forest village to revenue village also is now within the purview of two long standing court cases in the Supreme Court, the *Godavarman*<sup>152</sup> and *CEL, WWF-India case*<sup>153</sup>, where numerous orders have been issued to the effect that the permission of the Supreme Court is mandatory before such conversion.

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<sup>151</sup> Section 27 (2) and Section 34 (2) of the Indian Forest Act (As applicable in the State of M.P.)

<sup>152</sup> CWP No 202 of 1995

<sup>153</sup> CWP No. 337 of 1995

## VII OTHER ISSUES

### a) Working Plan: Importance and legality

#### Select Perceptions:

- “Main janta hoo working plan ka kanoni mahatava Aur working plan may eise khali jamin ka Jikra kiya gaye hai coup kai kam kee liya aur iska matlab hai woo jameen forest department kee hai. Aur us jamin per coup work hauwa hai Per patwari unkua bhadka raha hai jamin pae kabjha karne kee liya ” **(Forest Guard Jaminiya Khurd Beat, Jaminiya Khurd, RV)**

#### Background

This perception reflects the importance of the working plan, as perceived by the beat guard. It is important to understand the importance and legality of the working plans.

#### Legal Validity

The working plan is not a legal document in the sense that it is not a statutory requirement under any of the laws. They are prepared by the State Forest Department and are approved by the Central Government. They are guiding documents to facilitate forest management. It is important to note that the Apex Court, in one of the interim orders<sup>154</sup> passed in an ongoing case<sup>155</sup> accorded great importance to working plans. The Court directed that no felling may be carried out by any State except in accordance with the working plan and departure from it may entail legal consequences. Thus in an order the Supreme Court banned all felling in the entire State of Madhya Pradesh due to non-conformity with the Working-plan<sup>156</sup>.

### b) Critical Issues on legitimacy of law

#### Select Perceptions:

- *Rich men impose on poor men—why laws do not treat all equally—why officers take money-* **(Sarpanch, Ranchhod Das Malviya, Dhanpada (RV))**

#### Background

The above-mentioned perception centers around an all embracing legal issue on the legitimacy of law itself including how it tends to impact adversely through unequal treatment meted out to poor sections of the society. Additionally the perception also shows the corruption prevalent in our bureaucratic structure.

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<sup>154</sup> Order dated 12.12. 1996 in T. N Godavarman vs. UOI, Writ Petition (C) No. 202 of 1995

<sup>155</sup> T. N Godavarman vs. UOI, Writ Petition (C) No. 202 of 1995

<sup>156</sup> Interim order dated 19 Dec 1999.

### **Legal Validity**

One of the fundamental features of our Constitution is “equality before law”. The principle of equality has been enshrined as the fundamental right<sup>157</sup> of every citizen of India. It is incumbent upon the State to secure equal treatment and equal protection of laws to every person. Thus no law can discriminate against economically weaker sections of the Society. That is a blatant violation of the Constitution. The perception however, reflects the ground reality, and how that reality may not conform to the law books.

#### ***c) Right to information:***

#### **Select perceptions:**

- ***“The govt should disseminate information to us so that we may know what is happening around us”*** (Baajilal-villager, Lodhidhana (FV))

#### **Background:**

This perception reflects lack of initiative on the part of the government to disseminate information about its activities and policies, which is an important reason why such activities do not reach out to the people they are meant for.

### **Legal Validity**

“Right to information” is now part of the law of the land. The law mandates that the people have a right to know government’s policies, which are going to effect their lives, while the government has a corresponding duty to disseminate such information. Most of the States have framed legislations on the “Rights to Information”. Further the Apex Court of India has also recognised on a number of occasions that it as an important ingredient of participatory democracy.<sup>158</sup>

## **B. Forest Department Report**

### **I. JFM**

#### ***a) Genesis:***

#### **Select Perceptions**

- ***“... the local people emerged as a major force, rather the only force that would determine the survival of the forests.....and the forest officers started to look beyond the forest boundaries in order to solve the forestry problems.”*** (BHP<sup>159</sup>) ***It was felt that “..without the local peoples support, protection would not be possible; Participatory management emerged as the only tool.”*** (BHP)

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<sup>157</sup> Art 14 of Constitution of India

<sup>158</sup> (1988) 4 SCC 592, 613, AIR 1989 SC 190, 202-203.

<sup>159</sup> BHP refers to the respondents from the state level bureaucracy.

- “if we (forest department) try to sever those links between the forest and the local people we will have to face resistance” (BHP)
- “In the case of the Forest Villages, they feel that since these villages were completely dependent on the forest department for their developmental needs and the department felt a sense of “ownership” (HAR<sup>160</sup>) and “responsibility” towards these forest villages. As a result, some JFM had always been taking place in the Forest villages but it lacked “status” (HAR).

### **Background**

These Perceptions of forest department officials hint at the emergence of PFM. There is an assumption that the local people play an important role in the management of forest and therefore soliciting their involvement and participation is not just critical but inevitable. Evolution of PFM takes the spirit of the National Forest Policy further, and especially in the context of forest villages, it was the dependence of the people on the forest department that necessitated people’s involvement.

### **Legal Validity**

Even though PFM might have an old history it assumed formal status only after the commencement of the National Forest Policy and the 1990 JFM resolution of the Central Government. These perceptions revolve around the basic mandate of the PFM as provided under the National Forest Policy and the National JFM circulars.

#### ***b) Accountability***

### **Select Perceptions**

- “While the FLS have started recognizing the ‘peoples rights’ they feel that JFM as an approach is unfair. For involving people in protection the FLS policing powers have been diluted. However, they are still held responsible for the losses due to forest offences. While the committees are given all the ‘protection fund’ they are not accountable for such losses.”

### **Background**

These perceptions reflect frontline staffs concern over JFM. On one hand they feel that their powers have been diluted and on the other hand their accountability for the illegal activities in forest still remains the same. They also feel that the JFMCs do not share the responsibility for any illegal activity within the forests.

### **Legal Validity**

The duty of the committee to protect forest from illegal activities is limited to informing forest officials about such activities. If the committee does not discharge its duties envisaged under the JFM resolution<sup>161</sup> the FD has powers to disband the Committee itself. Here it could also be said that the responsibility of a government servant under any law is much more than that of a villager participating in the JFM process.

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<sup>160</sup> HAR refers to those from the Harda Division and the CF Hoshangabad.

<sup>161</sup> JFM resolution for the State of M.P, 2001



***c) Legal status of JFMCs:***

**Select perceptions:**

- *The JFM Committees should not be given legal status because this is likely to “legalise corruption,” and decrease ownership. (BHP);*

**Background**

The above perception suggests that corruption has effected the functioning of JFMCs and there is a fear that giving due legal status to JFMCs would result in aggravating the problem.

**Legal Validity**

The perception does not call for assessing its legal validity However, we believe that giving formal legal status to the process of JFM is essential to ensure long-term sustainability of JFMCs and also to bring in equal accountability of all the stakeholders in the JFM process. Thus the non-giving of the legal status to JFMCs has its own implications that can't be ignored. Corruption is a larger problem that needs to be dealt with at all levels; it however can't be taken as an excuse for not formalizing JFM under legal regime.

***d) FD-JFMC Relationship:***

**Select Perceptions:**

- *They (JFMCs) are helping the Forest Department but they are not going to replace it.” (HAR);*

**Background:**

The above perception revolves around the issue of FD and Committee relationship that is critical to the success of JFM process.

**Legal Validity:**

The above perception seems out of place especially when seen in light of the mandate of JFM. PFM or JFM itself implies joint, collaborative efforts of the community and FD to manage, protect & enhance forests. The JFMCs comprises both FD and Community representatives. One replacing the other is not the objective of the Policy.

***e) People's participation in planning:***

**Select perceptions:**

- *JFM should focus not only on participation in forest protection but should also include participatory planning. (BHP)*

**Background:**

The above perception suggests that JFM should not be limited to participation in forest management and protection only, but should also require participative planning, so that the needs and problems of all stakeholders can be addressed.

**Legal Validity:**

The present JFM Resolution as applicable to the State of MP does provide for micro planning with involvement of village Community, FD and other developmental departments.

## II. INSTITUTIONAL ISSUES

### *a) Role of NGOs*

**Select perceptions:**

- ***“Good NGOs can help us do things faster and may be better.....because the forest department does not have the expertise in all areas.” (BHP)***
- *Though “forestry is a technical matter and the NGOs have neither the expertise nor the resources to engage in it,” most senior officers and some of the field level respondents felt that the NGOs can serve as a “bridge between the Forest Department and the local community.”*
  - *“The respondents feel that the NGOs can especially play a role in facilitating women’s participation and participation from the marginalised communities because “people trust them”. (BHP,HAR)*

**Background:**

This perception shows that participation of NGOs along with the FD and village community is being recognized although some question the competence of NGOs in this regard. These NGOs can play a major role in mobilizing community support for JFM, especially in respect to women and other marginalised sections of the society.

**Legal Validity:**

Role of NGOs as community mobilizing agencies can be found in the very first guidelines issued by the Central government on JFM<sup>162</sup>. The subsequent guidelines issued by the Central Government on JFM<sup>163</sup>, further strengthened the role of NGOs by recommending for their participation in the conflict resolution mechanism. However, notably these provisions don’t find a place in the present JFM resolution of the state of MP, instead it provides for inclusion of representatives of Women Self Help Groups (WSHGs)<sup>164</sup> in the executive committee of JFMCs.

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<sup>162</sup> MOEF JFM Guidelines dated 1<sup>st</sup> June 1990

<sup>163</sup> MOEF JFM Guidelines dated 21<sup>st</sup> Feb, 2000

<sup>164</sup> Provisions for inclusion of WSHGs as provided in the JFM resolution for the State of MP dated 22<sup>nd</sup> Oct, 2001.

### III. RIGHTS OF THE COMMUNITIES:

#### Select perceptions:

- *“Whereas this relationship was earlier ridden with hostility, suspicion and antagonism there is now greater acceptance by the FD staff, of the rights of the local communities and also a more cooperative effort from the communities”;*
- *With the recent recruitment of field level staff, the acceptance of peoples’ involvement has gradually been increasing and the staff now ”recognises the rights of the people.” (HAR)*

#### Background:

These perceptions hint at the changed approach of the FD towards the community in recent years. However the whole assumption that the FD has started “recognising” people’s rights needs to be seen with a close legal eye.

#### Legal Validity:

While the perceptions suggest that FD have begin appreciating the rights of the people, it needs to be made clear that legal recognition of such rights is not within their competence. But those rights of the communities, which are already established under the formal legal regime, need to be respected by the FD.

### IV. ROLE OF FD

#### Select perceptions:

##### a) *Inter departmental Relationship:*

- *The forest department money was for protection and not for rural development. However, a part of these funds for protection are diverted for Rural Development.” (BHP)*
- *“We try to go to almost every rural development agency whether it is collector’s office, the DRDA, or the Agriculture department...we make our infrastructure available to them whenever they want to work in the interior....we help them to achieve their targets also. In our own way we are trying bring in a kind of rural development which can sustain conservation.” (BHP)*
- Some respondents believe that with the increase in demand for timber, and the existing ‘conservation focus’ of the department, *“forest department se akele nahi chal payega.” (HAR)*
- *“Cross sectoral integration is the key to JFM” (BHP)*

#### Background:

The above-mentioned perceptions emphasize the need and significance of interdepartmental co-ordination.

**Legal Validity:**

The present JFM Resolution of the State does provide for involvement of other developmental departments in micro-planning, arrangement of funds etc. The underlying idea is to reduce people's dependence on forests.

**V. ENCROACHMENT:**

**Select perceptions:**

- “Some respondents feel that JFM has resulted in limiting encroachment, not only by developing a feeling of ownership but also by providing irrigation. Some others believe that encroachment is still a “serious problem,” more so because of the governments’ policy of regularising encroachment, as well as the encouragement given by the MTOs”
- “*Faulty Policies encourage encroachment!*” (HAR)

**Background:**

The above perception clearly indicates government's ambiguous stand on the issue of encroachment. This ambiguity is created because on one hand encroachment is illegal *per se* under the present legal regime, however several government orders in form of guidelines have come up for regularizing these encroachments. But the government has never attempted to bring in any change in the statute thus far in respect of regularization of encroachment. This ambiguity traces its origin from the early settlement process that was done right after the independence, under which land got distributed unequally and arbitrarily. Further various categories of forests, e.g., *chotta jhad*, *bada jhad* needs to be seen closely as there is a different legal regime for each one of them. Here the role of the judiciary as well as the State's stand on the issue of regularization of encroachment needs to be seen in detail, especially with reference to the State of Madhya Pradesh.

**Legal Validity:**

There is a clear provision for the allotment of Patta of 2.5 Hectare to every family staying in a Forest Village<sup>165</sup> and in case of families, where the number of adult members exceed more than one, 5.0 Hectare of land is to be allotted<sup>166</sup>. It is important to note here that the said rules prescribed that after the death of the patta holder the son or wife of the patta holder as the case may be would get the said patch of land under succession. The Rules made no provision for other progenies of the patta holder nor did the State Govt. allotted the said patch of 2.5 Hectare of forestland to them. It is important into bring to light that the FCA through amendment in 1988 made the permission of Central Govt. mandatory before assigning any forestland to any private person<sup>167</sup> or body through lease or by any

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<sup>165</sup> whether located on RF or PF

<sup>166</sup> See Rule 6 (b) M.P. Forest Village Rules, 1977.

<sup>167</sup> Or Authority or Corporation etc.

other method. Role of judiciary has also attracted great attention on this issue. Apex Court and the M.P. High Court have taken serious note of the issue of encroachment. Supreme Court in an ongoing case<sup>168</sup> directed all the state governments to remove all post 1980 encroachment on any forestland. This post 1980 stand was taken on the pretext that these encroachments have come up after coming up of Indian Forest Act. Even the M.P. High Court in one of its recent judgments<sup>169</sup>, following the same stand, directed the state government to remove all such encroachment within a span of three months. There is another very huge problem in the state of M.P., which has already been discussed earlier in the chapter pertaining to M.P. Specific Lawsthat pertains to the problem of *Orange Areas*. This problem relates to the settlement process of those lands, which were acquired from the princely states in the post independence era.

## VI. NISTAR:

Select perceptions:

- *One respondent also stated that the “difference between the demand for nistar and its supply” was the primary reason for its transition from a right to a concession.*

### Background:

The above-mentioned perception assumes firstly that the nistar has been reduced to a concession, which was hitherto a right. The reason for the same lies in ever decreasing availability of nistar.

### Legal Validity:

Nistar has been reduced to a usufruct right, and in legal parlance from a ‘right’ to a ‘privilege’. This privilege can be accessed at the discretion of the DFO. Other important factor, which affects this privilege, is the availability of resources. In a resolution<sup>170</sup> the Forest Protection Committees formed under the JFM resolution<sup>171</sup> will be provided forest produce under Nistar system by only charging extraction and haulage expenditure and without charging any royalty but this is subject to the availability of forest produce. But the status of nistar rights during non-availability of forest produce is not specified under these resolutions.

## VII. LIVELIHOOD CONCERNS:

Select perceptions:

- *“The forests should not be handed over to the communities because their competence in protecting them is debatable and in the absence of adequate sources of livelihood they may be tempted to “clear fell” the forest”. (BHP, HAR)*

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<sup>168</sup> T.N. Godavarman V. Union of India W.P. (C) 202 of 1995

<sup>169</sup> ibid (Role of Courts)

<sup>170</sup> resolution no. F. 16-4-10-2-91 Bhopal. Dt. 4.01.1995.

<sup>171</sup> Order no. 16/4/10/2/91 of 10.12.91.

**Background:**

This statement of the FD officials clearly show that they find the community to be incapable of protecting and conserving the forests.

**Legal Validity:**

The perception goes against the spirit as well as letter of the policy on JFM. This is clear from a bare perusal of the preamble of the JFM Resolution. The duties and powers that have been given to the community under the present resolution including those of protection and conservation of forests is on the assumption that joint management and participation are key to a sustainable forest management.

**C. PERCEPTIONS OF PANCHAYATI RAJ INSTITUTIONS**

**I. JFM PROCESS**

**a) Dispute Resolution mechanism:**

**Select perceptions:**

- *“JFM president stated that they were weary of restricting the tribal communities from the illegal collection of forest resources as they resorted to the Tribal Welfare Department (TWD) for dispute resolution and not to the JFMC or to the village Sarpanch.”* (JFM president/Koshaddhyaksh (from the Bishnoi community)-Dheki Village

**Background:**

This perception on one hand hints at proliferation of institutions having conflicting jurisdiction and on the other hand it points out inadequacies of the dispute resolution mechanism under the JFM.

**Legal Validity**

The present JFM resolution of the State does not provides for any formal dispute resolution process. It only casts a duty on the forest department to help villagers in resolving their internal conflicts. This deficiency of JFM process, when coupled with the existence of different institutions having overlapping jurisdictions adds on to the existing ambiguity as to how a dispute between the community members is to be resolved.

**b) Village level conflicts**

**Select perceptions:**

- *“JFM had led to further marginalisation of the weaker communities as the Forest Department collaborates with the dominant community in the village in order to ensure the functioning of the JFMC,* Janpad President of Harda block

**Background**

This perception shows how the JFM has also tended to aggravate the caste and class conflict at the village level.

### **Legal Validity**

Present JFM Resolution of the State of M.P. contains special provisions for the representation of weaker communities. The SC/ ST and OBCs are included in the executive committees of the JFMCs in proportion to their population. Further it casts a duty on the FD to ensure their participation especially in committee's decisions and benefit sharing.

### **c) Decision making Process**

#### **Select perceptions:**

- “The marginalised groups as not being represented in the decision-making procedure, as they did not have the *“capacity to take decisions on issues related to forestry management, development or benefit sharing”* **Representative Khirkia Block**
- “JFM has facilitated *“participatory decision-making with regard to forestry management and the equitable representation of the interests of the entire community”* **Representative Sigampur**
- “*Only those villagers capable of making decisions should be involved in the decision-making process”*. **Janpad Panchayat Addhyaksh of Timarni Block**
- “*The decision-making process in every village was dominated by the economically powerful groups that did not take into account the voices of the weaker groups”*. **President of the Harda Janpad Panchayat (scheduled tribe)**
- “*It is no point for us to be present at the committee meeting as we do not have a voice, we will have to agree with whatever decisions that are taken”*. Korku member of the Gram Sabha in Dheki
- “63. 63 percent of the PRI officials and 78.38 percent of the community level respondents agree -*The FD respects the indigenous knowledge of the tribal communities”*.
- “*Forest Department did not take into account the traditional knowledge related to resource use and management in the planning process”* Representative of Timarni Block
- “*they had dissolved the JFMC as the decision-making process was a “top-down” process and was thus not representing the needs of the villagers”*. **PRI representatives of Dhanpadah village**

- *“since the community lacks the ability to take decisions keeping all the aspects in mind, the FD has to take the decisions on their behalf. Thus, the FD needs to retain more power to implement the decisions that are taken”*. **Janpad Upaddhyaksh of the Timarni Janpad Panchayat**

**Background:**

These perception mainly revolve around inadequate people’s participation in the decision making process on various grounds like lack of capacity, economic status, caste and class division etc. In one of the village the JFMC has been dissolved, as the community was not given adequate representation and participation.

**Legal Validity:**

It is important to emphasize here that the JFM resolution doesn't contain clear provisions for involvement of people in decision-making. Most of the important decisions regarding selection of area under JFM, fund utilization, eligibility of members for obtaining benefits under JFM, disbanding of JFMCs, termination of any individual's membership etc are taken by the forest department itself. The only place where the community is involved is preparation of micro-plan that it does along with forest department and other development departments.

**d) Women Participation:**

**Select perceptions:**

- *Women in the present village society are not capable enough to influence decision-making and their opinions are mostly left out*. **Gajendra Shah** – Member of Bheempura and Chikalpat, Khirkiya block

**Background:**

It is clear that there is absence of effective participation by women members especially with respect to decision-making. Further it is assumed that they are not capable enough to participate.

**Legal Validity**

Elaborate and compulsory provisions for involving women in JFM have been incorporated in the present JFM resolution of the State, i.e., 33% reservation of seats for women in Executive, representation by women SHGs, inclusion of minimum one female member representing the landless families in the Executive. Despite such provisions, the opinions of women members are not incorporated while making important decisions and hence it is bad in law.

**e) Transparency**

**Select perceptions:**



- **“the office of the JFMC secretary is held by a member of the Forest Department and as the JFMC members were not aware of the mechanism of fund allocation, the activity was carried out solely by the FD.”** Zilla Panchayat Sadasaya of Timarni Block
- *the FD representative manages the committees’ passbook and the villagers are not aware of the mechanism of fund allocation, This situation has resulted in a significant amount of JFM fund money being appropriated by the FD staff. The ZPS also stated that the FD did not take into account the traditional knowledge related to resource use and management in the planning process.* **Radhe Lal Iwne – Member of the tribal belt (Dhega, Bori, Keli, Rawang, Aamba, Dhanpadah, Sigampur), Timarni block**
- *“The JFMC fund receives money every year and the passbook is managed by the Satchiv. The JFMC money is used for village development and to help the needy in the village. The villagers also benefit from the sale of tendu patta (Rs 40 per senkra plus bonus). JFMC has also provided employment to 24 BPL people @ Rs 1200/month. MTO members not a part of this mechanism – they have cut the forest and converted it to agriculture land”.* **Bishnu Prasad**

#### **Background:**

The above perceptions clearly reflect people's concern for transparency and accountability in the overall JFM process, especially with reference to fund utilization. It is the FD that takes important decisions regarding fund allocation.

#### **Legal Validity:**

The 2001 JFM resolution<sup>172</sup> provides that the committee would maintain a record of the funds flowing in and out of the committee’s account<sup>173</sup>, which shall be audited by an agency appointed by the Forest Department<sup>174</sup>. However it is silent on the mechanism for fund utilization, for instance who shall take the decisions regarding the expenses to be made. Though the community is involved in the maintenance of accounts, it is not involved in the task of fund management and utilization.

#### **f) JFMCs-PRI Relationship:**

##### **Select perceptions:**

- *“the PRI as well as the JFMC can do the task of village development and forest management. However, the JFMCs had been doing the work so it is unnecessary to give the charge to the PRI and increase the burden on them”* **Sher Singh Tomar, President and the member of Unchaan, Harda block**

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<sup>172</sup> F16/4/91/10-2, dtd: 22<sup>nd</sup> Oct, 2001

<sup>173</sup> Sec 11.2 (9)

<sup>174</sup> 12.2 (8)

- *The ZPS was of the view that all the development work in the village should be undertaken after the decision of the villagers through the Zilla Panchayat “because the Zilla Panchayat is an elected body and not a Department”. Radhe Lal Iwne – Member of the tribal belt (Dhega, Bori, Keli, Rawang, Aamba, Dhanpadah, Sigampur), Timarni block*
- *Both PRI and FD are corrupt and do not use all the money for development purposes. – “all development is on paper with no signs on the ground”. This is relevant as he stated that fund allocation and accountability are important aspects of institutional sustainability. Radhe Lal Iwne – Member of the tribal belt (Dhega, Bori, Keli, Rawang, Aamba, Dhanpadah, Sigampur), Timarni block*
- *the PRI is not suitable to replace the JFMC as they do not have the technical knowledge about forest management. He also feels that the Panchayats do not have enough funds to do the management. The funds that the FD can generate will not be possible for the Panchayat bodies to generate. Gajendra Shah – Member of Bheempura and Chikalpat, Khirkiya block*
- *The Gram Sabha should be the best institution for such activities since it can concentrate on a particular village. However, the presence of the FD is required for the technical guidance regarding forest management. The community, Chikalpat*

#### **Background:**

The select perceptions revolve around the issue of interrelationship between the PRIs and JFMCs in relation to forest management. However the entire discussion seems to focus on JFMCs being replaced by PRIs, rather than the larger issue of co-ordination between the two bodies.

#### **Legal Validity:**

It is notable that the PRIs are Constitutional bodies, while the JFMCs have their origin in JFM Policy. The jurisdiction of PRIs extends to MFPs, Social forestry, farm forestry. The role of PRIs in forest management can't be ignored on the pretext of corruption. As per the JFM resolution, it is the gram Sabha that comprises the JFMC. The Panchs/Sarpanchs of the village are included in the Executive of JFMCs. Further the JFMCs are constituted, election of the Executive members are held in a duly convened Gram Sabha meeting as per the Panchayat Laws. However there are no clear functional linkages between two institutions, either in the JFM resolution or in the Panchayat laws.

## **II. RIGHTS OF THE COMMUNITY**

### ***Selected Perceptions***

- *“At the block level, the PRI respondents agreed that the forest dependent communities should exercise primary rights over the use of forest resources. Majority of the representatives at the block level perceives that JFM had not facilitated any such transfer of rights.”*

- “we have been given concessions in terms of bringing head loads of fuelwood, these used to be our right”. Koshaddhyaksh Rawang,
- “as the villagers had exercised traditional rights over resource use for personal consumption, the benefit-sharing mechanism was restricted to the benefits from nationalised products, labour and the allocation of money for development purposes. The benefit-sharing mechanism under JFM is in place to facilitate the allocation of such benefits. However, the low level of awareness amongst the villagers led to an increasing level of unaccountability on the part of the FD staff due to which the mechanism was not being implemented.” **Zilla Panchayat Sadasya of the tribal belt in the Timarni Block**
- “the people have been given rights or ownership of the forest resources. He feels that the dwellers near the forests do have the first rights over them and the FD has given them the rights they needed. The forests have not been handed over to them but they have rights on the resources” **Sher Singh Tomar, President and the member of Unchaan, Harda block**
- “Resources use rights have been provided in the forests. No restrictions on Nistaar. Land use rights are not there but should not be there either considering the MTO movement in the area” **Sukku Patel, Post: Janpad Panchayat Sadasya, Timarni Janpad Panchayat**

#### **Background:**

The above perceptions revolve around the concept of “rights of communities over natural resources” and people at various levels seem to talk about ownership rights as distinguished from the right to use resources. **Legal Validity:**

A close look at the National and State legislations and the National Forest Policy clearly shows that the approach of Policy is different from that of the legislation. While the policy talks of treating requirements of the forest dependent communities as first charge on forest produce, the legislations are absolutely silent on this aspect. The perceptions quoted above regarding the rights of the communities trace their origin to this ambiguity in the law and policy. Even the Indian Judiciary, which on one hand has been very proactive on forestry related matters, has overlooked this issue.

#### **D) Perceptions on NTFP Trade and Marketing**

##### **I) JFM Process**

##### **a) Decision Making**

##### **Selected Perceptions**

- *According to the JFMC in most of the villages the Forest Department had tried to dominate decision-making and therefore the JFMC could not do much about the NTFP species*
- *JFMC: The FD tries to dominate the decision-making process and are helped by the illiteracy of the villagers. However, decisions are taken jointly between the FD and the EC members of the JFMC*
- *The FD is overpowering and tries to control the decisions regarding the forests, especially in issues concerning choice of species for plantation. This makes it difficult for the JFMC*
- *The Forest Department, as according to the JFMC representatives, is supportive and they take decisions only after consultation with the community*

## **Background**

These perceptions highlight the dominance of the FD on decision-making under the JFM process especially when it come to NTFP trade and marketing While the FD asserts that the people are involved equally in decision-making (this view is supported by some villagers also), the other set of views shows that only a handful of influential people take the major decisions. It is needless to mention that active involvement of people in decision-making is a pre-requisite of a "joint" or "participatory" forest management.

## **Legal Validity**

Unclear and ambiguous provisions for involvement of people in decision-making give rise to these conflicts. Most of the important decisions regarding selection of area under JFM, fund utilization, eligibility of members for obtaining benefits under JFM, disbanding of JFMCs, termination of any individual's membership etc are taken by the forest department itself. The only place where the community is involved is preparation of micro-plan that it does along with forest department and other development departments.<sup>175</sup>

## **II) Nistar and Its Availability:**

### **Selected Perceptions**

- *Community: The Bansod families (observed in Siganpur) feels that though there is an increase in the bamboo forests in the region, it has not helped them. This is because bamboo Nistaar is not allowed directly from the forests. The Bansods need to collect the bamboo from the Nistaar depots. However, the bamboo found in the depots is not of the quality required.*
- *Community: They also allege that sometimes the FD officials in the Nistaar depots do not give them the subsidy that the government has awarded them and the Bansod families, in spite of having the required proof has to pay the market price for bamboo.*

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<sup>175</sup> Sec 8 of the 2001 JFM Resolution

**Background:**

The above-mentioned perceptions clearly reflect an important point that is the reduction in the availability of nistar. Which further raises some critical points like impact of JFMC on the nistar benefits and jurisdictional issues. The other important point is corruption prevalent at the lower or line staff of the forest department. Distribution of nistari is one aspect, which has drawn a lot of attention especially with regard to opening up of depots for villagers to avail their *nistari* as per the new Nistar policy.

**Legal Validity:**

Nistar a “privilege/ usufruct right” can be accessed at the discretion of the DFO. Other important factor, which affects this privilege, is the availability of resources and this has been discussed above

It is worth clarifying here that the Forest Department has opened up various depots for distribution of forest produce and *nistari* on reasonable rates. This facility of reasonable rates does correspond with the quality of forest produce, especially in case of bamboos. This is the reason why villagers do not find the rates of the FD to be reasonable.

**E) PERCEPTIONS OF NGOs AND MTOs**

**I. JFM**

**a) Formation of JFMCs:**

- *JFMCs were not formed in consultation with the people.*
- *People did not know much about JFM they thought that government has directed them to make JFMC and so they adopted JFM.*
- *JFMCs are perceived as government creations in which ordinary villagers have little say.*
- *JFMCs are not functioning in a democratic manner. Meetings are not being held democratically and only those few who are favourites of forest guard are benefiting from the programme.*

**Background:**

The select perceptions not only reflect lack of awareness on the part of the community about JFM, but also brings into light FD’s failure to communicate effectively to the community and to mobilize their support and participation. It is a serious pointer towards the state of JFM in the State.

**Legal Validity:**

The JFMCs are to be formed after the community is being apprised of the basics of the JFM programme and they voluntarily decide to be a part of it. The JFMCs are constituted in duly convened meetings of the Gram Sabha. The Government can’t force villagers to constitute JFMCs in their village. It is the entire gram Sabha that comprise the JFMC in a village.

**b) Transparency:**

- *Forest Guard is the secretary of JFMCs, all financial as well as other decisions are taken by him*
- *All decisions regarding the use of Village fund are also vested with the FD, and the power to decide where and for what activities this fund will be used lies with the FD Field experience also illustrates that this increased power has led to increased corruption in the FD.*
- *'Samiti are using funds according to Forest Guard's wish. To make money they have to show some work and that's why they use Samiti funds.*
- *That Forest Guard makes decisions that are taken along with few villagers who are rich and don't even know where they are using funds.*

**Background:**

The above-mentioned perceptions reveal people's concern about the utilization of JFMCs funds and transparency in the entire process. It is evident that they are not apprised about the financial aspects of the JFM. The finances are completely under FD's control and management.

**Legal Validity:**

The 2001 JFM resolution<sup>176</sup> provides that the committee would maintain a record of the funds flowing in and out of the committee's account<sup>177</sup>, which shall be audited by an agency appointed by the Forest Department<sup>178</sup>. However it is silent on the mechanism for fund utilization, for instance who shall take the decisions regarding the expenses to be made. Though the community is involved in the maintenance of accounts, it is not involved in the real task of fund management and utilization.

The problem of ignorance of people regarding fund management seems to exist on the implementation level. However the problem can be tackled if accounts are discussed or prepared in the executive or general body meetings.

**c) Decision making body:**

**Select perceptions:**

- *The fact that these committee can be disbanded anytime by the FD is a major loophole in the programme. All decisions regarding membership and removal/appointments to any post in the committee is left to the discretion of the FD officials.*
- *By having financial control (of Samiti funds), they allege that the FD has become all the more corrupt and dictatorial.*

**Background:**

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<sup>176</sup> F16/4/91/10-2, dtd: 22<sup>nd</sup> Oct, 2001

<sup>177</sup> Sec 11.2 (9)

<sup>178</sup> 12.2 (8)

These perceptions revolve around the role of FD in JFM and the overriding powers with the FD. This in turn creates resentment in people.

**Legal Validity:**

The JFM resolution doesn't contain clear provisions for involvement of people in decision-making. Most of the important decisions regarding selection of area under JFM, fund utilization, eligibility of members for obtaining benefits under JFM, disbanding of JFMCs, termination of any individual's membership etc are taken by the forest department itself. The only place where the community is involved is preparation of micro-plan that it does along with forest department and other development departments.<sup>179</sup>

**d) JFM and Panchayats**

- *Panchayat should not be involved in forestry, as they are not able to perform their existing responsibilities then how will they work in forestry?*
- *Panchayat post holders are not aware of the existing roles, responsibilities, and laws. In that case to expect them to take over new responsibilities would lead to the collapse of the JFM programme.*

Background:

The select perceptions revolve around the issue of involvement of Panchayats in JFM programme. It clearly emerges from the above perceptions that the Panchayats are not seen as efficient enough to be involved in JFM.

**Legal Validity:**

It is important to bear in mind the role that has been envisaged for Panchayats in forestry management under the existing legal regime. Social Forestry, MFPs, fuel, fodder, farm forestry, all come under the domain of Panchayats powers<sup>180</sup>. Further the Panchayat extension Act<sup>181</sup>, specifically applicable to Tribal areas even provides for granting ownership rights over MFPs to Panchayats and Gram Sabha. Though this provision has not been incorporated in the Panchayat law of the State of MP<sup>182</sup>, the spirit behind such provisions can't be ignored.

Further the existing linkages between PRIs and JFM have to be taken into consideration, irrespective of the fact that they are unclear and inadequate. As per the JFM resolution, it is the gram Sabha that comprises the JFMC. The Panchs/Sarpanchs of the village are included in the Executive of JFMCs. Further the JFMCs are constituted, election of the Executive members are held in a duly convened Gram Sabha meeting as per the Panchayat Laws.

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<sup>179</sup> Sec 8 of the 2001 JFM Resolution

<sup>180</sup> 73<sup>rd</sup> Amendment, Constitution of India.

<sup>181</sup> Panchayat Extension to Scheduled Areas Act, 1996.

<sup>182</sup> Madhya Pradesh (Panchayati Raj Avam Gram Swaraj) Adhiniyam, 1993.

## II. ENCROACHMENT:

### Selected Perceptions

- *every individual who is 18 years or older should be given 5 acres of land, and that irrespective of the category of land (i.e. forest land, ceiling land, or revenue land), each individual should be given 'ownership' over the piece of land that he/she is currently cultivating.*
- *'saare kabze waali jameen pe patta de do'. (Give patta over all encroached land).-sangathen*

### Background:

The above perception clearly depicts the approach of the MTOs on issues of encroachment of forestland. It is needless to say that there are conflicts regarding the rights over the land, because in certain cases the owner of the land is not the one in possession. The land on which the villagers have been residing for years is being taken from them. This issue traces its origin to the land reforms carried out after independence, under which land got distributed unequally and arbitrarily. Further various categories of forests, e.g., *chotta jhad*, *bada jhad* needs to be seen closely as there is a different legal regime for each one of them.

### Legal Validity

Under the MP Forest Village Rules, 1977 provisions related to distribution of patta to the residents of forest village are given. Each family of the concerned forest village is to be allotted 2.5 hectare of land with an additional 2.5 hectare in case there are more than one adult member in a joint family. Preference is given to the tribals belonging to the scheduled tribe's category<sup>183</sup>. These pattas are allotted for a period of fifteen years subject to renewal. The patta holder would have to pay fee at such rate as rent fixed for same area of land in a Revenue Village<sup>184</sup>. On violation of any rule the concerned authority can cancel such pattas. It is important to bring to light that the FCA through amendment in 1988 made the permission of Central Govt. mandatory before assigning any forestland to any private person<sup>185</sup> or body through lease or by any other method. Role of judiciary has also attracted great attention on this issue. Apex Court and the M.P. High Court have taken serious note of the issue of encroachment. Supreme Court in an ongoing case<sup>186</sup> directed all the state governments to remove all post 1980 encroachment on any forestland. This post 1980 stand was taken on the pretext that these encroachments have come up after coming up of Indian Forest Act. Even the M.P. High Court in one of its recent judgments<sup>187</sup>, following the same stand, directed the state government to remove all such encroachment within a span of three months.

## III. NISTAR:

<sup>183</sup> Rule 6 (b)

<sup>184</sup> Rule 20

<sup>185</sup> Or Authority or Corporation etc.

<sup>186</sup> T.N. Godavarman V. Union of India W.P. (C) 202 of 1995

<sup>187</sup> *ibid* (Role of Courts)



**a) Availability of Resources:**

**Selected Perceptions**

- “ Logo Ko sukhe ya phir giri hue lakri bhi nahi laane diye jaate hai. Nistar ke liye bhi to rokthe hain. Van Vibhag ke log aur chaukidar bhi ham logo se paisa mangte hain agar Sarbhoja le ke aao tab bhi.”(People are not allowed even to collect fallen or dry wood and are stopped from exercising nistar. Forest watchers and FD staff ask money for even the headloads that are collected from forest)
- “ nistari depot se jo lakri milti hai wo itni achi nahi hoti ki usse ghar bana sake. Upar se wo depot itni door hai ki lane me bahut muskil hoti hai aur paisa bhi jyada lagta hai.”(The timber that we get from nistari depot is not of good quality and cannot be used for making houses. Moreover, it causes immense difficulty in collecting them and we have to pay for that too).
- the government has restricted 'user rights' of the local people on the resource rather than giving them any additional rights.
- 'Poor have not benefited from JFM. In fact their condition has deteriorated, as now nistari and grazing in forests have also been stopped. Poor don't have money of the order of Rs 1000-1200, which frontline forest staff asks for nistari wood for repairing or making houses. They also stop us from carrying head loads and collecting even dead or fallen branches from forests. How can a man/woman go to 5-6 km a day for bringing in fuel wood on foot to cook food in houses?’
- since the very beginning, the forest policies have been oriented to exclude the rights of the forest dependent communities from the very resource on which their sustenance is based.
- “ bailgari se lakri lana band kar diya hai ab baar-baar jaana parta hai lakri lane ko aur harek bar Van vibhag waale tang karte hai.”(Bringing wood on bullock carts has been stopped. We have to go many times to bring wood and each time FD staff harrasses us)
- the villagers are infact paying (in fact more) when one adds up all fines, the additional transport costs that they have to pay to collect the timber from the forest depot.
- they do nistar directly from the forest without caring about forest guard.
- that they take bribe from the villagers even for exercising their rights- for example nistar.

**Background:**

These perceptions clearly reflect the problem faced by the villagers in accessing their *nistari*. They need the support from either the forest department or the JFMC. Else they do it by illegal means. Another important point is the reduction in the availability of nistar and this further raises some critical points like impact of JFMC on the nistar benefits and jurisdictional issues. The other important point that emerges from the above is the corruption prevalent at the lower or line staff of the forest department. Distribution of nistari is one aspect, which has drawn lots of attention and especially on the aspect of opening up of depots for villagers to avail their nistari as per the new Nistar policy.

### **Legal Validity:**

Nistar as defined means and include – dry wood fit only for fuel, dry bamboos, grass, thorns, leaves and bakka<sup>188</sup>. The central government JFM circular<sup>189</sup>, which introduced the concept of JFM, provided that the beneficiaries are entitled to usufructory rights such as grass, lops and tops of branches, minor forest produce etc.

The State of M.P. has made a clear distinction between forest produce for bonafide domestic requirement and forest produce for commercial use<sup>190</sup>. The consumers with restrictive demand in small quantity of forest produce for their own domestic requirement or for local sales may be removed and disposed of under free pass in accordance with the exemptions granted<sup>191</sup>.

The State Government has prescribed transportation of any forest produce in prescribed quantity for bonafide domestic use or for consumption within a unit by any person<sup>192</sup>. Any person having the right of nistar in any forest in respect to any specified forest produce<sup>193</sup> can transport such produce for his domestic consumption but according to the prescribed terms and conditions. Under the Transit (Forest Produce) Rules, 2000<sup>194</sup> no transit pass is required when the forest produce is removed for bonafide domestic consumption within the limits of a village where it is produced. A separate transit pass is required for each load whether a person, on animal or in a vehicle carries such load.

## **V. FOREST OFFENCES:**

### **Selected Perceptions:**

- *'even though sometimes the villagers report about illicit felling, the FD does not take any action.*
- *'to extend cultivable land, people do cut and burn the trees, but this is not illicit felling, since they do not sell these wood in the market'.*
- *'Sangathan members are predominantly felling trees to extend their cultivable land'*
- *As per the Act, adivasis can be put behind bars for collecting even stones and soil from forests. They cannot even collect fallen dry leaves from reserved forests'.*

### **Background:**

The root of such problem lies in instances where the Forest Department actions acts contrary to the interests of the people, and people in turn direct their anguish on the forests. The most likely reason this happens is due to the lack of spaces in the law and policy framework for ventilating the grievances of the people and for deliberations over serious issues by the people and the department.

<sup>188</sup> See The MP Disposal of Timber and Forest produce Rules, 1974,

<sup>189</sup> Central circular on JFM Dated 1/6/1990

<sup>190</sup> See Under the M.P Disposal of timber and forest produce Rules, 1974,

<sup>191</sup> Section 102(2).

<sup>192</sup> M.P Van Upaj (Vyapar Viniyaman) Adhinyam, 1969

<sup>193</sup> Refer to Box No. 2.6

<sup>194</sup> rules framed under section 41 and 42 along with section 76 of the Indian Forest Act, 1927.

### **Legal Validity:**

It is unlawful on the part of the Forest Department to ignore its duty to check forest related crimes. The Indian Forest Act, 1927 vests Forest Officials with a number of powers relating to forest offences like prevention of commission of such offences<sup>195</sup>, to hold inquiry into forest offences.<sup>196</sup> The JFM also recognizes the duty of the Forest Department to assist the Committee members in discharging their duties. An important duty of the Committee is to check forest offences and inform the Forest Department about any illegal activity. The combined reading of all these provisions show that it is incumbent upon the Forest Department to look into the matter, if the JFMC approaches it as the duty to prevent and check still lies with the Forest Department. Further, it has been sufficiently empowered to deal with offences under the existing legislation.

Carrying out any activity, which is banned or prohibited in a forest, is illegal irrespective of the intention behind the activity. As mentioned earlier the State Government has made provision for use of forest produce for domestic purposes. Further, on the issue of collection of material from the forest the India Forest Act very specifically says that a produce either brought from or found in any forest is a forest produce and hence collection of any forest produce is to be regulated under the specific law governing forest produce in the State. In fact in an on going case the Apex court has ordered that even dead and fallen wood would not be removed from protected areas as well as reserved forests.<sup>197</sup> This order has blurred the distinction between Godavarman and CEL WWF-India case in the sense that the Reserved Forest question is being dealt in both the cases.<sup>198</sup>

### **6.2 Perceptions not legally valid:**

This section focuses on widely held perceptions that are not legally 'valid, i.e., either in conflict with the Statutes or depicting an illegal practice in the sense that it contravenes existing statutory provisions, rules and regulations. There is also an attempt here to identify the reasons and possible sources of these perceptions and it has been suggested as to how they could give rise to conflicts especially in PFM.

#### **I. JFM Process:**

##### ***Community participation***

##### **1. *Gram Sabha is bigger body than JFMC*"- FGD: Lohar dhana, Rwang (RV)**

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<sup>195</sup> Sec 66 of the IFA, 1927

<sup>196</sup> Sec 72 (d) of IFA

<sup>197</sup> CEL, WWF-India vs Union of India in its Order dated Feb 2000

<sup>198</sup> Note that CEL WWF-India case is regarding protected areas i.e national parks and sanctuaries and the Godavarman case is with regard to implementation of FCA, 1980.

Such statement is not tenable in law as the general body of the JFMCs is the Gram Sabha itself.<sup>199</sup>. At one level it reflects lack of understanding of the basics of JFM by the stakeholders and at another level it throws up issues on accountability and responsibility for disseminating correct & complete information to the villagers. Having said that a possible reason for such perception is that JFMC is understood to be synonymous with its Executive only, which again has its root in inadequate participation of the community in policy and lawmaking.

### **Decision-making**

1. *"There have been many "Resolutions" from the JFMC regarding demand for work, development activities etc, but most of them have been turned down. Quantifying the same he said that so far only 10% of their resolutions have been accepted and passed, rest have been rejected. The decisions at the village level are done in consultation of all."* **(Hazari Lal-Panch and Ex RGWSC President; Mannasa (FV))**
2. *"Whenever. FD official/staff requires consent of villagers, they call few important members at Range office or Beat guard residence and complete the formalities"*- **(FGD, Mannasa (FV))**
3. the marginalised groups as not being represented in the decision-making procedure, as they did not have the *"capacity to take decisions on issues related to forestry management, development or benefit sharing"* **Panchayat Representative Khirkia Block**

The above set of perceptions, hints at the problem of non-representation & inadequate involvement of community in the decision-making. One reason for this can be the inadequate provisions in the JFM itself, to address the issue of genuine community participation. It needs to be reiterated that participative decision making in an integral and inescapable part of the PFM.

### **II. Encroachment**

1. *These landless people feel that individuals on the basis of "Baap dada ne jota thaisliye" have usurped government land.* **Suklya Villager. Bori (FV)**
2. *Tribal community has encroached upon the forestland and destroyed the forest. 'Coupe niklte hi adivasi kheti shuru kar dete hai'. No is there is stop them. Even FPC is not effective.* **FGD-Gollidhana. Rawang (RV)**
3. *The entire chote ghass is under encroached possession of the farmers.* **Hari Singh (Korku). Unchan (RV)**
4. *'saare kabze waali jameen pe patta de do'. (Give patta over all encroached land).*- **sangathen MTO**

'Encroachment of forestland' in the State of MP is a serious forestry concern. As is evident from above, the encroachment by the tribal communities is being seen as an important reason for forest degradation. As per the above perceptions the land is primarily encroached for agricultural operations. The explanation that villagers give is that their ancestors from ages are cultivating the land. However the problem partially has its genesis in the faulty settlement process, especially with regard to those lands, which

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<sup>199</sup> MP JFM Resolution of 2001.

were acquired from the princely states in the post independence era. The conflict over “orange areas” is one burning example of such defective settlement records. The legal status of land in MP is still not clear, which is a major cause of conflict between the revenue and the forest department. The issue also reflects the inefficiency of the government to resolve an important issue, which is not only creating discontentment in the public at large but also leading to inter-departmental conflicts. A further important issue that merits attention is the issue of the settlement of rights before declaration of any forest area as a reserve or protected forest under the IFA. The process for settlement of rights itself has lacunas especially when seen from the standpoint of the community. Thus for example there is no time period set out for the completion of settlement process. Suo motu actions with respect to inquiring into nature of claims as well as bonafide rights are seldom attended to by the Forest Settlement Officers. Authentication of land records and its validation with forest records is also at the core of the problem.

This problem also has to be seen in the backdrop of the events happening at the national level, like coming of Forest Conservation Act, 1980, which on one hand strengthened the role of the Central Government in regulating the allocation of forest lands in the states; specially with regard to non-forest activities, and on the other introduced the conservation principle resulting in making the regulatory mechanisms more stringent. Besides the judiciary has taken a serious note of the issue; and has come up with tough orders with respect to removal of encroachments. Although concern of the judiciary for forest conservation has to be appreciated, there has to be space to address the local and unique problems pertaining to specific states, or areas, such as MP.

### III. Community Rights

#### *Access to Nistar*

1. *they do nistar directly from the forest without caring about forest guard.*
2. *that they take bribe from the villagers even for exercising their rights- for example nistar.*
3. *We bring timber without the knowledge of Nakerdar and Dy Ranger; do not fell a standing tree. After transporting of main parts of timber, we meet our nistar requirement. For this we represent Nakerdar and they bear it. Ancestors died, where to migrate? Government is inflicting sorrow: (Villager: Bori (FV))*
4. *Get nistar items by stealing from coups; has to give something to get bamboo- Villager; Village People: Didmdha (FV)*
5. *One respondent also stated that the “difference between the demand for nistar and its supply” was the primary reason for its transition from a right to a concession.*
6. *Community: They also allege that sometimes the FD officials in the Nistar depots do not give them the subsidy that the government has awarded them and the Bansod families, in spite of having the required proof has to pay the market price for bamboo.*

Access to nistar is a major source of conflict cutting across all the stakeholders. The problem of “illegal extraction” of forest produce, with or without the knowledge of the FD, has been increasing. One reason is change in the legal status of nistar. The nistar has been systematically converted from a right to concession, which has left a huge

population of the community discontented- and because of their dependence on these items for making a living. A natural result is that they indulge in 'illegal' activities. Further there seems to be no clarity on the exact status of the nistar rights, in terms of eligibility of villagers to whom it accrues, the quantity, and the quality of the forest produce for which the community is eligible. The nistar policy of 1996 spells out the nistar benefits to which the villagers are entitled but arguably it overlooks the existing laws on the forest produce within the state. The references made in other laws<sup>200</sup> & policies<sup>201</sup> create confusion as to the exact status of nistar. This ambiguity, coupled with corruption and inefficiency of the FD, has led to an upsurge in the illegal extraction of forest produce, in the name of nistar.

Benefit sharing & access to resource is one of the basic incentives to the villagers to participate in the JFM process. Any ambiguity in provisions for benefit sharing or improper implementation might create a disinterest in the communities towards the PFM process. Some argue that the ambiguity in the benefit sharing process also reflects the intent of the state to involve community in an equal manner.

#### 4. Conversion of forest villages into revenue villages

- *Conversion of forest village into Revenue would help us in getting land ownership. He can sell his land in emergency period. In addition to it villagers would be free from Nakerdar and Deputy rangers clout. They would not be forced to do 'begar': Sabulal-villager: Lodhidhana (FV)*
- *"Zammen khot par de ja sakti hai". The villagers of the revenue village know exactly how much land do they possess. They have written rights to the land. Agar revenue main badal diya jayega to achha hi hai zameen par Adhikar ho jayega. Pyarelal (Gram patel), Lodhidhana (FV)*
- *They do face problems in getting credit from Banks. Banks do not accept patta, they want detailed terms and conditions of patta and explanation from Forest Department while sanctioning a normal credit. Villagers have to approach forest department officials getting their sanctions: Jageshwar Villager: Amba (FV).*

Different stakeholders often misunderstand the issue of conversion of forest villages into revenue villages. The forest villages can be converted into revenue villages by either denotifying the concerned protected forest or by de reserving the reserved forest on which such forest villages exist. The reserve forests or protected forests can be dereserved or denotified, however, for doing this the sanction of the Central Government is required under the Forest Conservation Act, 1980 along with the procedure prescribed under the Indian Forest Act as applicable in Madhya Pradesh. Under the Indian Forest Act, 1927, provision for denotification or dereservation of these forests is provided but these provisions make one thing very clear that no right, which has been extinguished at the declaration of the protected forest, should come into effect again<sup>202</sup>. Thus conversion

<sup>200</sup> MP Protected Forest Rules, 1960, MP Disposal of and Forest Produce Rules, 1974.

<sup>201</sup> JFM Resolution of 2001.

<sup>202</sup> Section 27 (2) and Section 34 (2) of the Indian Forest Act (As applicable in the State of M.P.)

may not lead to land entitlement automatically. The villagers will have to prove their rights to the land, which they were allowed when the area was being notified as protected or reserve forest and settlement process may take too long. The above issue of conversion of forest village to revenue village also is now within the purview of two long standing court cases in the Supreme Court, the *Godavarman*<sup>203</sup> and *CEL, WWF-India* case<sup>204</sup>, where numerous orders have been issued which make clear that the permission of the Supreme Court is mandatory before such conversion.

There are certain factors such as lack of proper development and civic amenities, villagers facing problems in getting credits and proper land entitlement (in papers and on ground) which lead to such perceptions on the issue of conversion.

The issue of conversion may not surface as a manifest conflict in reference to the PFM process, but definitely acts as a latent one. The issue of conversion is related to developmental activities and other facilities like credit and livelihood options, within the villages and community looks up to the FD for such facilities and activities. Failure on part of FD to stand upto the expectations of the communities acts as a source of latent conflict between the FD and the Community which inevitably hinder the process of PFM.

#### **V Panchayat & Forest Management:**

- ***Panchayat should not be involved in forestry, as they are not able to perform their existing responsibilities then how will they work in forestry?***
- ***“the PRI as well as the JFMC can do the task of village development and forest management. However, the JFMCs had been doing the work so it is unnecessary to give the charge to the PRI and increase the burden on them” Sher Singh Tomar, President and the member of Unchaan, Harda block***

The 73<sup>rd</sup> Constitutional Amendment mandated that, functions such as farm forestry, social forestry, minor forest produce should be endowed to PRIs. It can be argued that in terms of legal support & sustainability Panchayats are on a much stronger footing than the JFMCs<sup>205</sup>. However generally speaking, the manner in which Panchayat functions and the history of its performance, has not been satisfactory and thus they have failed to gain confidence of the people. This could be part of the reason explaining the perceptions above.

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<sup>203</sup> CWP No 202 of 1995

<sup>204</sup> CWP No. 337 of 1995

<sup>205</sup> See Section 3.2

## CHAPTER-VII FINDINGS AND CONCLUSIONS

### The Legal Basis

- The review of the legal regime on forestry both at the National and the state level for the state of Madhya Pradesh reveals that the entire Joint Forest Management Program is on a weak legal footing. The JFM program derives its source from the National Forest Policy of 1988. The Central JFM Circular of 1990 and subsequent Policy Resolutions of the States including the State of M.P. thus derive their strength from a policy document, which entails no legal consequences in case it is not followed.
- The concept of community participation also does not find a place in Forest Conservation Act, 1980 and the subsequent 1988 amendment of the Act, which was made around the same time as the enactment of the National Forest Policy. The FCA may also have detrimental effects on local experiments designed to increase local community participation in forest management. Although the FCA provides some important accountability measures with respect to State Government actions, narrow interpretations of the Act's restrictions on non-forest uses could limit the types of activities that could be initiated under JFM.

### Impact of Court Orders

- The Supreme Court's definition of 'forests' has had vast implications throughout the country, including the State of MP, as more and more land can be brought under the provisions of FCA. Although the Supreme Court has excluded farm forestry lands from within the purview of the order, the wide definition of forest where ownership is not a constraint creates an ambiguity regarding the status of private forest. Due to this ambiguity in law, tree farming on forestland is not able to attract more attention of the people willing to take up forestry on their private holdings. This is apart from the tedious process of clearance for removal of trees from private lands. The Apex Court's intervention in the Godavarman case can be said to have contributed to stringent implementation of the provision for prior approval of Central Government for any non-forest activity under the *Forest (Conservation) Act*.
- The importance accorded by the Apex Court to Working Plan in the above case has indeed paved the way for its acceptance as a guiding document by the Central Government. It has become all the more important that the micro-plan prepared under JFM should correspond with working plan. The recent State JFM resolution of 2001 focuses primarily on the "principles" of forest and wildlife management. The micro-plan, as prepared under JFM programme has to conform to these principles as emerging from the "working plan" as well as from the relevant laws and rules. However the working plan for a forest division goes beyond laying



down general “principles” for forest management. This issue needs to be addressed in the JFM resolution itself.

- The implications of Court orders have been varied and often unexpected. The real impact of these orders are felt at the field situations, where, in the absence of capacity to understand the legal jargon, the field functionary interprets the order as per his/her convenience, which becomes the “Supreme Court Order”...! This has led to ‘an anti forest department’ feeling within the community living in and around the forests

### **The JFM Program**

- The forest under JFM is classified on the basis of geographical location and ecological basis of the land and not as per any legal classification under the *Indian Forest Act* (as applicable to the State of Madhya Pradesh). This classification in itself is ambiguous as one category finds legal basis and the other two are not legally recognized. The lack of clarity on these aspects may lead to disputes arising out of competing rights or claims of forest department or village Panchayat over the land under the JFM resolution.
- When seen in terms of corresponding rights and duties the whole concept of participatory forest management is on a weak legal footing. Rights are enforceable by a court of law, which is not the case under JFM. Under JFM, firstly the committees can't claim the benefits as rights as they are subject to the discretion of the DFO. This administrative discretion even extends to the *bonafide* claims of the people to *nistar* requirements. The perceptions emerging from the field clearly show availability and accessibility to *nistar* to be a major source of conflict. The villagers on their own find it difficult to meet their *nistar* requirements. They need the support from either the forest department or the JFMC. This leads to the so called illegal extraction where people do not want to depend on either of the two and where they feel they have a right over forest produce.
- In MP there has been an attempt to make the programme more inclusionary, special provisions for the disadvantaged sections of the society and women have been made. The institutions at the village level, such as user groups, WSHGs, have also been dovetailed to make the JFM programme more relevant. However the field reports show a completely contradictory situation. Neither there is any awareness among the community regarding their participation to JFMCs, nor is there any effort on the part of the FD to strengthen involvement of the community in the programme.
- There are serious limitations in scope with the existing conflict resolution mechanisms under the present JFM Programme. It is imperative that the State comes up with clear guidelines on this aspect as it is a necessary requirement for a

programme involving livelihood and sustainability concerns of not just the village community but also a host of other institutions.

- The unbridled powers devolved upon the FD under the present JFM programme have been a major source of conflict. For instance FD's power to disband JFMCs, terminate an individual's membership, to determine who are eligible for the benefits under the programme, etc result in a committee of people that exists for name sake and without effective powers. The perceptions of various stakeholders also raise this issue. While the policy aims at joint management of forests by the community and the forest department, vesting of certain important powers in the department adversely affect the level of involvement of the people.
- An important area of conflicts pertains to overall transparency in the JFM process, especially from the field perceptions. People are concerned about the utilization of JFMCs funds and transparency in the entire process. It is evident that they are not apprised about the financial aspects of the JFM. The finances are completely under FD's control and management.

#### **Panchayat Laws and The JFM Program:**

- The existing legal regime with regard to functioning of PRIs does not envisage much role for PRIs in forest management in the State of MP, despite being the mandate of the 73<sup>rd</sup> amendment. Though certain provisions have been provided for, they have been made subject to factors such as Rules framed by the State government, availability of funds, other laws in force etc. This is clearly a case of lack of legislative will to empower the gram Sabha as well as various tiers of the Panchayats in respect of forest management.
- An interesting feature of the system of Panchayat law in MP is that it defines villages to include both revenue as well as the forest villages. One of the benefits that usually don't accrue to forest villages is the establishment of Panchayat Raj Institutions, but in MP the Panchayats can be established in forest villages by virtue of this Act. While on one hand this seems to be progressive step to include those villages, which are in forest areas, it also creates potential scope for jurisdictional conflict between the forest department and the revenue department. . The role of Panchayats in the Forest Villages needs to enumerated clearly in order to avoid jurisdictional ambiguity and conflict with the Forest Department.
- The recent JFM order goes beyond the mandate of the Panchayat Raj system, especially with regard to non-scheduled areas, as it extends the definition of villages on the community lines in the said areas also. Thus defining villages, differently from what has been provided in the legislation. Until this issue of geographical boundaries of villages is settled, the discussion on the inter-relationship between Panchayats and JFMCs, becomes pre-mature, as the terms gram Sabha or PRIs are referred to in the context of village as understood in the traditional legal sense and not along community lines as defined now.

- The field reports hint at the conflicts arising because of proliferation of institutions having conflicting jurisdiction, having no clear linkages, for instance PRIs and JFMCs.

**Encroachment:**

- There seems to be a serious problem of ‘encroachment of forestland’ in the State of MP. The problem partially originates from the faulty settlement process, especially with regard to those lands, which were acquired from the princely states in the post independence era. The conflict over “orange areas” is another burning example of such defective settlement records and process. The legal status of such lands in MP is still not clear, which is a major cause of conflict between the revenue and the forest department. On the other hand it puts the lives and the livelihoods of a large number of populations in jeopardy as they are seen as “encroachers”, and “offenders”.

**Conversion of Forest Villages to Revenue Villages**

- The field perceptions show a favorable attitude towards conversion of forests villages into revenue villages, as there is a belief that such conversion would help villagers in getting the permanent entitlement to their lands. In absence of legal entitlement to land, the villagers living in forest villages face problems in obtaining credit from banks and other financial institutions. Such institutions seek Forest department’s sanction before granting loan to these villagers, which in-turn increases their dependence on the department. However the fact is that conversion into revenue villages would not automatically result in entitlement of land.

## **ANNEXURE I**

### **LEGAL QUESTIONS AS GUIDE TO THE FIELD TEAM**

**Legal questions are divided into various categories to bring out the varied legal dimensions of forestry management. They are as follows:**

- (I) Resource.
- (II) Rights, Privileges and Benefits.
- (III) Procedure.
- (IV) Institution.
- (V) Jurisdictional.
- (VI) Implementation.
- (VII) Conceptual.

#### **(I) RESOURCE**

- 1. What is MFP?
- 2. Conflicts arising out of overlapping jurisdiction – Resources between JFMC's.
- 3. What is forest? (SC order)
- 4. What is forestland?
- 5. What is forest produce?

#### **(II) Rights, Privileges and Benefits**

- 01. What is mandated by *Nistar*?
- 02. What is mandated by *wazibur-ul-urz*?
- 03. Potential valid claims from members outside the JFMC's?
- 04. What is benefit sharing mechanism envisaged by the law?
- 05. Is there any incremental benefit argument?
- 06. Are they aware of "minus the operation cost clause" under the JFM?
- 07. What are the contents of Patta under the FV system?
- 08. Similarity/ Difference between usufruct under the JFM and *Nistar* under MPLRC?
- 09. What is a Right?
- 10. What is a Privilege?
- 11. What is a Concession?
- 12. What is a Favour?
- 13. Obligations/Duties envisaged by law at community level.
- 14. Guidelines for methods of distribution of – (a) Timber, (b) Usufruct.
- 15. Extents of Rights/Privileges included in the settlement process.
- 16. Nature of claim (if any) in Section 4(1) areas.

#### **(III) Procedure**

- 01. Knowledge/Perception on the MOU?
- 02. What is 'transit-permit'?

03. How is it used?
04. Are any trees exempt from TP?
05. Compensation during settlement process while constituting RF?
06. Extent of women participation by law?
07. Knowledge of recorded rights.
08. Guidelines for methods of distribution of (a) Timber (b) Usufruct
09. Procedure for survey, settlement in Forest Areas.

#### **(IV) Institution**

01. Legal status of JFMC's?
02. Perception on the appropriate legal sanction for JFMC's?
03. Is there any FV? Forest Village Rules of M.P.
04. Would they be happy if FV is converted into RV?
05. Alternatively what are the disadvantages of FV over RV?
06. Dissolution of JFMC's – Has there been any? Are they aware how it is done?
07. Traditional Dispute Resolution (if any)?
08. Dispute Resolution Mechanism – Formal/Informal.
09. Role of JFMC's and PRI's in conflict management.
10. Managing conflict by informal institutions (ADR mechanism).
11. Resolved locally, complaints in DFO's Courts, complaints in Magistrate's Court, Cases in HC.
12. Committee members their - legal authority?
13. What are the benefits of RV over FV?

#### **(V) Jurisdictional**

01. What is JFM area?
02. Are there any Orange Areas?
03. Are there any proposed RFs (while initial notification u/s 4 has been issued)?

#### **(VI) Implementation**

01. Role of DFOs/ Range Officers/Forest Guards?
02. Traditional Dispute Resolution mechanism (if any)?
03. Types of forest offences committed?
04. Resolved locally, Complaint's in DFO's Courts, complaints in Magistrate's Court, Cases in HC.
05. Are there any criminal/Civil cases which has genesis on Forest resources/
06. Dispute Resolution Mechanism – Formal/Informal.
07. Types of conflict that have gone to Court.
08. Legal actions initiated, punishment imposed by forest department against offenders/encroachers
09. Penal provisions for intruders

#### **(VII) Conceptual**

01. Knowledge of GO/Circular/Amendment
02. What is Forest Law?
03. What is Forest Policy?
04. Vernacular understanding of justice.
05. FP and laws – Implications for conflicts.

## ANNEXURE II

### Q-STATEMENTS- GENERAL

1. Van vibhag nahi hota to jungle ka sarvanash ho jaata.
2. Adivasiyon ko van par adhikaar nahi, riyayaten dee gayi hain
3. Junglon ke vinash main rajasva vibhag ka sabse bada haath hai
4. Nakedaar dono taraf se maara jaata hai-afsaron se bhi aur logon se bhi
5. Sanyukt vaniki jaise prayog ko itni jaldi kanooni jama nahi pehnana chahiye
6. Logon ki bhagidaari ka ek ehem hissa paisa hai
7. Panchayatn ka varchasva junglon ke liye haanikarak hai
8. Vishwa bank ke aane se sanyukt vaniki ko bal mila hai
9. Sanyukt vaniki ki safalta ke liye puraani van prabandhan mansikta ko badalna hoga
10. Van vibhag ka sabse mahetvapoorna role ek madadgaar (facilitator) ka hai
11. Sanyukt vaniki se logon ka van vibhag par vishvaas badhega
12. Van bhoomi par sare atrikraman najaayaz hain
13. Orange area ka vivaad van prabandhan ka ek mahetvapoorna hissa hai
14. Van gramon ka niyantran van vibhag ke paas hi rehna chahiye.

### I) FD- VISA-VIS POLICY (LAW)

- A) Logon ke vanupaj ke haqon ko riayatn mein tabdil kar diya gaya hai.
- B) vanupaj ke rajjiya karan se logon ka jungle se rishta aur katu hua hai.
- C) kametion ka gathan jungle se judi samasyaon ko sirf uljhana hai.
- D) registration se koi labh nahin hai

### II) FD- WORLD VIEW

- A) Zamindari Pratha aur Angrezi Pratha our aaj ke nayen vayawastha mein koi vishesh farq Nahin hai
- B) Aaj ka forester pehle ke apecha jaankar nahin hai.
- C) 5 km ka bandhan ka koi avchitya nahin hai.

### III) FD- CHANGE

- A) Rajaswa Aur Van Vibhag – Simaon Ko Durust Nahin Karna Chahate Hain
- B) Sanyukt Vaniki ke nitiyon ke badalne mein FD ke ektarfa soch hai.
- C) Bar bar nitiyon mein parivartan asthirta ka suchak hai.

### IV) FD- OTHERS

- A) DFO ko sarvopari karn a uchit hai.
- B) Vartaman vyasthan se logon mein sanyukt Vaniki ke prati apnatwa nahin hai

## ANNEXURE- III

**COMPRARISON OF CENTRAL GOVERNMENT CIRCULAR OF 1990 AND GOVERNMENT OF M.P. CIRCULAR OF 1991**

<b>S.No.</b>	<b>Govt. of India Circular, 1990.</b>	<b>Govt. of M.P. Circular, 1991.</b>
1	The JFM programme should be implemented under an arrangement between the voluntary agencies/NGO, the village community (beneficiaries) and the State forest Department.	The State govt. Circular talks only of co-operation between the village community and the state forest department .It nowhere mentions of the involvement of the voluntary agencies or the NGO's.
2	No ownership or lease rights over the forestland should be given to the beneficiaries or to the voluntary agency/NGO, nor should the forestland be assigned in contravention of the provisions contained in the Forest Conservation Act, 1980.	
3	Access to forestland and usufructory benefits should be given only to the beneficiaries who get organized into a village institution, specifically for forest regeneration and protection. This could be Panchayat or the co-operative of the village, with no restriction on membership. It could also be a Village Forest Committee.	The State Govt. by it's JFM Resolution, resolved to form 2 types of Committees for the protection of forests- (a) Forest Protection Committee (FPC) in forest areas sensitive to damage and (b) Village Forest Protection Committee (VFPC) in forest areas degraded due to biotic pressure.
4	The beneficiaries should be entitled to share in the usufructs to the extent and subject to the conditions prescribed by the State government. The voluntary agency/NGO should not be entitled to usufructory rights.	In the forest areas sensitive to damage where FPCs are constituted, the FPC will be given 20% of the net income derived from the forest areas so protected.
		In the forest which are degraded due to biotic pressure – (a) the villagers have been given full right to the forest produce (excluding nationalised timber) derived from the selected degraded forest area . The Committee will be given 30% of the net income obtained from the nationalised minor forest produce.



		<p>(b) The villagers will also get entire quantity of fuel wood, timber (poles) and bamboo yielded from thinning, clearing etc.</p> <p>in addition, the villagers will also get 30% of the total quantity of timber and fuel wood obtained from natural felling or final exploitation of planted trees.</p>
5	The benefit of people's participation should go to the village communities and not to commercial or other interests, which may try to derive benefits in their names.	
6	The selection of beneficiaries should be done only from families, which are willing to participate through their personal efforts.	A person from each family will be nominated as member.
7	Areas to be selected for the programme should be free from the claims (including existing rights, privileges, concessions) of any person who is not a beneficiary under the scheme.	For the FPCs, the DFO will select such sensitive forests where the villagers are willing to offer their co-operation in the protection of forests after considering the distance of the concerned villages, the size of the population and the quantity of forest produce required as usufructs.
8		For VFPCs the DFO will prefer such degraded forests where villagers are willing to help. In the selection of area for the committee the availability of degraded forest area, its distance from these villages, population of the villages, share in the forest produce shall be taken into account.
9	The selected site should be worked in accordance with a working scheme, duly approved by the State Government. The working scheme should be prepared in consultation with the beneficiaries.	Only for the VFPC, the management plan for the protection of forests is discussed in the circular. The DFO with the help of his staff would prepare a proposal for the management, development, protection, etc., for the degraded forest area. DFO will then put the management plan before the executive for suggestions. The amended plan will then be submitted

		to the VFPC for its approval. After getting approval the DFO will give his formal acceptance for the execution of the plan.
10	The working scheme may remain in operation for a period of 10 years and revised/renewed after that.	State Govt. circular provided that the Management plan will be for 5 years. (No mention of renewal/revision)
11	For performing various activities the beneficiaries should be paid by the Forest Department from the funds under the social forestry programme. However, the village community may obtain funds from Govt. agencies and sources for undertaking such activities.	For the VFPCs one of the responsibilities assigned to the Forest Department is that the FD will provide funds required for the implementation of the plan annually.
11	While the Circular prescribed certain prohibitions and on the village community involved in for the protection of forests such as a) No grazing shall be allowed in the forestland protected by the village community. b) No agriculture should be permitted on the forestland, it allowed cutting and carrying grass free of cost so that stall-feeding should be promoted.	Under the duties and responsibilities assigned to FPCs – the committee/executive will have to check illegal cutting, encroachments, illegal grazing, and theft of forest produce or damage to forests.
		Under the responsibilities and duties assigned to the executive of VFPCs inspite of social measures, if the villagers do not stop their illegal activities, the executive will request the ranger or his superiors to take action against the concerned villagers under the Indian Forest Act, 1927.
12	The Forest Department shall closely supervise the works.	As regards FPCs, the DFO or an officer authorized will quarterly review the work done by the FPC.  In relation to the VFPC's the DFO will undertake half-yearly review of the VFPC activities.
13	If the beneficiaries fail or neglect to protect the area, the usufructory benefits should be withdrawn without paying the compensation to any one for any work that might have been done prior to it.	The DFO has the power to cancel the membership of the members of the FP Committee/Executive if it comes to his notice that forest protection committee has failed to protect the selected area or violated the provisions of the Indian Forest Act.

		He is also empowered to dissolve the entire FPC as and when required.
		As regards VFPC if in the opinion of DFO it is found that funds released for the purpose are not being properly utilised he is authorized to suspend the execution of the management planning.
14	The Circular provides for MOU	If considered necessary

## ANNEXURE- IV

**COMPARISON OF CENTRAL GOVERNMENT GUIDELINES OF 2000 AND GOVERNMENT OF M.P. RESOLUTION OF 2001**

<b>S.No</b>	<b>Govt. of India Guidelines, 2000</b>	<b>GOVT. JFM.P Resolution</b>
1	JFM programme should cover both the degraded (<40% crown density) as well as good forests (>40% crown density) except the protected areas network.	JFM programme covers degraded (density <40%), good (density >40%) and protected forest areas.
2	All committees to be uniformly known as JFM committees (JFMC)	Three types of committees have been recognized: <ul style="list-style-type: none"> <li>- Village Forest Committees (VFC) in degraded areas</li> <li>- Forest Protection Committees (FPC) in good forest areas</li> <li>- Eco-development Committees (EDC) in protected forest areas.</li> </ul>
3	JFM Committees in good are to be constituted in villages situated within 2 km boundary; and in degraded areas within 5 km boundary.	VFC, FPC and EDC to be constituted in villages situated within five kilometers from the forest block boundaries of degraded forest, good forest and protected areas.
4	JFM committees to be registered under the <i>Societies Registration Act 1860</i> to provide them legal back up. Except those which are registered under the relevant Act in most of the states. The deadline is – 31 <sup>st</sup> March, 2000.	JFM Committees will not be registered under the Societies Registration Act, 1860. .
5	MOU with clearly defined roles and responsibilities for different work or areas should be separately assigned and signed between the State Governments and the committees	Memorandum of Understanding (MOU) to be signed by the Chairman of the committee and Divisional Level forest officer or any delegated officer.
6	All adults eligible to become members of the JFM committees	All adults eligible to become members of the JFM Committees.
7	President/Vice-President/Secretary – one post to be filled by woman	President/Vice President – one post to be filled by woman.
8	At least 50% members of the JFM general body should be women. For general body meetings, the presence of at least 50% women members is compulsory.	This has not been made mandatory.
9	33% membership in the JFM Executive	Minimum 33% of women to be

	Committee / Management Committee to be from women members. The quorum for Executive/Management Committee meetings should be one third of women executive members or a minimum of one whichever is more	members of Executive Committee, out of which one representative would be from women Self-Help Group, if present in the village.
10		The proportion of scheduled castes, scheduled tribes and backward class members in the Executive Committee should be in accordance with their populations in Gram Sabha.
11		Minimum of 2 members from landless families (1 male and 1 female) to be included in the Executive Committee.
12		All Panch/Sarpanch residing in the village will be ex-officio members of the committee.
13		Beat Guard/Forester in charge of the allocated forest area will be ex-officio Secretary of the Executive Committee.
14		A federation of Committees Presidents to be constituted at the division level. All appeals against DFO's decision to dissolve committee can be made to the federation.
15	In good forest areas, the JFM activities would concentrate on NTFP management and no alteration should be permitted in the basic silvicultural prescription prescribed in the Working Plan but to promote regeneration, development and sustainable harvesting of NTFP, which can be given for free or on concessional rates as per existing practicing in the degraded areas under JFM.	Royalty free nistar to all committees.
16	In good forest areas, JFM committees eligible for timber benefit sharing only, if satisfactorily protected the good forests for a minimum period of at least 10 years.	No time limit has been prescribed.
17	In good forests, sharing percentage limited to a maximum of 20% of the revenue from the final harvest. The felling of trees and harvesting of timber will be as per the provisions of the	10% share to FPC in final produce.

	Working Plan	
18		30% share to VFC in final produce
19		EDC within protected forest area would get a share equivalent to the adjoining FPC, while EDC outside protected forest area would receive benefits on the basis of the forest density.
21	Not less than 25% of the share of village community to be deposited in the village development fund for conservation and development, of the forests. A matching contribution may be made by the forest department from its share.	Mechanism for ploughing back a certain percentage of revenue from final harvest to forest management 50% of the amount from final felling to be distributed among members in cash; 30% to village resource development and 20% to be spent on forest development. No contribution from the forest department from its share.
21		50% of fine/compensation to be paid to committees for cooperation in apprehending offenders.
22		Committee members to be located as public servants during protection of forests. Protection to committee members to be given and in case of injury/death to any member of committee, compensation similar to forest staff be given.
23	Microplans to be prepared jointly by the forest department and committees using PRA exercises, and taking care of village needs.	Microplans to be prepared, both for forest management as well as for village resource development by the forest department and forest committees.
24	In case of existing working plans, PCCFs may issue special order to incorporate microplans, and without changing the silviculture principles, deviations may be approved in the existing working plans.	Principles of forest/wildlife management not to be violated in microplans.

## ANNEXURE- V

### LIST OF LAWS STUDIED

#### CENTRAL ACTS/POLICIES

1. Constitution of India
2. Indian Forest Act, 1927 as applicable in Madhya Pradesh
3. Forest Conservation Act, 1980
4. National Forest Policy of 1988
5. Panchayat Extension to Scheduled Areas Act, 1996.

#### STATE ACTS/RULES

##### *Forest & Wildlife*

1. Indian Forest Act, 1927 as applicable in Madhya Pradesh
2. The Madhya Pradesh National Parks Act 1955.
3. The Madhya Pradesh Protection of Aboriginal Tribes (Interest in Trees) Act, 1956
4. Madhya Pradesh Forest Rules, 1960.
5. M.P Protected Forest Rules, 1960
6. Madhya Pradesh Transit (Forest Produce) Rules, 1961.
7. Madhya Pradesh Forests (Hunting, Shooting, Fishing, Poisoning water and Setting Traps or Snares in Reserved or Protected Forests) Rules, 1963.
8. M .P Tendu Patta (Vyapar Viniyaman) Adhinyam 1964,
9. The Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Adhinyam, 1964
10. M .P Tendu Patta (Vyapar Viniyaman) Niyamavali, 1966
11. Madhya Pradesh Tendu Patta (Vyapar Viniyaman) Niyamavali, 1966.
12. The Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhinyam, 1969.
13. M.P. Van Upaj (Vyapar Viniyaman) Niyam, 1969
14. Madhya Pradesh Van Upaj Other Than Timber (Vyapar Viniyaman) Niyam, 1969.
15. Madhya Pradesh Tendu Patton Ke Nirvartan Hetu Nyuntum Dar Nischayan Adhinyam, 1972.
16. MP Tendu Patto ke Nirvarthan Hetu Nyuntam Dar Nishchyan Dar Adhinyam 1972
17. M.P. Shaswat Patta Pratisanharan Adhinyam, 1973
18. Madhya Pradesh (Vyapar Viniyaman) Kastha Niyam, 1973.
19. Madhya Pradesh Wild Life (Protection) Rules, 1974.
20. Madhya Pradesh Disposal of Timber and Forest Produce Rules, 1974.
21. M.P. Forest Village Rules, 1977
22. The Madhya Pradesh Van Upaj (Vyapar Viniyaman) Sanshodhan Adhinyam, 1983.
23. The Madhya Pradesh Kastha Chiran (Viniyaman) Adhinyam, 1984.
24. The Madhya Pradesh Kastha Chiran (Viniyaman) Niyam, 1984.
25. The Madhya Pradesh Van Upaj Ke Kararon Ka Punrikshan Adhinyam, 1987.

26. M.P. Aadim Janjatiyon ka Sanrakshan (Vriksho Mein Heit) Adhiniyam, 1999
27. M.P (Transit) Forest Produce Rules, 2000
28. M.P. Lok Vaniki Adhiniyam, 2001
29. Madhya Pradesh Vrikshon Ka Parirakshan Adhiniyam 2001

*Land*

1. *MP Land Revenue Code, 1959*
2. The Cattle Trespass (M.P. Amendment) Act, 1960
3. Madhya Pradesh Bhumi Sudhar Yojna Adhiniyam, 1967.
4. Rules Under Bhumi Sudhar Yojna Adhiniyam.
5. Bhumi Vikas Nigam Adhiniyam, 1976.
6. M.P Co-operative Society (Loans and Subsidies for Irrigation Purposes) Rules, 1961.
7. The Central Provinces and Berar Cultivation of Fallow Land Act, 1948.
8. Rules under CP and Berar Cultivation of Fallow Land Act, 1948.
9. Madhya Pradesh Grazing Rates Rules, 1979.
10. The Madhya Pradesh Grazing Rules, 1986

*Panchayat*

1. Madhya Pradesh (Panchayat Raj Avam Gram Swaraj) Adhiniyam, 1993

**JFM:**

***Centre:***

1. Involvement of Village Community and VAs in regeneration of Degraded forests, (No. 6.21/89-FP)
2. Guidelines for Strengthening of JFM Programme issued by the MoEF, NO. 22-8/2000-JFM (FPD), dated 21 Feb 2000
3. Guidelines for Strengthening of JFM Programme issued by the MoEF, No. 22-8/2000-JFM (FPD), dated 24.12.02

***State:***

1. Madhya Pradesh JFM Resolution (Order No. 16/4/91/10-2 of 10.12.91)
2. Madhya Pradesh JFM Resolution (F-16/4/91, dated 4-01-95)
3. Madhya Pradesh JFM Resolution (F 16/4/91/10-2 dated 7-02-00)
4. Madhya Pradesh JFM Resolution, F16/4/91/10-2 dated 22-10-01)



## ANNEXURE-VI CASE STUDY

### “UNIQUENESS OF RAJABARARI ESTATE” IN HARDA FOREST DIVISION.

#### *Background*

Rajabarari estate in Harda Division represents a unique institutional arrangement in terms of forest management prevailing in country. The uniqueness lies in the fact that despite a blanket notification of conversion of all erstwhile princely state forests to undemarcated forests Rajabarari has maintained its private status and infact has shown good potential or a unique model of forestry management in the country<sup>206</sup>. The model has not adopted the prevalent JFM model in Harda but instead practices forest management as per the norms laid down by the estate management.

To appreciate this model a little background is pertinent here.

The Estate has a total area of 8000 acres and comprises four Revenue villages – Rajabarari, Salaitheka, Mahagaon and Temrobahar. The first three villages comprise Rajabarari Panchayat while Temrobahar lies within the jurisdiction of Temrobahar Panchayat. The sample village Salaitheka has two hamlets (*dhanas*) - Salai and Ratamati.

#### *General History*

The estate originally belonged to a Korku Malguzar- ‘Gotang Patel’ who sold the estate to a British national Mr. Murray. The fifth spiritual leader ‘Guru Param Guru Maharaj’ (original name Anand Swarup Ketti) of the Radha Swami Sect bought the estate in year 1919 from the widow of Mr. Murray who owned these forests for four years and later donated the estate to Radha Swami Sect in 1923, which managed it till 1950.

#### *Legal History*

The Estate was managed by the Radha Swami sect till coming into effect of Madhya Pradesh Abolition of Proprietary Right (Estates, Mahals, Alienated lands) Act in 1950, by which the State Govt. acquired the proprietary rights in the Estate. Through a contract executed in 1953 between State Govt. and the Estate the ‘forestland’ was leased out to the Estate Authorities for 99 years with retrospective effect from 1951 i.e. the lease is effective till the year 2049. Initially the Estate exercised control on the total area of 8000 Acres but the coming of M.P. Abolition of Proprietary Right (Estates, Mahals, Alienated lands) Act brought few changes in the composition of land held by the Estate. The State Government at the time of executing the contract, granted 5000 Acres of forest land to the Estate. Besides this the Sect was given an agricultural patch of 500 acres as per the provisions of the M.P. Abolition of Proprietary Right (Estates, Mahals, Alienated lands) Act. The Madhya Pradesh Abolition of Proprietary Right (Estates, Mahals, Alienated lands) Act states that certain properties will continue to remain in possession of

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<sup>206</sup> The good management practices of Rajabarari estate is acknowledged by both the forest department and the community; as per personnel communication with field team and unofficial discussion with officials of the Forest Department .

proprietor or other person. The listing of certain properties included all open enclosures used for agricultural purposes or domestic purposes and should have been in continuous possession for twelve years (12) immediately before 1948-49. Listing further goes on to include all buildings, places of worship, wells situated in and trees standing on lands included in such enclosures or house sites or land appertaining to such buildings<sup>207</sup>. Pattas or leases were issued to people on over 2000 acres of land and rest 500 acres has river, streams flowing over them. Compensation was paid to Estate authorities for the patta issued on 2000 acres of land to local people. This continued till 1973 when the State Legislature passed The Madhya Pradesh Shaswat Patta Pratisanharan Adhiniyam, which emphasised the revoking of all perpetual lease [leases for a period of 30 years or more] on forest land in the State of Madhya Pradesh.

However the 1973 legislation clearly laid down that the Act will not apply to such perpetual leases where 'entire income' whereof is appropriated for promotion of interest of general public or for promotion of the educational or economic interests of the weaker sections of the people and in particular of Scheduled castes and schedule tribes"(Section 12). This exclusion clause has thus been utilized to exclude the estate. Without getting into the merit of the legal position one can assume that perpetual leases which existed prior to the Shashwat Patta Adhiniyam and where such lands were used for promotion of public interest or promotion of economic interests of the weaker sections especially Scheduled Tribes and Castes may be excluded and it is legally permissible to do so. The Rajabarari estate is one such example and probably the only one in Madhya Pradesh. It thus offers another model of management where public good and services, if demonstrated, may be used as a pretext for experimenting with other forms of forestry management such as private forestry management.

#### *Estate – Education as the Thrust and Forestry Management as a means*

The main thrust of the estate is on imparting education to the children of tribals inhabiting the area. The Estate has ten schools out of which six are primary, three are secondary and one is a higher secondary school. The Estate runs two primary schools outside Rajabarari Estate too. The management has thus focused on focused on education<sup>208</sup> as a public good. Besides that the Estate runs a hospital for the treatment of people residing in the Estate. As regards agricultural patch of 500 acres, agricultural wing of Estate cultivate 20 % of the said area and rest is let out to villagers for agriculture against annual rent- called *Khot Batai*- payable to Estate authorities. Estate authorities generally charge between 30 to 40 Rupees per acre per annum<sup>209</sup>. What is interesting in this model is that there is a focus on two aspects of rural life- agriculture and education hence ensuring livelihood security with an emphasis on improving level of education to ensure a better future for the children. This certainly brings the estate outside the purview

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<sup>207</sup> See Section 5 of M.P. Abolition of Proprietary Right (Estates, Mahals, Alienated Land) Act, 1950

<sup>208</sup> Discussions with a schoolteacher, Mr. Aagam, revealed that that Estate earlier had just one primary school imparting education upto fifth standard. The Estate opened its second school only in 1980.

<sup>209</sup> Discussions with people of Ratamati Hamlet during PRA exercise revealed that all households have *Khot Batai* land.

of the Shashwat Act which permits perpetual leases for such estates which are engaged in public goods and services.

### *Legal Category of Forest*

The forest area leased to Sect belongs to Protected Forest (PF) category under Indian Forest Act (IFA). The team of people managing these forests on behalf of the estate includes four forest guards, one forester and a ranger all of them are employees of the above-mentioned society<sup>210</sup>. The forest Department prepares working plan for management of forest area within the estate. Such working plan is made taking into account the opinion of Estate authorities.

The forest patch was declared a protected forest (PF) through a notification issued in 1958. It is pertinent to mention here that the Madhya Pradesh Government issued blanket notifications between 1954-1958 regarding all such forest land which has been vested in the State by virtue of the provisions contained in the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No.1 of 1951). Such forestlands were denoted as undemarcated Protected Forests. Such undemarcated forests were brought under the forestry legislation only in 1960 through the Rules on PF. The idea was to convert such rich forests as Reserved Forest after a prescribed survey and settlement procedure under the Indian Forest Act. However, the estate of Rajabarari remains a private property of the Radhaswami Sect for reasons afore mentioned.

### *JFM and Estate Forest Management*

As per JFM Resolution it is applicable to forest lands owned by the Government. Legally speaking the estate does not come under the purview of the JFM Order. However since the land should have been technically a Protected Forest in all probability a reserve forests where there are rich forests the FD at least at the lower level feels that such forests are merely a lease and thus needs the FD control. It is not surprising that different perceptions have emerged as regards formation of JFM Committee. Estate authorities see forest area leased out to them as their private property. Villagers on the other hand opposed the formation of Committee with Estate authorities but gave a positive reply as regards formation of Committee with the Forest Department<sup>211</sup>. One of the pointers during discussion emphasised the role of monetary considerations associated with JFM. The preference of FD over Estate is perhaps because of the financial assistance that is provided under the JFM program which obviously is not to that scale in any private forestry management such as the Estate.

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<sup>210</sup> The names given to the persons working in the forest of the Estate have been given as forest officials. This is more to give credence to the kind of activities they are engaged in rather than any official post they hold as in the Government. Thus legally speaking they are not public servants.

<sup>211</sup> To the query why the Estate failed to take up JFM programme for management of forest area leased out to them? Mr. Saxena replied "Hamari Property hai hame save karna hai" [its our property and we have to save it]. Responding to the same question Mr. Aagam (school teacher) responded "hamne Samiti ke objective ko accept kiya hai lekin format ko follow nahi kiya hai... aap to jante hi hai na election mein kya hota hai..." [We have accepted the objective of committee but did not take up the format prescribed by JFM programme.... you know what happens in elections...].

*Nistar: Estate Forest not Sufficient to meet demand*

Discussions with villagers and Estate authorities revealed that Estate forest area is not sufficient to meet their Nistar requirements. Legally, the Estate authorities are not bound to provide nistar as the property is private in nature. However the crucial practical aspect is the location of Nistar Depot from this Estate. The nearest nistar depot is located at Temagaon, which is located at a distance of 25 KM from the village. Even the Ranger Mr. Saxena admitted that nistar depot exists only on paper. It is important to mention here that all the four villages lying in Estate territory has Nistar Patraks. According to Estate Officials material required for meeting nistar requirement is distributed to villagers through Panchayat. However villagers revealed that “*panchayat is almost functionless*”. There is a clear conflict in terms of role of the Panchayat vis vis nistar. Although legally the Panchayat is not mandated to provide for Nistar.

*Forest management in the Estate :*

The coupe work<sup>212</sup> is done as per the prescriptions given in working plan however duration of enclosure of the plantation depends upon the estate authority. This discretion becomes important as the gestation of a plantation is most important for the benefits to flow to the estate or the people who are engaged in the protection. One of the measure to prevent from grazing is fencing by barbed wires.. The concession allowed in such enclosed compartments include allowance for fodder. Apart from that wage employment for cutting grass is also a benefit that accrues to the community. The over all responsibility of estate forests vests with Estate Ranger. Another key strategy which the estate authority use is the longevity of association with a given forest. Unlike ther forest departemtn or the Government sytem where transfers are inevitable the estate follows a policy of not transferring its employee from one place to other<sup>213</sup>.

*Effect of Godavarman order*

The Godavarman order dated 12<sup>th</sup> of December 1996<sup>214</sup> which imposed ban on the felling of trees except under working plan as approved by the Central Govt across India, apparently had no effect on the functioning of forestry activities of Estate. As told by the Estate Ranger, the timber were felled before the pronouncement of order and had received the revenue for the last year felling of timber from State Department authorities. Legally speaking this raises a unique situation, as on one hand there is a requirement of permission from the Central Government for leasing forestland to private individual or community on the other court orders which are sweeping in nature and nationally applicable brings within its ambit even such forests which are privately being managed. There is more clarity needed for such unique situations.

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<sup>212</sup> Generally forestry operations are done as per marking of forest compartments and subsequent felling after the trees mature.

<sup>213</sup> The present rangers are working here since 1983. This is the central reason for a better management of forest as per the Estate Authorities.

<sup>214</sup> T.N. Godavaraman vs Union of India, CWP No 202 of 1995

*Concluding Remarks:* Thus we see that Rajabarari stands as a unique arrangement on forestry management for a land which was first legally converted into the jurisdiction of the Forest Department but allowed as a private entity due to a space provided by another law and subsequently, despite prohibition on long terms leases, which was considered by the state in 1973, spaces within the legislation has been used to demonstrate a good forestry practice. Clearly where intentions are good, a good law will never come in the way.